

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ESSROC San Juan, Inc.,)
)
 Defendant.)
)

Civil Action No. 3:09-cv-01578
Judge Cerezo

CONSENT DECREE

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant ESSROC San Juan, Inc. (“ESSROC”) violated Section 112 of the Clean Air Act (“CAA”), 42 U.S.C. § 7412, and the National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”) for the Portland Cement Manufacturing Industry, 40 C.F.R. Part 63, Subpart LLL, promulgated thereunder (and referred to as the Portland Cement Maximum Achievable Control Technology or “Portland Cement MACT”); and Sections 301 and 402 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311 and 1342, and implementing regulations.

The Complaint against ESSROC alleges that it is an owner or an operator of a Portland Cement plant and the related quarrying operations in Espinosa Ward in the Municipality of Dorado, Puerto Rico (“Facility”) subject to the CAA and CWA, regulations promulgated by EPA pursuant to the CAA and CWA, and permits issued pursuant to the CAA and CWA. The Complaint alleges that ESSROC violated the CAA and its implementing regulations by improperly performing compliance testing, by exceeding its applicable emission limits, and by improperly monitoring emissions at the Facility. Furthermore, the Complaint alleges that ESSROC violated the CWA and its implementing regulations and permits issued thereunder by exceeding effluent limits applicable to its discharges, improperly preparing required compliance plans, failing to maintain records, failing to timely submit reports, failing to operate pursuant to a permit, and failing to comply with its compliance plan.

Defendant does not admit liability to the United States for the occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, Section 113 of the CAA, 42 U.S.C. § 7413, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7613(b), Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and ESSROC conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, ESSROC consent to the Court's jurisdiction over this Decree and any such action and over ESSROC and consents to venue in this judicial district.

2. For purposes of this Consent Decree, ESSROC agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon ESSROC and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve ESSROC of its obligation to ensure

that the terms of the Decree are fully implemented. At least 30 Days prior to such transfer, ESSROC shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 2, the United States Attorney for the District of Puerto Rico, and the United States Department of Justice in accordance with the Notice section of this Decree. Any attempt to transfer ownership or operation of the Facility, or any part of the Facility, without complying with this Paragraph constitutes a violation of this Decree.

5. ESSROC shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. ESSROC shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent decree that are defined in the CAA, the CWA or in regulations promulgated pursuant to the CAA or CWA shall have the meanings assigned to them in such Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Complaint" shall mean the complaint filed by the United States in this action;
- b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto;
- c. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- d. "Effective Date" shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.
- e. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;
- f. "Parties" shall mean the United States and ESSROC;
- g. "Section" shall mean a portion of this Decree identified by a title and roman numeral;
- h. "Waste Water" shall mean all water discharged from ESSROC's Facility from Outfall 001 under NPDES permit PR0001163; and

i. "Storm Water" shall mean all water discharged from outfalls covered by the EPA 2008 Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date of this Consent Decree, ESSROC shall pay the sum of \$275,000 to the United States as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. ESSROC shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Puerto Rico. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in this case, and shall reference the civil action number and DOJ case number 90-5-2-1-08412, to the United States in accordance with Notice Section of this Decree; by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

10. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or the Stipulated Penalties Section in calculating its federal or State income tax.

V. COMPLIANCE REQUIREMENTS

11. Clean Air Act Compliance – Baghouses.

- a. ESSROC attests that it has disconnected Baghouse No. 3 in June, 2007. ESSROC shall not route any air emissions from the Facility through Baghouse No. 3
- b. ESSROC shall operate its facility so that all air emissions that formerly passed through Baghouse No. 3 instead pass through Baghouse No. 2. ESSROC shall ensure that Baghouse No. 2 is capable of handling all air emissions at the facility previously handled by Baghouses 2 and 3.
- c. Within 90 days of the effective date of this Consent Decree, ESSROC shall apply for a modification to any permit that it holds pursuant to the Clean Air Act, including any permit issued pursuant to Title V of the Clean Air, seeking to permanently disconnect Baghouse No. 3 and to require that all air emissions formerly routed through Baghouse No. 3 pass through Baghouse No. 2.

12. Clean Water Act Compliance – Lagoon Enhancement System

- a. ESSROC shall install a Lagoon Enhancement System at its Facility to control all water moving between Lagoon 1, and Lagoon 2, as described in Appendix “A” to this Consent Decree, in order to reduce its pollutant discharges in its effluent from Outfall 001, which is regulated by the Clean Water Act.

- b. ESSROC shall design and install the Lagoon Enhancement System in conformance with specifications contained in Appendix A:
- i. Design and installation capable of accommodating the 10-year 24-hour storm flow and to adequately treat the maximum expected flows of 556,000 gallons per day;
 - iii. Design and installation that allows ESSROC to clean, maintain, and repair the Lagoon Enhancement System.
- c. Within 45 days of the effective date of this Consent Decree, ESSROC shall procure authorization and approval from the Puerto Rico Environmental Quality Board (“EQB”), and other necessary entities, as required by Part I, Special Condition 1 of its NPDES permit, to install and use the Lagoon Enhancement System.
- d. ESSROC shall begin construction of the Lagoon Enhancement System within 90 days of the Effective Date of this Decree.
- e. ESSROC shall complete construction of the Lagoon Enhancement System within 180 days of the Effective Date of this Decree and shall continuously use and maintain the system thereafter.
- f. ESSROC shall inspect the Lagoon Enhancement System at a minimum of once per month.
- g. ESSROC shall clean the Lagoon Enhancement System at least once every 12 months after installation, or more frequently as needed to maintain the System.

h. ESSROC shall establish procedures for handling and disposing of any materials removed from the Lagoon Enhancement System during any cleaning thereof.

i. ESSROC shall, within 180 days of the Effective Date of this Decree, prepare and submit to EPA for approval a Lagoon Enhancement System Operation and Maintenance Plan containing, at a minimum, the procedures used to inspect the Lagoon Enhancement System, clean the Lagoon Enhancement System, handle and dispose of materials removed from the Lagoon Enhancement System, and ensure continuous compliance with the Waste Water Permit.

13. Clean Water Act Compliance – Coliform Control

a. ESSROC attests that it has replaced all existing sanitary septic tanks with sanitary holding tanks at the Facility. ESSROC shall submit a summary of the design information of the new sanitary tanks installed.

b. Beginning on the date of completion of construction of the Lagoon Enhancement System, ESSROC shall conduct biweekly monitoring of Fecal Coliform and Total Coliform at Outfall 001 and the influent to Lagoon 2 from Lagoon 1. Such monitoring shall continue for a minimum of one year from the date of completion of construction of the Lagoon Enhancement System. If ESSROC violates an effluent limitation for either Fecal Coliform or Total Coliform during the year of monitoring required by this paragraph, it shall conduct weekly monitoring for three months after such violation for Fecal Coliform and Total Coliform. If ESSROC violates an effluent limitation for either Fecal Coliform or Total Coliform during the

three month enhanced monitoring period required following a violation of the effluent limitation, it shall continue to conduct weekly monitoring for three months until ESSROC has demonstrated compliance with the Fecal Coliform and Total Coliform effluent limitations for a period of three months, at which point it shall revert back to biweekly monitoring if still within the one year from the date of completion of construction of the Lagoon Enhancement System.

c. If, at any time from 180 days after the completion of construction of the Lagoon Enhancement System ESSROC exceeds either the effluent limit for Fecal Coliform or Total Coliform contained in its NPDES Permit, ESSROC shall prepare and submit to EPA for approval a plan of action to address its noncompliance with the Coliform limitations (“Coliform POA”).

d. ESSROC shall submit the Coliform POA no later than 30 days after the due date of the Discharge Monitoring Reports (“DMR”) for the monitoring period during which the Fecal or Total Coliform exceedance that triggered the requirements of this Paragraph occurred.

e. ESSROC shall include in the Coliform POA:

i. proposed measures that will be used to achieve compliance with the NPDES permit limit for Fecal or Total Coliform;

ii. an estimate of the costs and technical feasibility of the installation of a disinfection system to treat Fecal or Total Coliform;

iii. a proposed schedule for the implementation of the Coliform POA,

which shall not exceed 90 days from the date ESSROC submits the Coliform POA to EPA or the due date of the Coliform POA, whichever occurs earlier.

f. Within 30 days of submitting any Coliform POA to EPA, ESSROC shall seek permission from EQB to install any additional controls required by any Coliform POA, and shall modify any permit that it holds pursuant to the Clean Water Act, including its NPDES permit, to require the continuous use of any such additional controls.

g. Upon approval by EPA of the Coliform POA, it shall be incorporated by reference into this Consent Decree and shall be enforceable as part hereof.

h. No later than 90 days after the start of the implementation of the measures set forth in the Coliform POA, ESSROC shall submit to EPA a Coliform POA Completion Report that includes ESSROC's written certification that (i) the measures set forth in the Coliform POA have been implemented, and (ii) ESSROC has achieved consistent compliance with the Fecal and Total Coliform effluent limitations.

14. Clean Water Act Compliance – Enhanced Monitoring

a. Beginning on the date of completion of construction of the Lagoon Enhancement System, ESSROC shall conduct biweekly monitoring of the parameters listed on the table below at Outfall 001. Such monitoring shall continue for a minimum of one year from the date of Lodging of the Decree. If ESSROC violates an effluent limitation for any of the parameters listed on the table below during the year of monitoring required by this paragraph, it shall conduct weekly monitoring for three months after such violation for such parameter. If

ESSROC violates an effluent limitation for a parameter during the three month enhanced monitoring period required following a violation of the effluent limitation for that parameter, it shall continue to conduct weekly monitoring for three months after such violation for that parameter until ESSROC has demonstrated compliance with the applicable effluent limitation for a period of three months, at which point it shall revert back to biweekly monitoring if still within the one year from the date of completion of construction of the Lagoon Enhancement System. At least one of the weekly samples during any month in which there is a rainfall event of 0.5" or greater must be collected within 2 hours of such rainfall event. All samples must be collected, transported, and analyzed in accordance with the permit and 40 C.F.R. Part 136, unless as specified otherwise in this Consent Decree:

Parameter	Monitoring Location	Monitoring Frequency
Surfactants	Outfall 001	biweekly
Total Suspended Solids	Outfall 001	biweekly
Copper	Outfall 001	biweekly
Sulfate	Outfall 001	biweekly
Precipitation	Daily Monitoring at the Facility	Daily
Flow	Outfall 001	Continuous
Fecal Coliform	Outfall 001	biweekly or weekly (see paragraph 13 above for requirements specifically applicable to Coliform)
Total Coliform	Outfall 001	

c. All monitoring results, with the exception of daily precipitation, must be reported on the DMR. A monthly summary sheet which includes all of the biweekly sample results and daily rainfall daily flow rates, and, as applicable, any weekly sample results, must also be submitted along with the DMRs.

15. Clean Water Act Compliance – Effluent Control Plans.

a. If Essroc exceeds the effluent limitation for an identified parameter as described in the following table following the installation of the Lagoon Enhancement System, ESSROC shall develop and submit to EPA for approval a Plan of Action to address the noncompliance.

Type of Effluent Limitation	Trigger for Plan of Action
Monthly Average	2 violations within a 3 month period
Daily Maximum	3 violations within a 3 month period for enhanced monitoring parameters and 1 violation in 3 months for any other parameters

b. Within 60 days of the due date of the DMR for the monitoring period during which the exceedance(s) of effluent limitation(s) that triggers the requirement to develop and implement a Plan of Action pursuant to this Paragraph occurs, ESSROC shall develop and submit to EPA for approval a Plan of Action that:

i. identifies and proposes all measures to be taken to achieve compliance with the final effluent limitation(s) for the relevant parameter(s) as set forth in the NPDES permit; and

ii. provides a schedule for implementing the proposed measures, which shall not exceed one year from the date ESSROC submits the Plan of Action to EPA or the due date of the Plan of Action, whichever occurs earlier.

c. Upon approval by EPA of the Plan of Action, it shall be incorporated by reference into this Consent Decree and shall be enforceable as part hereof.

d. No later than 60 days after implementation of the measures set forth in a Plan of Action, ESSROC shall submit to EPA a Plan of Action Completion Report that includes ESSROC's written certification that (i) the measures set forth in the Plan of Action have been implemented, and (ii) ESSROC has achieved consistent compliance with the relevant effluent limitation(s).

16. Clean Water Act Compliance – Stormwater Permit

a. ESSROC shall amend the Notice of Intent ("NOI") that it has submitted (and by which it obtained MSGP 2008 coverage under NPDES Tracking No. PRR05BJ45) to include all information required by the NOI form, such as endangered species information, impaired waterbodies, and all appropriate activities, MSGP sectors and Standard Industrial Activity codes, and submit the amended NOI to the NOI processing center no later than 60 days from the date of Lodging of this Consent Decree, with a copy of the NOI and Storm Water Pollution Prevention Plan ("SWPPP") to EPA Region 2, Division of Enforcement Compliance Assurance, Water Control Branch, and obtain coverage under the EPA 2008 MSGP.

b. ESSROC shall conduct Benchmark Monitoring in accordance with Parts 6, 8E and 8J of the MSGP 2008 except that this monitoring shall take place on a monthly basis (instead of quarterly as specified in the MSGP 2008) for one year from the Effective Date of this Decree. Results of the benchmark monitoring, and any effluent limitations monitoring required by ESSROC's SWPPP, shall be submitted to EPA in the quarterly monitoring reports to EPA and in accordance with the MSGP 2008. If any of the benchmark concentrations in Parts

8E or 8J of the MSGP 2008 are exceeded then ESSROC must, in accordance with Part 3.2, review the selection, design, installation and implementation of its control measures and modify its SWPPP and implement sufficient control measures to meet the benchmark concentrations. SWPPP modifications and certification that the SWPPP changes have been implemented must be submitted in ESSROC's quarterly reports. If during the first year of monitoring pursuant to this paragraph, ESSROC exceeds any of the benchmark concentrations in Parts 8E or 8J of the MSGP 2008, or any effluent limitations required by ESSROC's SWPPP, ESSROC shall continue monthly Benchmark Monitoring, and any required effluent limitation monitoring, until it has four continuous months of monitoring that are below the pollutant benchmarks.

c. ESSROC shall conduct monthly routine inspections, monthly visual assessments, and annual site compliance inspections in accordance with Part 4 of the MSGP 2008 (except that the frequency of the quarterly routine inspections and quarterly visual monitoring shall be conducted monthly for the first year following the Effective Date of this Decree).

d. ESSROC shall include in its quarterly reports required by this Consent Decree all reports required by Parts 2, 4, 5, 6, and 8J of the MSGP 2008 which includes, but is not limited to inspections, quarterly visual assessments, annual site compliance inspections pursuant to Part 4 of the MSGP 2008, monitoring required by Parts 6, 8E and 8J of the MSGP 2008, and training records required by Part 2.1.2.9.

e. Within one hundred and twenty (120) days of lodging of this Consent

Decree, ESSROC shall review its SWPPP and certify that the facility is in full compliance with the MSGP 2008 and that it has obtained coverage under the MSGP 2008.

17. Compliance with Method Detection Limits

a. Upon the Date of Lodging of this Decree, for all effluent parameters that ESSROC is required to monitor pursuant to any Permit or this Decree, ESSROC shall utilize procedures and laboratories that have that have analytical procedures and methods that ensure method detection limits (“MDLs”) are less than or equal to the applicable final effluent limitation so that the United States can assess ESSROC’s compliance with applicable effluent limitations.

b. No later than 30 days after the date of Lodging of this Decree, ESSROC shall submit a written certification to EPA, in accordance with the Notice section of this Decree, that ESSROC utilizes procedures and laboratories that have analytical procedures and methods that ensure MDLs less than or equal to applicable effluent limitations.

18. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA may in writing either approve the submission or disapprove the submission.

19. Permits and Approvals. Where any compliance obligation under this Section requires ESSROC to obtain a federal, state, or local permit or approval, ESSROC shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. ESSROC may seek relief under the provisions of the Force Majeure Section of

this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation including the issuance of a revised NPDES permit or the issuance of a final Water Quality Certificate by EQB based on the draft Modified Water Quality Certificate for ESSROC issued by EQB on June 28, 2008, if ESSROC has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

20. General Description. ESSROC shall implement a land preservation Supplemental Environmental Project (“SEP”), whereby ESSROC creates a conservation easement and transfer that easement to the Puerto Rico Department of Natural and Environmental Resources (“PRDNER”) for a portion of ESSROC’s facility, in accordance with the requirements of this Consent Decree. As delineated in Appendix B to this Consent Decree, the parcel (“SEP Parcel”) of land is approximately 5.3 acres in size is located in the same watershed into which ESSROC discharges effluents. The purpose of this environmental restoration and protection project is to preserve the SEP Parcel in its natural state, providing environmental and public health protection, and enable PRDNER to manage in perpetuity the ecological resources of the SEP Parcel.

21. Within 60 days after the Effective Date of this Decree, ESSROC shall submit to EPA for approval a proposed deed between ESSROC and PRDNER (“SEP Deed”), whereby ESSROC agrees to record on the deed to the SEP Parcel a conservation easement for the benefit

of PRDNER. The SEP Deed shall include the following:

- a. a detailed description of the SEP Parcel, including a survey;
- b. ensure that the SEP Parcel is perpetually maintained as a protected area through deed restrictions, covenants, and/or conservation easements, consistent with the purpose of the SEP as set forth above, and is free from uses or conditions that are inconsistent with ecosystem protection;
- c. a certification by ESSROC that it has not used, generated, stored, disposed, or released any "hazardous pollutants" or "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq. or in the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 et seq.
- d. ensure that neither the SEP Parcel nor any portion of the SEP Parcel is or will be encumbered in any way, with the exception of the covenants or easements given to PRDNER.

22. After review of the SEP Deed, EPA shall in writing: (a) approve the SEP Deed; (b) approve the SEP Deed upon specified conditions; or (c) disapprove the SEP Deed, in whole or in part, and provide the grounds for any disapproval.

23. If the SEP Deed is conditionally approved, ESSROC shall promptly, but in any event no later than 60 Days after receiving EPA's conditional approval, address the grounds for any such conditional approval.

24. In the event that EPA disapproves the SEP Deed in whole or in part, ESSROC shall, within 60 Days thereafter, correct all deficiencies and resubmit the SEP Deed to EPA for approval in accordance with the preceding Paragraphs.

25. No later than 45 Days after (I) EPA approves the SEP Deed or (ii) ESSROC addresses the grounds for conditional approval, ESSROC and PRDNER shall execute the SEP Deed and all other appropriate documents necessary for the recordation of the conservation easement on the title of the SEP Parcel. The transfer documents shall include:

a. a covenant by ESSROC that it has not committed, nor caused to be committed, any acts by which the SEP Parcel or any portion thereof is encumbered in any way, and that ESSROC has not impaired the title of the SEP Parcel by conveying it in whole or in part to another entity; and

b. deed restrictions, covenants, and/or conservation easements to ensure that the SEP Parcel is perpetually maintained consistent with the purpose of the SEP set forth above.

26. ESSROC shall arrange for the recordation of all documents necessary to establish the conservation easement with the appropriate governmental records office, and shall arrange to present such documents at the Registry of the Property within 30 days of execution of the deed.

27. In the event that it is determined by EPA, as a result of the title search or other means, that the SEP Parcel would not serve the purposes of the SEP as set forth in this Section, then within 90 Days after learning of such unsuitability, ESSROC shall provide the United States with a written proposal regarding one or more alternative SEP proposals in the same watershed.

Any proposed alternative property must serve the purposes of the SEP as set forth in this Section, and the total cost to implement the SEP must be not less than \$1 million, including the fair market value of the alternative property based on an independent third-party appraisal.

28. No later than 30 Days after the United States receives any proposal submitted in accordance with the Paragraph above, it shall approve, conditionally approve, or disapprove, in whole or in part, the alternative property proposal.

29. If, after one year from the Effective Date of this Decree, neither the SEP Parcel nor any alternative property has been subject to a conservation easement or transferred to a third party for conservation purposes, the United States may determine that the SEP shall be terminated, in which event a stipulated penalty shall accrue in accordance with the Stipulated Penalties Section of this Decree. Upon payment of the stipulated penalty, ESSROC shall be relieved of any further obligations with respect to the SEP. All provisions of this Decree apply to ESSROC's obligation to complete the SEP in accordance with this Section.

30. With regard to the SEP, ESSROC certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that ESSROC in good faith estimates that the cost to implement the SEP is not less than \$1 million, including the fair market value of the SEP Parcel based upon an independent third-party appraisal;

b. that, as of the date of executing this Decree, ESSROC is not required to

perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that ESSROC was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that ESSROC has not received and will not receive credit for the SEP in any other enforcement action; and

e. that ESSROC will not receive any reimbursement for any portion of the SEP from any other person.

31. No later than 90 Days after the presentation of the conservation easement with the appropriate governmental records office, or the completion of an alternative SEP subject to this Section, ESSROC shall submit to the United States, in accordance with the Notices Section of this Decree either independent of, or as part of, the quarterly reports required by this Decree, the following information:

a. a detailed description of the SEP, as implemented;

b. a description of any problems encountered in completing the SEP and the solutions thereto;

c. copies of the deed and any related deed restrictions, covenants, and/or conservation easements on the SEP Parcel, and any documents evidencing presentation of these deeds, restrictions or covenants to the Registry of the Property;

d. certification that ESSROC has taken all steps to ensure that the SEP has been fully implemented pursuant to the provisions of this Decree; and

e. a description of the environmental and public health benefits resulting from implementation of the SEP.

32. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate the SEP.

33. After receiving notice that the SEP is complete from ESSROC, the United States shall notify ESSROC whether ESSROC has satisfactorily completed the SEP. If the United States determines that ESSROC has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under this Decree.

34. Disputes concerning the satisfactory performance of the SEP may be resolved under the Dispute Resolution Section of this Decree. No other disputes arising under this Section shall be subject to dispute resolution.

35. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set in this Consent Decree.

36. Any public statement, oral or written, in print, film, or other media, made by ESSROC in English making reference to the SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States v. ESSROC San Juan Inc., taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act.” Any public statement, oral or written, in print,

film, or other media, made by ESSROC in Spanish making reference to the SEP under this Decree shall include the following language: “Este proyecto se ejecuta por un acuerdo de una accion legal, United States v. ESSROC San Juan Inc., promovida por la Agencia Federal de Proteccion Ambiental bajo la autoridad del estatuto federal de Agua Limpia.”

37. For federal income tax purposes, ESSROC agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

VII. REPORTING REQUIREMENTS

38. ESSROC shall submit the following reports:

a. Within 30 Days after the end of each calendar-year quarter (i.e., by April 30, July 30, October 30, and January 30) after lodging of this Consent Decree, until termination of this Decree pursuant to the Termination Section, ESSROC shall submit a quarterly report for the preceding quarter that shall include:

- i. status of any construction or compliance measures;
- ii. completion of milestones;
- iii. problems encountered or anticipated, together with implemented or proposed solutions;
- iv. status of permit applications;
- v. operation and maintenance activities;
- vi. status of supplemental environmental project work,
- vii. reports required by the MSGP 2008 (including visual monitoring,

annual site compliance inspections, routine inspections, benchmark monitoring, training, non-storm water certifications, and SWPPP improvements);

viii. non compliance notification required by the ESSROC's NPDES permit;

ix. a description of any stipulated penalties that may be due under this Decree;

x. the name of the firm used to transport and dispose of sanitary wastewater from the Facility;

xi. the name of the wastewater treatment plant at which the Facility's sanitary wastewater is delivered for treatment, if known; and

xii. the amount, in gallons, of the sanitary wastewater removed for treatment from the Facility.

b. The quarterly reports shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If ESSROC violates, or has reason to believe that it may violate, any requirement of this Consent Decree, ESSROC shall notify the United States of such violation and its likely duration, in writing, within ten working Days of the Day ESSROC first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully

explained at the time the report is due, ESSROC shall so state in the report. ESSROC shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day ESSROC becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves ESSROC of its obligation to provide the notice required by the Force Majeure Section of this Consent Decree.

39. All reports shall be submitted to the persons designated in the Notice Section of this Consent Decree.

40. Each report submitted by ESSROC under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

41. The reporting requirements of this Consent Decree do not relieve any ESSROC of any reporting obligations required by the CAA, the CWA, or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

42. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

43. ESSROC shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under the Force Majeure Section of this Decree. A violation includes failing to timely or fully perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

a. Late Payment of Civil Penalty

If ESSROC fails to pay the civil penalty required to be paid when due, ESSROC shall pay a stipulated penalty of \$1,750 per Day for each Day that the payment is late.

b. Violation of Clean Air Act Terms

i. For failing to timely or fully route all air emissions at the facility through Baghouse No. 2, ESSROC shall be liable for a stipulated penalty of \$7,500 for each day that the air emissions are not routed as required by this Decree.

ii. For failing to disconnect Baghouse No. 3, ESSROC shall be liable for a stipulated penalty of \$7,500 for each day that the Baghouse is not disconnected as required by this Decree.

iii. For failing to timely or fully apply for a permit modification to any Clean Air Act permit it holds to include the air requirements of this Decree, ESSROC shall be liable for a stipulated penalty of \$3,750 for each day that the such application is late.

c. Violations of Daily Maximum Effluent Limitations

The following stipulated penalties shall accrue per parameter per day for each violation of an applicable interim or final daily maximum effluent limitation:

- i. \$1,000 for the first violation of the effluent limitation for a parameter;
- ii. \$2,250 for the second violation of the effluent limitation for the same parameter; and
- iii. \$3,750 for the third and any subsequent violation of the effluent limitation for the same parameter.

d. Violations of Monthly Average Effluent Limitations

The following stipulated penalties shall accrue per parameter per month for each violation of an applicable monthly effluent limitation:

- i. \$1,500 for the first violation of the effluent limitation for a parameter;
- ii. \$3,000 for the second violation of the effluent limitation for the same parameter; and
- iii. \$4,500 for the third and any subsequent violation of the effluent

limitation for the same parameter.

e. Violations of Lagoon Enhancement Terms

i. For failing to timely or fully install the Lagoon Enhancement System required by this Decree, ESSROC shall be liable for a stipulated penalty of \$7,500 for each day that the installation is late.

ii. For failing to design or operate the Lagoon Enhancement System required by this Decree ESSROC shall be liable for a stipulated penalty of \$3,750 for each day that the applicable deadline is missed or requirement is not completed correctly.

f. Violations of Coliform Control Terms

i. For failing to submit any Coliform POA required by this Decree, ESSROC shall be liable for a stipulated penalty of \$7,500 for each day that the Coliform POA is not submitted, submitted late, or does not otherwise satisfy the requirements of this Decree.

g. Violations of Stormwater Terms

For failing to obtain coverage under the EPA 2008 MSGP, or amending its MSGP as required by this Decree, ESSROC shall be liable for a stipulated penalty of \$7,500 for each day that such coverage is late, incomplete, or otherwise inadequately obtained.

h. Violations of Supplemental Environmental Projects Terms

i. If ESSROC does not satisfactorily complete the SEP by the deadlines contained in this Decree, or any interim deadlines for the SEP contained in this Decree ESSROC shall be liable for a stipulated penalty of \$7,500 for each day that such completion is

late or is incomplete.

ii. If ESSROC fails to implement the SEP, or halts or abandons work on the SEP, or if the United States determines that the SEP has been terminated, ESSROC shall be liable for a stipulated penalty of \$1,000,000.

i. Violations of Waste Water or Storm Water Monitoring Terms

For failing to conduct any monitoring required by any term of this Decree, including but not limited to any effluent limitation, Waste Water System requirement, Coliform Control requirement, or Stormwater requirement, ESSROC shall be liable for a stipulated penalty of \$3,750 for each day that the monitoring is late, not undertaken, or undertaken incorrectly.

j. Violations of Reporting/Notification Terms

For failing to provide any report or notification to EPA or any other entity required by any term of this Decree, including but not limited to any effluent term, Waste Water System term, Coliform Control term, Stormwater term, SEP term, ESSROC shall be liable for a stipulated penalty of \$3,750 for each day that the such report or notification is late, not undertaken, or undertaken incorrectly.

44. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

45. ESSROC shall pay stipulated penalties to the United States within 30 Days of a

written demand by the United States.

46. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

47. Stipulated penalties shall continue to accrue during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, ESSROC shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, ESSROC shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If ESSROC or the United States appeals the District Court's decision, ESSROC shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

48. ESSROC shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by the Civil Penalty Section of this Decree, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

49. If ESSROC fails to pay stipulated penalties according to the terms of this Consent Decree, ESSROC shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for ESSROC's failure to pay any stipulated penalties.

50. Subject to the provisions of the Effect of Settlement/Reservation of Rights Section of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for ESSROC's violation of this Consent Decree or applicable law.

IX. FORCE MAJEURE

51. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of ESSROC, of any entity controlled by a ESSROC, or of a ESSROC's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite ESSROC's best efforts to fulfill the obligation. The requirement that ESSROC exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include ESSROC's financial inability to perform any obligation under this Consent Decree.

52. If any event occurs or has occurred that may delay the performance of any

obligation under this Consent Decree, whether or not caused by a force majeure event, ESSROC shall provide notice orally or by electronic or facsimile transmission to EPA, within 72 hours of when ESSROC first knew that the event might cause a delay. Within seven days thereafter, ESSROC shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; ESSROC's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of ESSROC, such event may cause or contribute to an endangerment to public health, welfare or the environment. ESSROC shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude ESSROC from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. ESSROC shall be deemed to know of any circumstance of which ESSROC, any entity controlled by ESSROC, or ESSROC's contractors knew or should have known.

53. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA

will notify ESSROC in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

54. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify ESSROC in writing of its decision.

55. If ESSROC elects to invoke the dispute resolution procedures set forth in the Dispute Resolution Section, it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, ESSROC shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that ESSROC complied with the requirements of this Section. If ESSROC carries this burden, the delay at issue shall be deemed not to be a violation by ESSROC of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

56. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

57. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when ESSROC sends the United States a written Notice of Dispute.

Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, ESSROC invokes formal dispute resolution procedures as set forth below.

58. Formal Dispute Resolution. ESSROC shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting ESSROC's position and any supporting documentation relied upon by ESSROC.

59. The United States shall serve its Statement of Position within 45 Days of receipt of ESSROC's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on ESSROC, unless ESSROC files a motion for judicial review of the dispute in accordance with the following Paragraph.

60. ESSROC may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with the Notices Section of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of

receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of ESSROC's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

61. The United States shall respond to ESSROC's motion within the time period allowed by the Local Rules of this Court. ESSROC may file a reply memorandum, to the extent permitted by the Local Rules.

Standard of Review

62. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, ESSROC shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

63. Other Disputes. Except as otherwise provided in this Consent Decree, including subparagraph (a) above, ESSROC shall bear the burden of demonstrating that its position complies with this Consent Decree.

64. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of ESSROC under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute. If ESSROC does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in the Stipulated Penalties Section.

XI. INFORMATION COLLECTION AND RETENTION

65. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by ESSROC or its representatives, contractors, or consultants; obtain documentary evidence, including photographs and similar data; and
- d. assess ESSROC's compliance with this Consent Decree.

66. Until five years after the termination of this Consent Decree, ESSROC shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all

documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to ESSROC's performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States ESSROC shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

67. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state law, regulation, or permit, nor does it limit or affect any duty or obligation of ESSROC to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII.EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

68. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Decree.

69. The United States reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in the preceding paragraph. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA, the CWA, or implementing regulations, or under other

federal or state law, regulation, or permit condition, except as expressly specified in the preceding paragraph.

70. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or ESSROC's violations, ESSROC shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

71. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. ESSROC is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and ESSROC's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that ESSROC's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA or the CWA, or with any other provisions of federal, State, or local laws, regulations, or permits.

72. This Consent Decree does not limit or affect the rights of ESSROC or of the United States against any third parties, not party to this Consent Decree, nor does it limit the

rights of third parties, not party to this Consent Decree, against ESSROC, except as otherwise provided by law.

73. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

74. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by ESSROC, or to otherwise enforce the terms of this Decree.

XIV. NOTICES

75. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: US v ESSROC San Juan Inc., DOJ No. 90-5-2-1-08412

To EPA:

Chief, Compliance Section
Water Compliance Branch
U.S. Environmental Protection Agency

Region 2
290 Broadway, 20th Floor
New York, New York, 10007-1866
Re: US v ESSROC San Juan Inc.

To Defendant ESSROC:

Francisco Bravo Montanez
VP & General Manage
Essroc San Juan, Inc.
P.O. Box 366698
San Juan, Puerto Rico 00936-6698

Gordon C. Andrews, Esq.
General Counsel
Essroc Cement Corp.
3251 Bath Pike
Nazareth, PA 18064

76. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

77. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

78. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

79. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to the Dispute Resolution or Modification Sections of this Decree, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

80. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

81. Any disputes concerning modification of this Decree shall be resolved pursuant to the Dispute Resolution Section of this Decree, provided, however, that, instead of the burden of proof provided by the Dispute Resolution Section of this Decree, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

82. After ESSROC has completed the requirements of the Compliance Requirements Section of this Decree, has complied with the Supplemental Environmental Project Section of this Decree, has submitted all reports or notifications required by this Decree, has thereafter maintained continuous satisfactory compliance with this Consent Decree for a period of 6

months, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, ESSROC may serve upon the United States a Request for Termination, stating that ESSROC has satisfied those requirements, together with all necessary supporting documentation.

83. Following receipt by the United States of ESSROC's Request for Termination, all Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether ESSROC has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

84. If the United States does not agree that the Decree may be terminated, ESSROC may invoke Dispute Resolution under this Decree. However, ESSROC shall not seek Dispute Resolution of any dispute regarding termination, under the Dispute Resolution Section, until 90 days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

85. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. ESSROC consents to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to

challenge any provision of the Decree, unless the United States has notified ESSROC in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

86. Each undersigned representative of ESSROC and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. ESSROC agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

88. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

89. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and ESSROC.

XXIII. APPENDICES

90. The following appendices are attached to and part of this Consent Decree: “Appendix A” is the Technical Description of the Waste Water System and “Appendix B” is the Technical Description of the SEP.

Dated and entered this __ day of _____, 2010.

UNITED STATES DISTRICT JUDGE
District of Puerto Rico

FOR PLAINTIFF UNITED STATES OF AMERICA:

Respectfully submitted,

ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division

PETER M. FLYNN, Bar No. G00107
Senior Attorney
JEROME W. MACLAUGHLIN, Bar No. G00611
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
(202) 514-4352

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney
District of Puerto Rico

ISABEL MUNOZ
Assistant U.S. Attorney
District of Puerto Rico
Federico Degeteau Federal Building
Carlos Chardon Avenue
Hato Rey, Puerto Rico 00918
(787) 282-1841

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Essroc San Juan, Inc.*

FOR THE ENVIRONMENTAL PROTECTION AGENCY: //

Dated: 2/25/10

ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

Dated: 2/24/10

JUDITH A. ENCK
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

OF COUNSEL:
EDUARDO J. GONZALEZ
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
(212) 637-3223

HECTOR VELEZ
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de Leon Ave.,
San Juan, PR 00907
(787) 977-5850

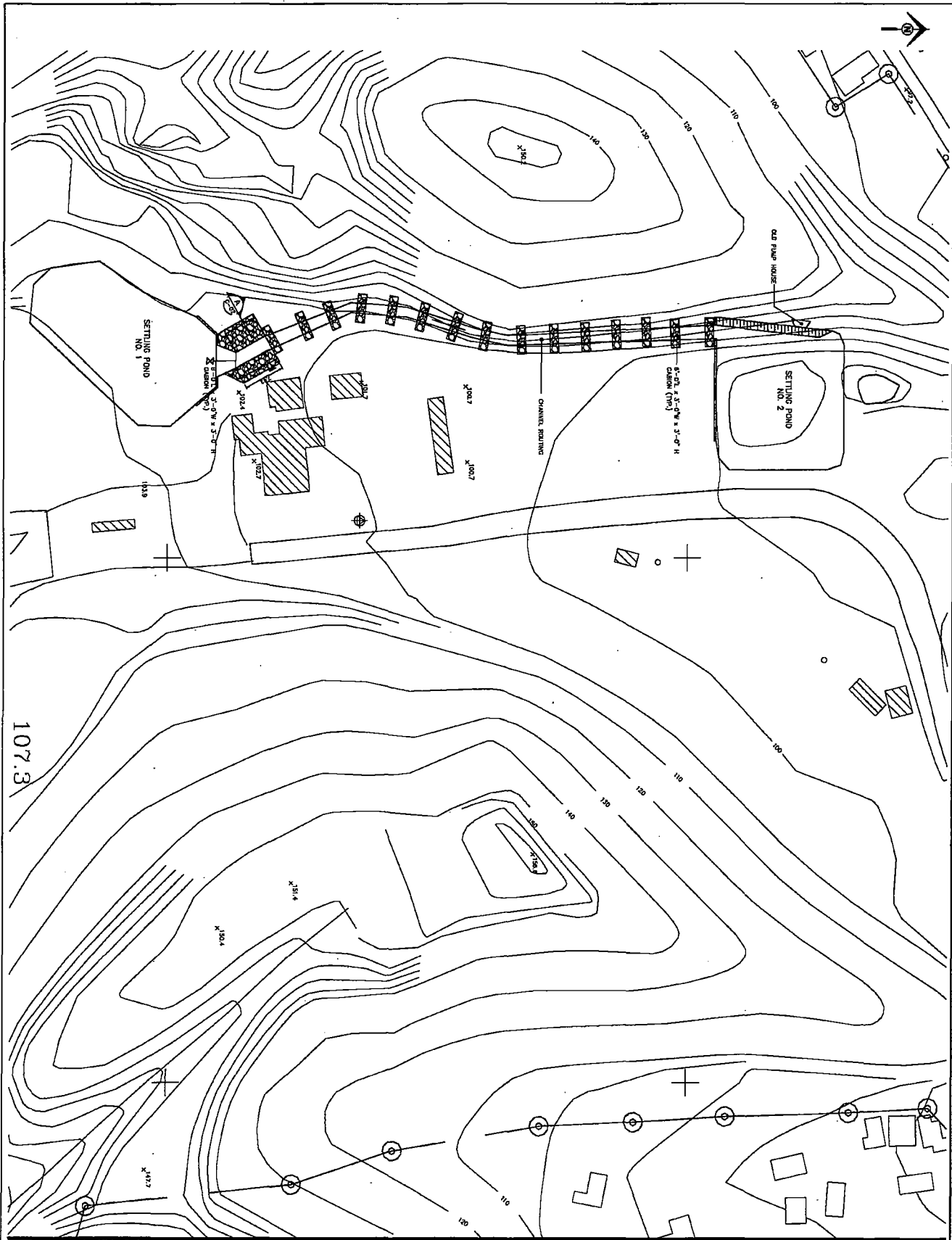
FOR DEFENDANT ESSROC San Juan Inc.:

Christian Violette
Sr. Vice President Technical Director

U.S. - ESSROC Consent Decree

APPENDIX A

Gabion System



C-01	PROJECT NAME	ESSROC
	DATE	1/2/02
A	SCALE	AS SHOWN
	DESCRIPTION	PONDS AND CHANNEL AREA CODIFICATION

ESSROC



PEDRO PANZARDI & ASSOCIATES
 PROCESS & ENVIRONMENTAL ENGINEERS
 37 COMMERCIAL AVENUE
 THIRD FLOOR, SUITE 301
 CLAYTON, P.A. 02026
 TEL: 478-423-4000, 1-800-774-9749

DATE	ISSUED BY	DATE			
1/2/02	R. REVERA	12/19/01			
PROJECT ENG.	R. REAYD	12/29/01			
CHECKER	BLANCKEN	12/21/01			
APPROVED BY:					
CLIENT:	B. REVERA	A	ISSUED FOR APPROVAL	12/29/01	
C.A. APPROVAL:		X	REVISIONS	DATE	BY
			RESPONSE		

U.S. - ESSROC Consent Decree

APPENDIX B

Supplemental Environmental Project



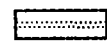
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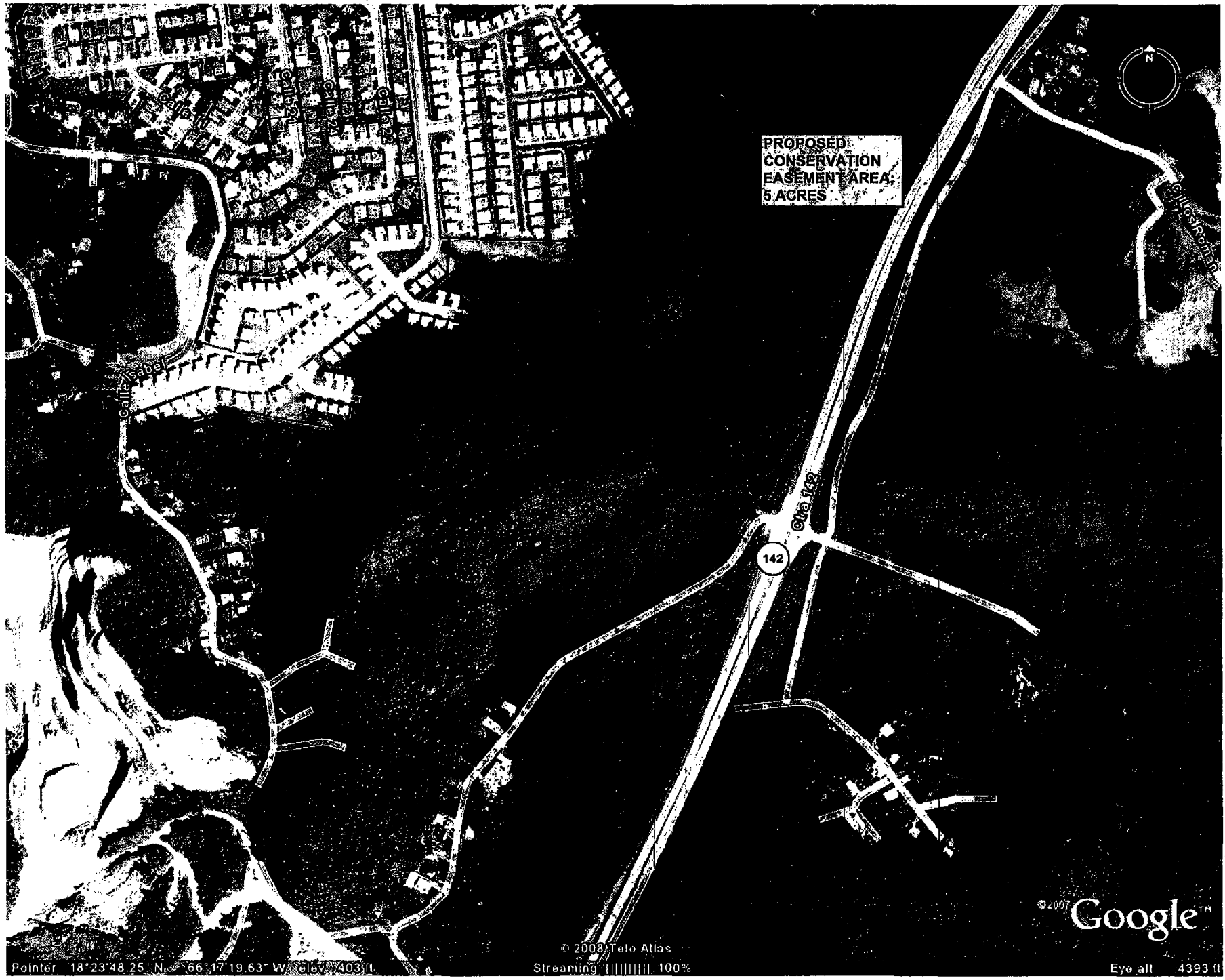
LEGEND



SAN JUAN CEMENT PROPERTY



**PROPOSED CONSERVATION EASEMENT AREA
5 ACRES**



PROPOSED
CONSERVATION
EASEMENT AREA:
5 ACRES



©2007 Google™

Point: 18°23'48.25" N, 66°17'19.63" W, elev: 403 ft

© 2008 Tele Atlas
Streaming [|||||] 100%

Eye alt 4393 ft