

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:14-CV-059-MOC-DCK

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 BOULOS FAMILY PROPERTIES,)
 LLC, *et al.*,)
)
 Defendants)

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed this civil action pursuant to Sections 104(e), 107(a), 107(l), and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. §§ 9604(e), 9607 (a), 9607(l), 9613(g), against Boulos Family Properties, LLC; Boulos Family Holdings, LLC; Robert G. Schory, III; National Petroleum Packers Incorporated; National Petroleum Packers, Inc.; National Petroleum Packers of North Carolina, Inc.; Chehade Boulos; and 2.99 acres of land in Stallings, North Carolina. The United States sought to recover all costs incurred in response to a release or threatened release of hazardous substances at or from a former glycol reprocessing facility at 3501 Gribble Road (the “Site”). In addition, the United States sought a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that all the defendants are jointly and severally liable for any future response costs, not inconsistent with the National Contingency Plan, 40 C.F.R. § 300, that may be incurred by the United States in connection with the Site. The United States also sought a judgment *in rem* against the Site under Section 107(l) of CERCLA, 42 U.S.C. § 9613(l). The United States also sought the assessment of civil penalties and injunctive relief against Mr. Chehade Boulos for his alleged unreasonable failure to fully respond to EPA information requests submitted to him pursuant to Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2).

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. A removal action commenced on October 4, 2010 and the EPA demobilized from the Site on February 10, 2011.

Once the final sampling results were reported, the EPA prepared a Removal Investigation Report on April 19, 2011, concluding that no further action was necessary. The EPA removed 55-gallon drums, above-ground storage tanks, totes, and tankers, many of which were in poor condition so that they leaked or threatened to leak hazardous substances, including but not limited to ethylene glycol.

C. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future. As of August 1, 2013 the United States' response costs totaled \$1,859,612.29.

D. The United States alleges that Settling Defendants are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

E. The defendants that have entered into this Consent Decree ("Settling Boulos Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. The United States has reviewed the Financial Information submitted by Settling Boulos Defendants to determine whether Settling Boulos Defendants are financially able to pay response costs incurred and to be incurred at the Site, including whether insurance coverage is available or whether there are any additional corporations related to the Settling Boulos Defendants that may have liability in connection with the Site. Based upon this information, including the Financial Information submitted in Appendix B, the United States has determined that Settling Boulos Defendants have limited financial ability to pay for response costs incurred and to be incurred at the Site, beyond the value of the Site.

G. The United States and Settling Boulos Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to Sections 104(e), 107(a), 107(1)(4), and 113(b) of CERCLA, 42 U.S.C. §§ 9604(e), 9607(a), 9607(1)(4), and 9613(b), as well as 28 U.S.C. §§ 1331 and 1345 and also has personal jurisdiction over Settling Boulos Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Boulos Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Boulos Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

1. This Consent Decree is binding upon the United States, and upon Settling Boulos Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Boulos Defendants under this Consent Decree.

IV. DEFINITIONS

2. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“Best Efforts” in connection with selling the Property means to take all reasonable and customary steps to attempt to sell the Property and includes entering into a Listing Agreement and includes providing access to the Property, at reasonable times, to Commercial Broker and prospective buyers. Until the Property is sold, Best Efforts precludes Settling Boulos Defendants from renting or encumbering the Property, and requires the Settling Boulos Defendants to maintain the Property and make necessary repairs to the Property to keep the Property in the same condition it was in as of the date of execution of this Consent Decree.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Closing Agent” shall mean a person such as an attorney authorized under applicable law to close a real estate transaction.

“Closing Costs” shall include the normal and customary closing costs associated with the sale of property in the jurisdiction where the closing takes place, and shall include commercial broker commissions, transaction taxes, costs to clear title, and attorney’s fees, but does not include income taxes that might be due from the seller as a result of the sale.

“Commercial Broker” means Derek Sullivan of KellerWilliams Commercial in Charlotte, North Carolina, or any other commercial broker approved by EPA.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

“Escrow Agent” shall mean a person or entity such as an attorney or a bank authorized under applicable law to hold funds in escrow.

“Financial Information” shall mean those financial documents identified in Appendix B.

“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.

“Listing Agreement” shall mean a customary agreement with Commercial Broker to list the Property for sale. The Listing Agreement shall require that the Commercial Broker shall present any Purchase Offers to Mr. Boulos and to EPA simultaneously upon presentation of the offer by the potential buyer(s). The Listing Agreement shall also specify that Commercial Broker shall keep EPA advised of progress and status in the marketing and sale of the Property.

“Net Proceeds” shall mean the payment made by any person or entity that purchases the Property pursuant to a contract for purchase approved by EPA, after subtraction of Closing Costs.

“Owner Settling Defendant” shall mean any of the Settling Defendants, including Boulos Family Properties, LLC or Boulos Family Holdings, LLC that has title to the Property or is able to convey title or execute documents in order to sell the Property or satisfy any obligation under this Consent Decree.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States, and the Settling Defendants.

“Plaintiff” shall mean the United States.

“Property” shall mean that portion of the Site that is owned by Settling Defendant Boulos Family Holdings, LLC, and/or its predecessor, Boulos Family Properties as of April 6, 2000. The Property is located at 3501 Gribble Road, Stallings, Union County, North Carolina, and is designated by the following property description: approximately 2.99 acres, located at 3501 Gribble Road in Stallings, Union County, North Carolina, and is described more particularly as that certain tract or parcel of land beginning at an old P.K Nail in the center line of S.R. 1368 (Gribble Road), said point being the southern-most corner of the property of Blazek and Teal Enterprises (now or formerly) described in Book 383, Page 273, in the Union County Public Registry and running from said Beginning point, N. 45-03-21, E. 448.17 feet to a point in the center of the right of way of Seaboard Coastline Railroad; thence, with the center of the right of way of Seaboard Coastline Railroad, S. 44-59-54, E. 270.49 feet to the corner of the property of S & O Properties; thence with the line of the S & O Properties, S. 45-06-18, W. 516.49 feet to an old railroad spike in the center line of Gribble Road; and the place of beginning; and containing 2.99 acres, more or less as shown on a survey of Samuel P. Malone Jr., N.C.R.L.S.

“Purchase Offer” shall mean an offer to purchase the Property with all material terms and conditions set forth in writing, including the time of closing.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Boulos Defendants” shall mean Boulos Family Properties, LLC; Boulos Family Holdings, LLC; National Petroleum Packers Incorporated; National Petroleum Packers, Inc.; National Petroleum Packers of North Carolina, Inc.; Chehade Boulos, and the Site.

“Site” shall mean the National Petroleum Packers Superfund Site, encompassing approximately 2.99 acres, located at 3501 Gribble Road, Stallings, Union County, North Carolina, and generally described as the “Property.” A map of the Site is attached hereto as Appendix A.

“State” shall mean the State of North Carolina.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. STATEMENT OF PURPOSE

3. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Boulos Defendants to make a cash payment to resolve their alleged civil liability for the claims alleged in the Complaint, as provided in the Covenants by Plaintiff in Section IX, and subject to the Reservations of Rights by United States in Section X.

VI. PAYMENT OF RESPONSE COSTS

4. Sale of Property and Payment of Response Costs. As set forth below, Settling Boulos Defendants shall use Best Efforts to obtain a Purchase Offer in order to sell the Property. Settling Boulos Defendants shall instruct the Escrow

Agent to pay to EPA a percentage of the Net Proceeds according to the payment instructions set forth in this Consent Decree. If the Net Proceeds exceed \$950,000, EPA's percentage shall be 80%. If the Net Proceeds exceed \$750,000, EPA's percentage shall be 85%. Otherwise, EPA's share shall be 90%. As set forth below, if the Property has not been sold within two years of the entry of this Consent Decree, a money judgment shall be entered in rem against the Property in the amount of \$1,859,612.29 with Interest accruing from the date of filing of the Complaint.

5. Settling Boulos Defendants shall cause payments to EPA to be made at <https://www.pay.gov> by Fedwire Electronic Funds Transfer "EFT" to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the Western District of North Carolina after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to Mr. Boulos on behalf of Settling Boulos Defendants. Notice to Mr. Boulos shall be by email to trinpakltd4@aol.com.

6. Settling Boulos Defendants may change the individual to receive payment instructions on their behalf by providing written notice to DOJ and EPA of such change in accordance with Section XV (Notices and Submissions).

7. Deposit of Payment. The total amount to be paid pursuant to Paragraph 4 (Payment of Net Proceeds of Sale of Property) shall be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Notice of Payment. At the time of payment, Settling Boulos Defendant shall send notice that payment has been made (a) to EPA in accordance with Section XVI (Notices and Submissions), (b) to DOJ in accordance with Section XVI; (c) to Paula V. Painter at the U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303; and (d) to the EPA Cincinnati Finance Office (CFO) at:

EPA CFO by email: cinwd_acctsreceivable@epa.gov

EPA CFO by regular mail: EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number A4QL, and DJ # 90-11-3-10947.

9. Marketing and Sale of Property.

a. Settling Boulos Defendants shall use Best Efforts to obtain a Purchase Offer in order to sell the Property. A Purchase Offer must be approved by EPA before it may be accepted in order to sell the Property. Upon EPA approval of a Purchase Offer, the Purchase Offer shall be accepted by Owner Settling Defendant, and the Property shall be sold according to the terms of the Purchase Offer through the Closing Agent. Settling Boulos Defendants shall hire a Closing Agent, approved by EPA, to close the transaction with instructions to transfer the Net Proceeds to an escrow account maintained by the Escrow Agent. Settling Boulos Defendants shall instruct the Escrow Agent to pay to EPA a percentage of the Net Proceeds from the sale of the Property as set forth in Paragraph 4 of this Consent Decree and according to the payment instructions set forth in this Consent Decree.

b. Settling Boulos Defendants shall submit to EPA, at least ten days prior to the date of the sale of the Property, a notice of the sale, Settling Boulos Defendants' calculation of the Net Proceeds, and all documentation regarding the values used in the calculation, including: (i) copies of all documents to be executed regarding the sale; (ii) documentation of the amounts to be paid to holders of any liens; (iii) documentation of the amounts of closing costs to be paid; (iv) documentation of any broker's fees regarding the sale; and (v) documentation of the amounts of state and/or municipal transfer taxes to be paid regarding the sale of the Property. Settling Defendants may request that EPA approve the calculation of Net Proceeds prior to the sale. In that event, EPA's approval shall be binding in any subsequent dispute between the United States and Settling Boulos Defendants regarding whether Settling Defendants complied with their obligation to pay a percentage of Net Proceeds.

c. Provided that the amount of Net Proceeds is acceptable, EPA shall arrange for the execution or delivery, at the time of the sale, of a release of the federal lien regarding the Property filed on July 24, 2013.

d. In the event of a sale or other Transfer of the Property or any portion thereof, Settling Boulos Defendants shall continue to be subject to all terms, conditions and benefits of this Consent Decree.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

Interest on Payments. If Settling Boulos Defendants fail to make the payments required by this Consent Decree by the required due date, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment.

10. Stipulated Penalty.

a. If any amounts due to EPA under this Consent Decree are not paid by the required date, Settling Boulos Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest, \$100 per violation per day that such payment is late.

b. If Settling Boulos Defendants fail to use Best Efforts to sell the Property in accordance with this Consent Decree, Settling Boulos Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, \$100 per day for each day of failure to use Best Efforts to sell the Property.

c. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = D68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Each payment shall reference the CDCS Number, Site/Spill ID Number A4QL, and DJ # 90-11-3-10947.

d. At the time of payment, Settling Boulos Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Paragraph 8.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Boulos Defendants of the violation or made a

demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Boulos Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Boulos Defendants' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Boulos Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. JUDGMENT AND NOTICE OF LIEN

14. If Settling Boulos Defendants have not sold the Property within two years of entry of this Consent Decree, then Settling Boulos Defendants consent to the entry of a money judgment in favor of the United States against the Site *in rem* for \$1,859,612.29, plus Interest running from the date that the Complaint was filed.

IX. COVENANTS BY PLAINTIFF

15. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Boulos Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), regarding the Site and for the claims in the complaint. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Boulos Defendant of their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs), and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). These covenants are also conditioned upon the veracity and completeness of the information, including Financial Information, provided to EPA by Settling Boulos Defendants. Settling Boulos Defendants represent and warrant that they have made full disclosure of their ability to pay EPA response costs as set forth in Paragraph 33 of this Consent Decree. If the representation or information, including Financial Information and Insurance Information, provided by Settling Boulos Defendants, is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Boulos Defendants shall forfeit all payments made pursuant to this Consent Decree and these covenants and the contribution protection in Paragraph 23 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Boulos Defendants' false or materially inaccurate information. These covenants extends only to Settling Boulos Defendants and do not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

16. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Boulos Defendants with respect to all matters not expressly included within Paragraph 15 (Covenants by Plaintiff). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Boulos Defendants with respect to:

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

17. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to

reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the representation in Paragraph 33 and any information, including Financial Information or Insurance Information provided by Settling Boulos Defendants, is false or, in any material respect, inaccurate.

XI. COVENANTS BY SETTLING DEFENDANTS

18. Settling Boulos Defendants covenant not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the 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 pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

19. Except as provided in Paragraph 20 (claims against other PRPs) and Paragraph 26 (Res Judicata and other Defenses), these covenants shall not apply in the event the United States brings a cause of action or issues an order pursuant to

any of the reservations set forth in Section X (Reservations of Rights by United States), other than in Paragraph 16.a (liability for failure to meet a requirement of the Consent Decree) or 16.b (criminal liability), but only to the extent that Settling Boulos Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

20. Nothing in this Consent Decree 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).

21. Settling Boulos Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Boulos Defendants. This waiver also shall not apply to Settling Boulos Defendants' contractual indemnification claim against any other person.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

22. Except as provided in Paragraph 21 (claims against other PRPs), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section XI (Covenants by Settling Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of

action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

23. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement pursuant to which Settling Boulos Defendants have, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section X (Reservations of Rights by United States), other than in Paragraphs 16.a (liability for failure to meet a requirement of Consent Decree) or 16.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

24. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved

settlement pursuant to which Settling Boulos Defendants have, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

25. Settling Boulos Defendants shall, with respect to any suit or claim brought by them for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within ten days after service of the complaint or claim upon them. In addition, Settling Defendants shall notify EPA and DOJ within ten days after service or receipt of any Motion for Summary Judgment, and within ten days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section IX.

XIII. ACCESS TO INFORMATION

27. Settling Boulos Defendants shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred

to as “Records”) within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

28. Privileged and Protected Claims.

a. Settling Boulos Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 28.b, and except as provided in Paragraph 28.c.

b. If Settling Boulos Defendants assert a claim of privilege or protection, they shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendants shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Boulos Defendants shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Boulos Defendants’ favor.

c. Settling Boulos Defendants may make no claim of privilege or protection regarding:

- (1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific,

chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

29. Business Confidential Claims. Settling Boulos Defendants may assert that all or part of a Record submitted to Plaintiff under this Section or Section XIV (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Boulos Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendants assert a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. RETENTION OF RECORDS

31. Until five years after the Effective Date, Settling Boulos Defendants shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other

information in electronic form) (hereinafter referred to as “Records”) now in their possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that if Settling Boulos Defendants are potentially liable as an owner or operator of the Site, Settling Boulos Defendants must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

32. After the conclusion of the record retention period, Settling Boulos Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, except as provided in Paragraph 27 (Privileged and Protected Claims), Settling Boulos Defendants shall deliver any such Records to EPA.

33. Settling Boulos Defendants certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State, and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Boulos Defendants’ financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Boulos Defendants execute this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information. Settling Boulos Defendants certify that they have no insurance coverage or indemnity agreements that would allow them to recover monies in connection with EPA's claims and certify that there are no other corporate entities related to the Settling Boulos Defendants that were ever operators or owners with respect to the Property or the Site other than the Settling Boulos Defendants.

XV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescasemanagement.enrd@usdoj.gov

As to DOJ by regular mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-10947

As to EPA: Elisa Roberts
Associate Regional Counsel
U.S. Environmental Protection Agency
61 Forsyth Street, SW
Atlanta, Georgia 30303
roberts.elisa@epa.gov

As to Settling Defendants: Chehade M. Boulos
Trinpak Packaging Co. Ltd
Lot # 9 O' Meara Industrial Estates,
Arima, Trinidad and Tobago, W.I
PH/Fax: 1 868 646 8556
1 868 646 7608
email:trinpakltd4@aol.com

XVI. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDICES

36. This Consent Decree and its appendices constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement

other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the Site.

“Appendix B” is a list of the financial documents submitted to EPA by Settling Boulos Defendants.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Boulos Defendants consent to the entry of this Consent Decree without further notice.

38. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

39. Each undersigned representative of Settling Defendants and the Deputy Section Chief, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

40. Settling Boulos Defendants agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless

the United States has notified Settling Boulos Defendants in writing that it no longer supports entry of the Consent Decree.

XX. FINAL JUDGMENT

41. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and Settling Boulos Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.


SO ORDERED THIS __ DAY OF _____, 2015.

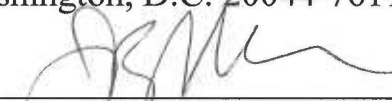
United States District Judge

Signature Page for Consent Decree Regarding the National Petroleum Packers Superfund Site.

2/25/15
Dated

FOR THE UNITED STATES OF AMERICA:

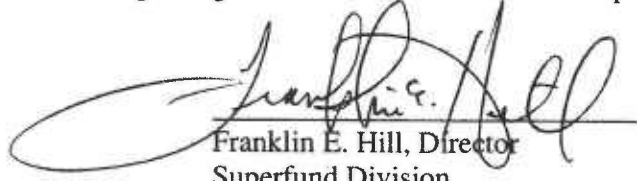

Ellen M. Mahan
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611


James R. MacAyeal
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Jonathan.Ferry@usdoj.gov

Signature Page for Consent Decree Regarding National Petroleum Packers Superfund Site

2/25/15
Date


Franklin E. Hill, Director
Superfund Division
U.S. Environmental Protection Agency,
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303


2/13/15
Date


Elisa Roberts
Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Signature Page for Consent Decree Regarding the National Petroleum Packers Superfund Site

FOR BOULOS FAMILY PROPERTIES,
LLC, BOULOS FAMILY HOLDINGS,
LLC, NATIONAL PETROLEUM
PACKERS INCORPORATED NATIONAL
PETROLEUM PACKERS, INC.
NATIONAL PETROLEUM PACKERS OF
NORTH CAROLINA, INC. CHEHADE
BOULOS, AND 2.99 ACRES OF LAND
IN STALLINGS, NORTH CAROLINA

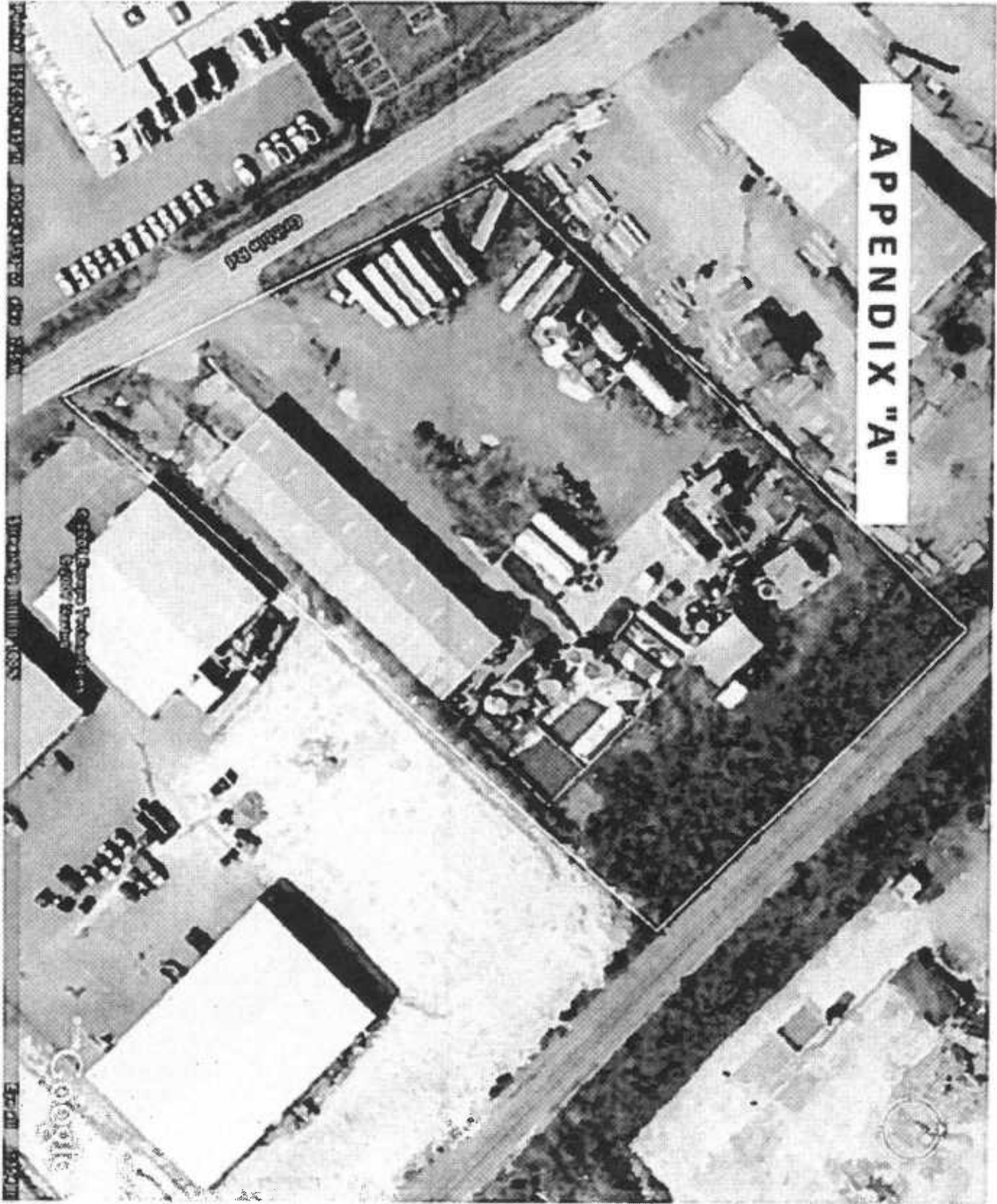
26-01-2015
Date



Name: Chehade Boulos
Title:
Address:

APPENDIX A

MAP OF THE SITE



APPENDIX B

**LIST OF THE FINANCIAL DOCUMENTS SUBMITTED TO THE EPA BY SETTLING
DEFENDANTS**

- 1) U.S. Individual Income Tax Returns (Form 1040, 2010 to 2013)**
- 2) Individual Ability to Pay Claim, dated May 7, 2014**
- 3) Wells Fargo Bank Statements (March-June 2014)**