

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 3:15-cv-02328-FAB

v.

PUERTO RICO INDUSTRIAL
DEVELOPMENT COMPANY,

CONSENT DECREE

Defendant.

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I. BACKGROUND

1. This Settlement concerns the Maunabo Groundwater Superfund Site (“Site”) located in Maunabo, Puerto Rico.
2. There have been releases or threats of releases of hazardous substances, as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), at or from the Site.
3. In response to these releases or threatened releases of hazardous substances, the United States Environmental Protection Agency (“EPA”) has, under Section 104 of CERCLA, performed response actions and has incurred response costs at the Site.
4. The United States of America (“United States”) filed, on behalf of the Administrator of EPA, a complaint in this matter under Sections 106 and 107 of CERCLA, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Site.
5. The United States District Court for the District of Puerto Rico entered judgments finding that PRIDCO (i) is a liable party under Section 107(a) of CERCLA, (ii) is jointly and severally liable for approximately \$5.5 million of response costs accrued through February 28, 2018, and (iii) would be liable in future litigation for additional response costs incurred by the United States.
6. PRIDCO appealed the District Court’s judgments, and on November 18, 2021, the United States Court of Appeals for the First Circuit affirmed the District Court’s judgments.
7. From February 28, 2018 through May 3, 2020, the United States incurred approximately an additional \$5.5 million in response costs regarding PRIDCO’s property within the Site, including performance of the remedy to address the groundwater plume related to PRIDCO’s property, enforcement costs, and interest, and it seeks recovery of those costs from PRIDCO.
8. Puerto Rico Act 66-2014 provides that when a debt in an amount above \$7 million but less than \$20 million that is owned by a Puerto Rico public corporation becomes final and unappealable, the debt must be paid under a payment plan that is between seven years and 10 years. The United States does not concede that Puerto Rico Act 66-2014 is binding upon the United States in this matter. The United States has examined PRIDCO’s financial information and has determined that the seven year installment payment structure provided for herein is appropriate based on PRIDCO’s financial assets and obligations.
9. PRIDCO asserts that it must abide by Puerto Rico Act 66-2014 statutory mandates. Act 66-2014 - Government of the Commonwealth of Puerto Rico Special Fiscal and Operational Sustainability Act, declared a state of emergency for the fiscal and economic recovery, to enable PR to resume its participation in the capital markets. PRIDCO asserts that, per Article 28, 3 LPRA § 9141, this payment plan was evaluated by the Puerto Rico Attorney

General and a certification of availability of funds was provided by PRIDCO's Governing Board. In addition, approval was sought from the Financial Oversight and Management Board for Puerto Rico.

10. Prompt settlement with PRIDCO is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA.

11. The United States and PRIDCO agree, and this Court by entering this Consent Decree finds, that (a) this Settlement has been negotiated by the Parties in good faith; (b) settlement of this matter without further litigation and without any further admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties; and (c) this Settlement is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED and DECREED:

II. JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1345, and Sections 106, 107 and 113(b) of CERCLA, and personal jurisdiction over the Parties. Venue lies in this District under Section 113(b) of CERCLA and 28 U.S.C. §§ 1391(b) and 1395(a) because the Site is located in this judicial district. This Court retains jurisdiction over the subject matter of this action and over the Parties for the purpose of resolving disputes arising under this Settlement, entering orders modifying this Settlement, or effectuating or enforcing compliance with this Settlement. Settling Party agrees not to challenge the terms of this Settlement or this Court's jurisdiction to enter and enforce this Settlement.

III. PARTIES BOUND

13. This Settlement is binding on the United States and upon Settling Party and upon its successors. Unless the United States otherwise consents, (a) any change in ownership or corporate or other legal status of Settling Party, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter Settling Party's obligations under this Settlement. Settling Party's responsibilities under this Settlement cannot be assigned except under a modification executed in accordance with ¶ 40.

14. In any action to enforce this Settlement, Settling Party may not raise as a defense the failure of any officer, director, employee, agent, contractor, subcontractor, or any person representing Settling Party to take any action necessary to comply with this Settlement. Settling Party shall provide notice of this Settlement to each person representing such Settling Party with respect to the Site and to Settling Party's obligations under this Settlement.

IV. STATEMENT OF PURPOSE

15. The objective of the Parties in entering into this Settlement is for Settling Party to make a cash payment to resolve its alleged civil liability regarding Past Response Costs under Section 107 of CERCLA, subject to the Covenants and Reservations in Section VIII.

V. DEFINITIONS

16. Terms not otherwise defined in this Settlement shall have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

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

“Day” or “day” means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day.

“Working day” means any day other than a Saturday, Sunday, or federal or Commonwealth holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the date upon which the Court’s approval of this Settlement is recorded on its docket.

“EPA” means the United States Environmental Protection Agency.

“Fund” means the Hazardous Substance Superfund established by Section 9507 of the Internal Revenue Code.

“Including” or “including” means “including but not limited to.”

“Paragraph” or “¶” means a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Party” or “Parties” means the United States or Settling Party or the United States and Settling Party, respectively.

“Past Response Costs” means all costs, including costs of performance of the remedy to address the groundwater plume related to PRIDCO’s property and all direct, indirect, payroll, travel, enforcement, and laboratory costs, that the United States paid in connection with the Site through May 3, 2022, plus all interest on such costs that accrued under Section 107(a) of CERCLA through such date.

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

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settling Party” means the Puerto Rico Industrial Development Company.

“Settlement” means this Consent Decree and all appendices attached hereto (listed in Section XIII). If there is a conflict between a provision in Sections II through XVI and a provision in any appendix, the provision in Sections II through XVI controls.

“Site” means the Maunabo Groundwater Superfund Site located at Maunabo, Puerto Rico, and depicted generally on the map attached as Appendix A.

“Special Account” means the special account, within the Fund, established for the Site by EPA under Section 122(b)(3) of CERCLA.

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

“Waste Material” means (a) any “hazardous substance” under Section 101(14) of CERCLA; (b) any pollutant or contaminant under Section 101(33) of CERCLA; or (c) any “solid waste” under Section 1004(27) of RCRA.

VI. PAYMENT

17. **Payment to EPA.** Settling Party shall pay \$11,000,000 in installments, plus interest at the rate of 3.5% per annum, as described in this Paragraph. Settling Party shall make payment in 28 quarterly installments of \$444,653.02 each. The first payment is due on the first day of the month that is two months after the month of the Effective Date. The first payment shall include an additional amount for interest, if any, accrued on \$11,000,000 at the rate of 3.5% per annum from May 3, 2022 until the date three months before the first payment. Settling Party shall thereafter make 27 consecutive payments in quarterly (i.e., three-month) intervals from the first payment. The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Puerto Rico shall provide to Settling Party, in accordance with ¶ 37, instructions for making payments, including a Consolidated Debt Collection System (“CDCS”) reference number. Settling Party shall make payments by FedWire Electronic Funds Transfer (“EFT”) in accordance with the FLU’s instructions, including references to the CDCS Number. Settling Party shall send notices of the payments to DOJ and EPA in accordance with ¶ 37. Interest will continue to accrue on any unpaid amounts until Settling Party pays the total amount due. Interest required under this Paragraph is in addition to any stipulated penalties owed under Paragraph 19.

18. **Deposit of Payments.** EPA may deposit the amounts paid under ¶ 17 in the Fund and/or in the Special Account. Amounts deposited in the Special Account may be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the Fund.

VII. FAILURE TO COMPLY WITH SETTLEMENT

19. If any amounts due under ¶ 17 (Payment to EPA) are not paid by the required date, Settling Party shall pay to EPA, as a stipulated penalty, \$500 per violation per day that such payment is late. Settling Party shall make payment at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to the Site/Spill ID and DJ numbers listed in ¶ 37, along with the purpose of the payment. Settling Party shall send a notice of any such payment to DOJ and EPA, in accordance with ¶ 37. The payment of stipulated penalties and interest, if any, does not alter any obligation of Settling Party under this Settlement.

20. Penalties will accrue in accordance with this Section regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but they must be paid upon demand. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate violations of this Settlement. If the United States brings an action to enforce this Settlement, Settling Party shall reimburse the United States for all costs of such action, including the costs of attorney time. Payments made under this Section are in addition to any other remedies or sanctions available to the United States by virtue of Settling Party’s failure to comply with the requirements of this Settlement.

21. The United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.

VIII. COVENANTS BY UNITED STATES

22. **Covenants for Settling Party.** Subject to ¶¶ 24, the United States covenants not to sue or to take administrative action against Settling Party under Section 107(a) of CERCLA regarding Past Response Costs.

23. The covenants under ¶ 22 (a) take effect on the Effective Date; (b) are conditioned on the satisfactory performance by Settling Party of the requirements of this Settlement; (c) extend to the successors of Settling Party but only to the extent that the alleged liability of the successor of the Settling Party is based solely on its status as a successor of the Settling Party; and (d) do not extend to any other person.

24. **General Reservations.** Notwithstanding any other provisions of this Settlement, the United States reserves, and this Settlement is without prejudice to, all rights against Settling Party regarding the following:

a. liability for failure by a Settling Party to meet a requirement of this Settlement;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA; or

d. criminal liability.

IX. COVENANTS BY SETTLING PARTY

25. Subject to ¶ 26, Settling Party covenants not to sue and agrees not to assert any claim or cause of action against the United States and its contractors and employees under CERCLA, Section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding all past response actions regarding the Site and Past Response Costs. Subject to ¶ 26, Settling Party covenants not to seek reimbursement from the Fund through CERCLA or any other law for costs of past response actions performed by any person regarding the Site.

26. **Settling Party's Reservation.** The covenants in ¶ 25 do not apply to any claim or cause of action brought, or order issued by the United States after the Effective Date to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 24.a through 24.c.

X. EFFECT OF SETTLEMENT; CONTRIBUTION

27. The Parties agree, and 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 and that this Settlement constitutes a judicially-approved settlement under which Settling Party has, as of the Effective Date, resolved its liability to the United States within the meaning of Sections 113(f)(2) and 113(f)(3)(B) of CERCLA. Settling Party is 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 Settlement. The "matters addressed" in this Settlement are Past Response Costs, provided, however, that if the United States exercises rights under the reservations in ¶¶ 24.a through 24.c, the "matters addressed" in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

28. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA and DOJ within 10 days after service of the complaint on Settling Party. In addition, Settling Party shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

29. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or

other appropriate relief relating to the Site, Settling Party shall not assert, and agrees not to 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.

30. Nothing in this Settlement diminishes the right of the United States under Section 113(f)(2) and (3) of CERCLA to pursue any person not a party to this Settlement 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).

XI. RECORDS

31. **Settling Party Certification.** Settling Party certifies that (a) it has implemented a litigation hold on documents and electronically stored information relating to its potential liability under CERCLA regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and (b) it has fully complied with any EPA requests for information under Sections 104(e) and 122(e) of CERCLA, and Section 3007 of RCRA.

32. Retention of Records and Information

a. Settling Party shall retain, and instruct its contractors and agents to retain, all documents and electronically stored data (“Records”) regarding Settling Party’s liability under CERCLA regarding the Site until 10 years after the Effective Date (“Record Retention Period”) all Records.

b. Settling Party shall retain all Records regarding the liability of any person under CERCLA regarding the Site during the Record Retention Period.

c. At the end of the Record Retention Period, Settling Party shall notify EPA that EPA has 90 days to request the Settling Party’s Records subject to this Section. Settling Party shall retain and preserve its Records subject to this Section until 90 days after EPA’s receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

33. Settling Party shall provide to EPA, upon request, the originals or copies of all Records and information required to be retained under this Section. Settling Party shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the Site.

34. Privileged and Protected Claims

a. Settling Party may assert that all or part of a Record requested by the United States is privileged or protected as provided under federal law, in lieu of providing the Record, provided Settling Party complies with ¶ 34.b, and except as provided in ¶ 34.c.

b. If Settling Party asserts a claim of privilege or protection, it shall provide the United States 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, of each addressee, and of each recipient, as applicable; 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 Party shall provide the Record to the United States in redacted form to mask the privileged or protected portion only. Settling Party shall retain all Records that it claims 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 Settling Party's favor.

c. Settling Party may not make a claim of privilege or protection regarding any data regarding the Site, including 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.

35. **Confidential Business Information (CBI) Claims.** Settling Party may claim that all or part of a Record provided to the United States under this Section is CBI to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Settling Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which the Settling Party claims is CBI by labeling each page or each electronic filed "claimed as confidential business information" or "claimed as CBI." Records that Settling Party identifies as CBI will be afforded the protection specified in 40 C.F.R. part 2, subpart B. If no claim of CBI accompanies Records when they are submitted to EPA, or if EPA has notified the Settling Party that the Records are not entitled to confidential treatment 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 Party.

36. Notwithstanding any provision of this Settlement, 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.

XII. NOTICES AND SUBMISSIONS

37. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given, or a deliverable is required to be sent, by one Party to the other under this Settlement, it must be sent as specified below. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ:

via email to:
eesdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-11397

As to EPA: via email to:
 rodriguez.teresita@epa.gov
 and
 santos.luis@epa.gov
 Re: Site/Spill ID # 02XF

As to Settling Party: Diana Battle-Barasorda
 Casillas Santiago Torres, LLC
 53 Calle Palmeras, #1601
 San Juan, PR 00901-2419
 dbattle@cstlawpr.com

XIII. INTEGRATION AND APPENDICES

38. This Settlement constitutes the entire agreement between the Parties regarding the subject matter of this Settlement and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of this Settlement.

39. The following appendix is attached to and incorporated into this Settlement:

“Appendix A” is the map of the Site.

XIV. MODIFICATIONS TO SETTLEMENT

40. Non-material modifications to this Settlement must be in writing and are effective when signed (including electronically signed) by duly-authorized representatives of the Parties. Material modifications to this Settlement must be in writing, signed (including electronically signed) by the Parties, and they are effective upon approval by the Court.

41. If the Court enters an agreement providing for Settling Party to perform the monitored natural attenuation remedies for the groundwater plumes at the Site that are not related to PRIDCO’s property, and the Parties agree on the value of such work, then the Parties shall modify this Settlement to provide Settling Party with a credit for the value of such work.

XV. SIGNATORIES

42. The undersigned representative of the United States and the undersigned representative of Settling Party certify that they are fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind such Party to this document.

XVI. PUBLIC COMMENT AND ENTRY

43. This Settlement is subject, after lodging with the Court, to a public comment period of at least 30 days under Section 122(d) of CERCLA and 28 C.F.R. § 50.7. The United States may modify or withdraw its consent to this Settlement if comments received disclose facts or considerations that indicate that this Settlement is inappropriate, improper, or inadequate.

44. Settling Party agrees not to oppose or to appeal the entry of this Settlement. If for any reason the Court should decline to approve this Settlement in the form presented, this agreement, except for the previous sentence, is voidable at the sole discretion of either Party, and its terms may not be used as evidence in any litigation among the Parties.

45. Upon entry of this Settlement by the Court, this Settlement constitutes a final judgment under Fed. R. Civ. P. 54 and 58 between the Parties.

So ORDERED this ____ day of _____, 20__.

United States District Judge

Signature Page for Settlement Regarding Maunabo Groundwater Superfund Site

FOR THE UNITED STATES:

Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

/s/ Mark Gallagher

Mark Gallagher
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

W. Stephen Muldrow
United States Attorney
District of Puerto Rico

Lisa Bhatia
Assistant United States Attorney
District of Puerto Rico

**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:**

Pat Evangelista

Digitally signed by Pat
Evangelista
Date: 2022.12.05 21:39:11 -05'00'

Pat Evangelista, Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2


Henry Guzman
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2

Signature Page for Settlement Regarding Maunabo Groundwater Superfund Site

**FOR PUERTO RICO INDUSTRIAL DEVELOPMENT
COMPANY:**

11-2-22

Date



Javier Bayón Torres
Executive Director
PO BOX 362350
San Juan, PR 00936-2350



Carlos Ríos Pierluisi
General Legal Counsel
Department of Economic Development and Commerce
PO BOX 362350
San Juan, PR 00936-2350