UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF NEW YORK

In re:	)	No. 04:12295
BUSH INDUSTRIES, INC.	)	
Debtor.	)	

SETTLEMENT AGREEMENT

WHEREAS, on or about March 31, 2004, Bush Industries, Inc. (the "Debtor") filed a petition for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, as amended (the "Bankruptcy Code"); and

WHEREAS, the United States has incurred unreimbursed environmental response costs at the Little Valley Superfund Site located in Cattaraugus County, New York (the "Site"), and will incur future response costs at the Site, together totaling more than $11,000,000;

WHEREAS, on or about September 27, 2004, the United States, on behalf of the Environmental Protection Agency (the "EPA"), filed a Proof of Claim against the Debtor;

WHEREAS, the Proof of Claim asserts a claim, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, for $6,134,874 for unreimbursed environmental response costs incurred by the United States at the Site, and for future response costs to be incurred by the United States at the Site (the "EPA Claim");

WHEREAS, the Proof of Claim was asserted as a general unsecured claim; and

WHEREAS, the parties hereto, without admission of liability by any party, desire to settle, compromise and resolve the EPA Claim;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Bankruptcy Court, as follows:

1. The EPA Claim shall be allowed as an Unsecured Claim in the amount of $1,533,000, and paid as a Class 4 General Unsecured Claim without discrimination in accordance with the terms of the Debtor's Plan of Reorganization, dated October 7, 2004 and confirmed on October 29, 2004, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of $1,533,000. Distributions received by EPA will be:
   (a) deposited in a site-specific special account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at the Site; or
   (b) deposited into the EPA Hazardous Substance Superfund.
2. The EPA Claim shall be paid within 45 days of the date of approval of this Settlement Agreement by the Bankruptcy Court. Payment of the EPA Claim shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number 90-11-2-

06763/2 and U.S.A.O. File No. _____, in accordance with instructions provided by the United States to the Debtor after execution of this Settlement Agreement. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

3. Only the amount of cash received by EPA from the Debtor under this Settlement Agreement for EPA's allowed Unsecured Claim, and not the total amount of the proof of claim, shall be deposited in accordance with Paragraph 1 above and credited by EPA to its account for the Site, which credit shall reduce the liability of non-settling potentially responsible parties to EPA for the Site by the amount of cash received.

4. In consideration of the payments or distributions that will be made by the Debtor under the terms of this Settlement Agreement, and except as provided in Paragraph 5, the United States covenants not to bring a civil action or take administrative action against the Debtor pursuant to Sections 106 and 107 of CERCLA or Section 7003 of RCRA relating to the Site. This covenant not to sue is conditioned upon, and becomes effective upon, the complete and satisfactory performance by the Debtor of its obligations under this Settlement Agreement. This covenant not to sue extends only to the Debtor and does not extend to any other person.

5. The covenant not to sue set forth in the previous paragraph does not pertain to any matters other than those expressly specified in the previous paragraph. The United States reserves, and this Settlement Agreement is without prejudice to, all

rights against the Debtor with respect to all other matters, and specifically with respect to:

(a) liability for damages for injury to, destruction of, or loss of natural resources;

(b) liability for response costs that have been or may be incurred by federal agencies which are trustees for natural resources;

(c) claims based on a failure by the Debtor to meet a requirement of this Settlement Agreement;

(d) claims for any site other than the Little Valley Superfund Site;

(e) liability arising from the past, present, or future disposal, release, or threat of release of waste material outside of the Site;

(f) liability based upon the Debtor's transportation, treatment, storage, or disposal, or the Debtor's arrangement for the transportation, treatment, storage, or disposal of waste material at or in connection with the Site and after the date on which this Settlement Agreement is approved by the Bankruptcy Court; and

(g) criminal liability.

Provided, however, that the Debtor reserves and retains any and all defenses to such matters and claims enumerated in Paragraph 5, sub-paragraphs (a) through (g).

6. With regard to claims for contribution against the Debtor for matters addressed in this Settlement Agreement, the Debtor is entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). Matters addressed in this Settlement Agreement include,

without limitation, claims for response costs incurred and to be incurred and response actions taken or to be taken at the Site, but do not include those claims set forth in Paragraph 5 above.

7. The Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out of response activities at the Site. Nothing in this Settlement Agreement shall be construed to constitute 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).

8. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

9. This Settlement Agreement will be submitted for public comment following notice of the Settlement Agreement in the Federal Register. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, or improper, or inadequate. After the close of the public comment period the United States and Debtor will file a Joint Motion seeking approval of this Settlement Agreement with the Bankruptcy Court. Debtor's entry into this Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. Debtor agrees to exercise its best efforts to obtain the approval of the Bankruptcy Court.

10. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of either party with respect to the matters contained herein.

11. This Settlement Agreement represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises, courses of dealing and representations made by the parties hereto concerning the subject matter hereof. This Settlement Agreement may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

FOR THE UNITED STATES OF AMERICA

21 Dec 2007
Date

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

4 January 2008
Date

Deanna J. Chang
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
PO Box 7611 Ben Franklin Station
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11/27/07
Date

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11/27/07
Date

Marla E. Wieder
Assistant Regional Counsel
U.S. EPA, Region 2
290 Broadway, 17th Floor
New York, NY

FOR DEBTOR, BUSH INDUSTRIES, INC.

September 27, 2007
Date

Bush Industries, Inc.
Name of Debtor

One Mason Drive, PO Box 460
Jamestown, NY 14702-0460
Address

716.665.2000
Telephone Number

By: Neil Frederick
Name of Officer (please print or type)

Signature of Officer

Treasurer
Title of Officer