

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 3:17-cv-00038
v.)	
)	
THE CYRIL V. FRANCOIS ASSOCIATES, L.L.C.,)	
)	
Defendant.)	
_____)	

**NOTICE OF LODGING OF CONSENT DECREE PENDING
SOLICITATION OF PUBLIC COMMENT**
(No Action Required)

The attached proposed Consent Decree is hereby lodged with the Court for public comment. Notice of the lodging of this settlement, and the opportunity to comment thereon, will be published in the Federal Register. The public will have thirty (30) days in which to submit comments to the United States Department of Justice on the Consent Decree. The 30-day period will begin on the date the notice of lodging of the Consent Decree is published in the Federal Register. Because of the public comment period, we respectfully request that the Court not execute the Consent Decree at this time. During the pendency of the public comment period, no action is required of this Court. After the 30-day public comment period has expired, the United States will inform the Court of any public comments timely received and any responses thereto, and move the Court to sign and enter the settlement, should it appear that the settlement is in the public interest, and not inappropriate, improper or inadequate.

The United States respectfully requests that the Court take no action with respect to the lodged settlement until the United States moves for the entry of the settlement or otherwise advises the Court.

Respectfully Submitted,

ELLEN M. MAHAN
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

/s/ Myles E. Flint, II
MYLES E. FLINT, II
Senior Counsel
U.S. Department of Justice
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Ben Franklin Station
Washington, DC 20044-7611
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myles.flint@usdoj.gov

Of counsel:
ANDREW PRASCHAK
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region II
New York, NY 10007-1866

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System. I also certify that I have served this filing to counsel for Defendant Cyril V. Francois Associates, LLC, by U.S. Mail, postage prepaid:

W. MARK WILCZYNSKI, ESQUIRE
Law Office of W. Mark Wilczynski, P.C.
Palm Passage Suite C20 - 22 - P.O. Box 1150
St. Thomas, U.S. Virgin Islands 00804

/s/ Myles E. Flint, II

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)
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 Plaintiff,)
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 v.)
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 CYRIL V. FRANCOIS ASSOCIATES, LLC.,)
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 Defendant.)

Civil Action No. 3:17-cv-00038

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Tutu Wellfield Superfund Site in St. Thomas, U.S. Virgin Islands ("the Site").

B. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. In response to the release or threatened release of hazardous substances at or from the Site, EPA performed response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will perform additional response actions in the future.

D. In performing response actions at the Site, EPA incurred response costs and will incur additional response costs in the future.

E. The United States alleges that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred and to be incurred at the Site.

F. The United States has reviewed the financial information and Insurance Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this financial information and Insurance Information, the United States has determined that Settling Defendant has limited financial ability to reimburse EPA for its response costs incurred and to be incurred at the Site.

G. The United States and Settling Defendant 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 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 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal

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jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant 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

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its 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 Defendant under this Consent Decree.

IV. DEFINITIONS

3. 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:

"Affected Property" means all real property at the Site and any other real property, owned or controlled by Settling Defendant, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, Parcel 5B Estate Anna's Retreat, No. 1 New Quarter, St. Thomas, Virgin Islands.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

"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 holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.

"Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

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

“Insurance Information” shall mean any Insurance Policies and those insurance documents identified in Appendix A.

“Insurance Policies” or “Insurance Policy” shall mean all liability insurance policies issued to or for the benefit of Cyril V. Francois Associates, LLC, or any predecessor in interest to Cyril V. Francois Associates, LLC, including all policies for which Cyril V. Francois Associates, LLC or its predecessor is an “insured”, “named insured”, or “additional insured”, and including all policies for primary, excess, pollution legal liability, and environmental impairment liability.

“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.

“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 Defendant.

“Plaintiff” shall mean the United States.

“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 Defendant” shall mean Cyril V. Francois Associates, LLC.

“Site” shall mean the Tutu Wellfield Superfund site, located in the upper Turpentine Run basin in eastern central St. Thomas, U.S. Virgin Islands, in the Anna’s Retreat section of the island, and generally shown on the map included as Appendix B.

“Territory” or “State” shall mean the United States Virgin Islands.

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

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V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment to resolve its alleged civil liability for the Site under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, as provided in the Covenants Not to Sue by Plaintiff in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Payment of Response Costs. Settling Defendant shall pay to EPA the principal amount of three-hundred thousand dollars (\$300,000.00). The payment shall be made within 30 days after the Effective Date and, if timely paid, shall include no Interest.

6. Settling Defendant shall make payment at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the District of the United States Virgin Islands 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:

THE LAW OFFICE OF W. MARK WILCZYNSKI, P.C.
Palm Passage Suite C20-22, P.O. Box 1150
St. Thomas, Virgin Islands 00804-1150
Phone: (340) 774-4547
Email: mwilczynski@usvilaw.com

on behalf of Settling Defendant. Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice to DOJ and EPA of such change in accordance with Section XIV (Notices and Submissions).

7. Deposit of Payment. The total amount to be paid pursuant to Paragraph 5 (Payment of Response Costs) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

8. Notice of Payment. At the time of payment, Settling Defendant shall send notice that payment has been made (a) to EPA in accordance with Section XIV (Notices and Submissions); (b) to DOJ in accordance with Section XIV (Notices and Submissions); and (c) to the EPA Cincinnati Finance Office by email or by regular mail at:

Email: acctsreceivable.cinwd@epa.gov

Regular mail: EPA Cincinnati Finance Office

26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 021D, and DJ # 90-11-3-09837.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Payments. If Settling Defendant fails to make any payment required by Paragraphs 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 9, \$500 per violation per day that such payment is late.

b. 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 Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

and shall reference the CDCS Number, Site/Spill ID Number 021D, and DJ # 90-11-3-09837.

c. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 8.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant 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 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.

Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendant 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 Defendant's 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 Defendant from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFF

14. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. 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 Defendant of its obligations under this Consent Decree. These covenants are also conditioned upon the veracity and completeness of the financial information and the Insurance Information provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 30. These covenants extend only to Settling Defendant and do not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 14 (Covenants Not to Sue By Plaintiff). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant 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;

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d. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;

e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the 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 Defendant; 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.

16. 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 financial information or the Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 30, is false or, in any material respect, inaccurate.

X. COVENANTS BY SETTLING DEFENDANT

17. Settling Defendant covenants 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 Virgin Islands Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 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.

18. Except as provided in Paragraph 21 (claims against other PRPs) and Paragraph 25 (Res Judicata and other Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section IX (Reservations of Rights by United States), other than in Paragraph 15.a (claims for failure to meet a requirement of the Settlement Agreement) or 15.b (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response

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action or response costs that the United States is seeking pursuant to the applicable reservation.

19. 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).

20. Settling Defendant agrees 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 it may have for all matters relating to the Site against 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 Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

21. Except as provided in Paragraph 20 (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 X (Covenant by Settling Defendant), 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 which 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).

22. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement pursuant to which the Settling Defendant has, 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 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 “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 Territory; provided, however, that if the United States exercises its rights under the reservations in Section IX (Reservations of Rights by United States), other than in Paragraphs 15.a (claims for failure to meet a requirement of the Decree) or 15.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.

23. 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

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judicially-approved settlement pursuant to which Settling Defendant has, 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).

24. Settling Defendant shall, with respect to any suit or claim brought by it 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 Defendant 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 of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within ten days of service or receipt of any Motion for Summary Judgment, and within ten days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. 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 Defendant 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 Not to Sue by Plaintiff set forth in Section VIII.

XII. ACCESS

26. Agreements Regarding Access and Non-Interference. Settling Defendant shall, with respect to its Affected Property:

a. Provide the United States or the Territory for performance of response action at the Site, and their representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) Monitoring, investigation, removal, remedial or other activities at the Site;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing response actions;

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(6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents;

(7) Assessing Settling Defendant's and any Performing Party's compliance with the Consent Decree;

(8) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

(9) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site.

27. Notwithstanding any provision of the Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. RETENTION OF RECORDS AND CERTIFICATION

28. Until 5 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records") now in its possession or control, or which come into its possession or control, that relate in any manner to Insurance Policies or evidence of Insurance Policies, or to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

29. After the conclusion of the document retention period as set forth in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such Records to EPA. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the Record; 2) the date of the Record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the Record; and 6) the privilege asserted. If a claim of privilege

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applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor.

30. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. conducted a thorough, comprehensive, good faith search for all records, reports, or other information requested by the United States and has fully and accurately disclosed to EPA all such information currently in their actual possession, or in the possession of their officers, directors, or employees, as applicable, that relates in any way to the ownership, operation, or control of the Sites, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site by Settling Defendant, or any other persons, and that Settling Defendant will disclose to EPA any such information that comes into Settling Defendant's possession or control in the future;

b. complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, including but not limited to those items outlined in Appendices A and B, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);

c. 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 Defendant executes this Consent Decree; and

d. 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.

XIV. NOTICES AND SUBMISSIONS

31. 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. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

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

As to DOJ by 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 # 90-11-3-09837

and

As to EPA:

Office of Regional Counsel
New York/Caribbean Superfund Branch
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866
Att: Tutu Superfund Site Attorney

Emergency and Remedial Response Division
New York Remediation Branch
U.S. Environmental Protection Agency
290 Broadway, 20th Floor
New York, NY 10007-1866
Att: Tutu Superfund Site Project Manager

and

As to Settling Defendant:

Richard P. Bourne-Vanneck, Esq.
The Law Offices of Richard P. Bourne-Vanneck
9800 Buccaneer Mall, Suite 9
St. Thomas, Virgin Islands 00802
Richard@rpbvlawoffices.com

XV. RETENTION OF JURISDICTION

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

XVI. INTEGRATION/APPENDICES

33. This Consent Decree and its appendices constitute 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 a list of the Insurance Information submitted to EPA by Settling Defendant; and "Appendix B" is the map of the Site.

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XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree shall be lodged with the Court for a period of not less than 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 which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

35. 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.

XVIII. SIGNATORIES/SERVICE

36. The undersigned representative of Settling Defendant certifies that he or she; and the Chief/Deputy Chief, Environmental Enforcement Section, United States Department of Justice, 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.

37. Settling Defendant agrees 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 Defendant in writing that it no longer supports entry of the Consent Decree.

38. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT

39. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendant. 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 _____, 20__.


United States District Judge

RPAW

FOR THE UNITED STATES OF AMERICA:

ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

5/31/2017
Date



MYLES E. FLINT, II
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

JOYCELYN HEWLETT
Acting United States Attorney
District of the Virgin Islands

5/25/17
Date

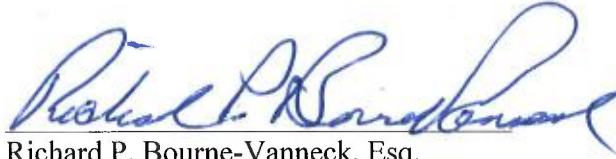


John Prince
Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007

RPRW

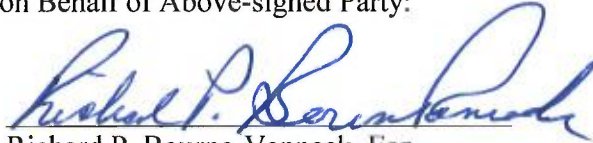
FOR CYRIL V. FRANCOIS ASSOCIATES, LLC.,

April 4, 2017
Date



Richard P. Bourne-Vanneck, Esq.
The Law Offices of Richard P. Bourne-Vanneck
9800 Buccaneer Mall, Suite 9
St. Thomas, Virgin Islands 00802
Richard@rpbvlawoffices.com
(340) 777-5849

Agent Authorized to Accept Service on Behalf of Above-signed Party:



Richard P. Bourne-Vanneck, Esq.
The Law Offices of Richard P. Bourne-Vanneck
9800 Buccaneer Mall, Suite 9
St. Thomas, Virgin Islands 00802
Richard@rpbvlawoffices.com
(340) 777-5849

United States of America v. Cyril V. Francois Associates, LLC.

Appendix A

1. Notice of Cancellation or Non-Renewal of Package Policy No. 61SMP50443 effective 4/2/94.
2. Theodore Tunick & Co. Invoice No. 86230 for Renewal of Package Policy No. 61SMPS0443 marked "Paid 5/25/93".
3. Theodore Tunick & Co. Invoice for Dorchester TBD/Binder marked "Paid 3/22/93"; and, Theodore Tunick & Co. Invoice for Topa Insurance Company TBD/Binder marked "Paid 3/22/93".
4. Theodore Tunick & Co. Invoice for Renewal of Tope Insurance Company General Liability Policy No. XL6230 marked "Paid 4/9/92"; and, Theodore Tunick & Co. Invoice for renewal of Commercial Union Assur. Package Policy No. 61SMPS0443 marked "Paid 3/22/94".
5. All Purpose Endorsement Number 1 effective 5/2/93 and part of Dorchester Insurance Company, Ltd. Policy No. EL--5520.
6. Dorchester Insurance Company, Ltd. Excess Liability Policy No. EL-5520 effective 4/2/93 to 4/2/94.
7. Commercial Union Assurance Company Renewal Certificate No. 18303 for Policy No. 61SMP50443 for period 4/2/93 to 4/2/94 with attached 3 page Binder.
8. Topa Insurance Company Policy No. XL-5042 effective from 4/2/93 to 4/2/94 with attached Endorsements 1 through 10.
9. Topa Insurance Company Policy No. XL-5555 effective from 4/2/92 through 4/2/93 with attached Endorsements 1 through 9.
10. Commercial Union Assurance Company PLC Renewal Certificate No. 15031 for Policy No. 61SMP0443 for period of 4/2/92 through 4/2/93.
11. Theodore Tunick & Co. Invoice for Renewal of Package Policy Nol. 61 SMP50433 marked "Paid 5/19/92"; Renewal of General Liability Policy No. EL5123 marked "Paid 4/29/92"; and Renewal of Commercial Union Assur. Policy No. 61SMPS0443 marked "1/2 Paid 3/17/92.
12. Commercial Union Assurance Company Limited Endorsement No. 2 forming part of Policy No. 61SMP50443 effective 4/2/92 with attached Supplemental Declarations Endorsement and Loss of Rents Endorsement.

13. Dorchester Insurance Company Ltd. Renewal Certificate for Policy No. EL 5123 effective 4/2/93 through 4/2/93, and Theodore Tunick & Co. Invoice for Renewal of Dorchester General Liability Policy EL 5123 marked "Paid 4/29/92."
14. Theodore Tunick & CO. Invoice for Topa Insurance Company Policy No. XL 6230 (2 pages) marked "Paid 12/5/91."
15. Copy of Theodore Tunick & Co. Memo dated 10/4/91 with attached Topa Insurance Company Policy No. XL-6230 effective 4/2/91 through 4/2/92 including Endorsements 1 through 8.
16. Endorsement No.1 to Dorchester Insurance Company, Ltd. Policy No. SMP 30405 effective 4/2/91 with attached Loss of Rent Endorsement.
17. Endorsement No.1 to Commercial Union Assurance Company Limited Policy No. 61SMP 50443 effective 4/2/91 with attached Loss of Rent Endorsement.
18. Commercial Union Assurance Company Limited Policy No. 61 EPL 0172 effective 1/31/90 to 4/2/90.
19. Letter dated 5/4/91 from John "Haps" Littlehales, C.S.P., Theodore Tunick & Co., to Gloria McGowan, Cyril V. Francois Associates.
20. All Purpose Endorsement No. 1 to Dorchester Insurance Company: Ltd. Policy No. EL-5123 effective 4/2/91.
21. Commercial Union Assurance Company Limited Policy No. 61-SMP 50443 effective 4/2/91 to 4/2/92.
22. Theodore Tunick & Co. Invoice No. 69640 MGM dated 4/15/91 for Dorchester Policy No. EL 5123.
23. Theodore Tunick & Co. Invoice No. 69637 MGM dated 4/15/91 for Dorchester Policy No. MP 30405.
24. Theodore Tunick & Co. Invoice No. 69641 MGM dated 4/15/91 for Dorchester Policy No. 15927TOPA.
25. Theodore Tunick & Co. Invoice No. 69632 MGM dated 4/15/91 for Commercial Union Assur. Policy No. 61SMP50443.
26. Insurance Binder dated 4/15/91 for Dorchester Policy No. 1592/TOPA General Liability.
27. Theodore Tunick & Co. Invoices for Dorchester Policy SMP3045; Dorchester Policy No. 15492/TOPA; and, Commercial Union Assur. Policy No. 61SMP50443 marked "Paid

- 4/22/91.”
28. Dorchester Insurance Company Ltd. Renewal Certificate for Policy No. EL 5123 effective 4/2/91 to 4/2/92.
 29. Dorchester Insurance Company Ltd. Policy No. SMP 30405 effective 4/2/91 to 4/2/92.
 30. Eagle Star Insurance Company of Puerto Rico receipt for Claim No. 960050 on Policy No. SMP404685 for loss sustained 9/18/89.
 31. Commercial Union Assurance Company PLC Renewal Certificate No. 17377 for Policy No. 61EPL0172 effective 4/2/90 to 4/2/91; and, Theodore Tunick & Co. Invoice for Dorchester Commercial Umbrella/Excess Liability coverage marked “Paid 3/27/90.”
 32. Commercial union Assurance Company Limited Endorsement to Policy No. 61SMP 50290 effective 4/2/90.
 33. Commercial Union Assurance Company PLC Renewal Certificate No. RC-170763 for Policy No. 61SMP 50290 effective 4/2/90 to 4/2/91 with attached Supplemental Declarations Endorsement and Loss of Rents Endorsement.
 34. Theodore Tunick & Co. Memorandum dated 6/5/92 and Invoice for Policy No. 61EPL0172 marked “Paid 3/20/90.”
 35. The Prudential Assurance Company Limited policy No. SMP514302 effective 4/2/90 to 4/2/91.
 36. Theodore Tunick & Co. Invoice for Prudential policy No. SMP 514302 marked “Paid 4/20/90.”
 37. Theodore Tunick & Co. Invoices for Commercial Union policy No. 61SMP 50290 and 61EPL 0172 marked “Paid 4/20/90.”
 38. Dorchester Insurance Company Ltd. Insurance Policy No. EL-5123 effective 4/2/90 to 4/2/91.
 39. Letter dated 2/13/90 from Thomas Howell Kiewit International Loss Adjusters to Cyril Francois Associates.
 40. Sworn Statement of Proof of Loss to Commercial Union Assurance Company Ltd. against Policy No. 61SMP50290 dated 2/20/91.
 41. Unidentified handwritten document entitled “Rentals ’90.”
 42. Commercial Union Assurance Company Limited Policy No. 61-SMP50290 effective

- 4/2/89 to 4/2/90.
43. Eagle Star Insurance Company of Puerto Rico Policy No. SMP 404685 effective 4/2/89 to 4/2/90.
 44. Theodore Tunick Invoices for Eagle Star Ins Co of PR Policy No. SMP404685; Commercial Union (V.I.) Policy No. 61SMP50290; and Policy No. GLA0602 marked "Paid 5/4 and 5/5/89."
 45. American Property and Casualty Insurance Company, Inc. Policy No. GLA0602 effective 4/2/89 to 4/2/90.
 46. Theodore Tunick & Co. memorandum dated 1/19/90 with attached Notice of Cancellation of Policy No. GLA 0602, and Order entered 1/11/90 by the Office of the Commissioner of Insurance In the Matter of the Rehabilitation of American Property and Casualty Insurance Company, Inc., No. 13/1989.
 47. Theodore Tunick & Co. memorandum dated 12/14/89.
 48. Letter dated December, 1988 from James D. Tunick, Theodore Tunick & Co.
 49. Undated letter from Evan A. Francois.
 50. Copy of undated circular entitled "The Co-Insurance Clause."
 51. Theodore Tunick & Co. memorandum dated 3/16/89.
 52. Unidentified Invoice for Policy Nos. LL00493 marked "Paid 7/10/96."
 53. Theodore Tunick & Co. Invoice No. 105803 MGM dated 4/11/96 for Independent Ins. Advisor Policy No. L7110362 marked "Partial Payment 4/22/96" with attached Insurance Binder effective 4/2/96 to 4/2/97.
 54. Theodore Tunick & Co. Invoice No. 105713 AB dated 4/3/96 with attached Lloyd's of London Policy No. LL00493 effective 4/2/96 to 4/2/97.
 55. Theodore Tunick & Co. Statement dated 5/31/96 for various policies.
 56. Unidentified Invoice for various policies marked "Paid 5/8/96."
 57. Cover letter from Theodore Tunick & Co. dated 5/16/96 with attached TOPA Insurance Company Policy No. XL-8430 effective 4/2/97.
 58. Theodore Tunick & Co. Invoice No. 105836 MGM dated 4/15/96 marked "Payment on Account 4/22/96" with attached Insurance Binder for TOPA Insurance Company General

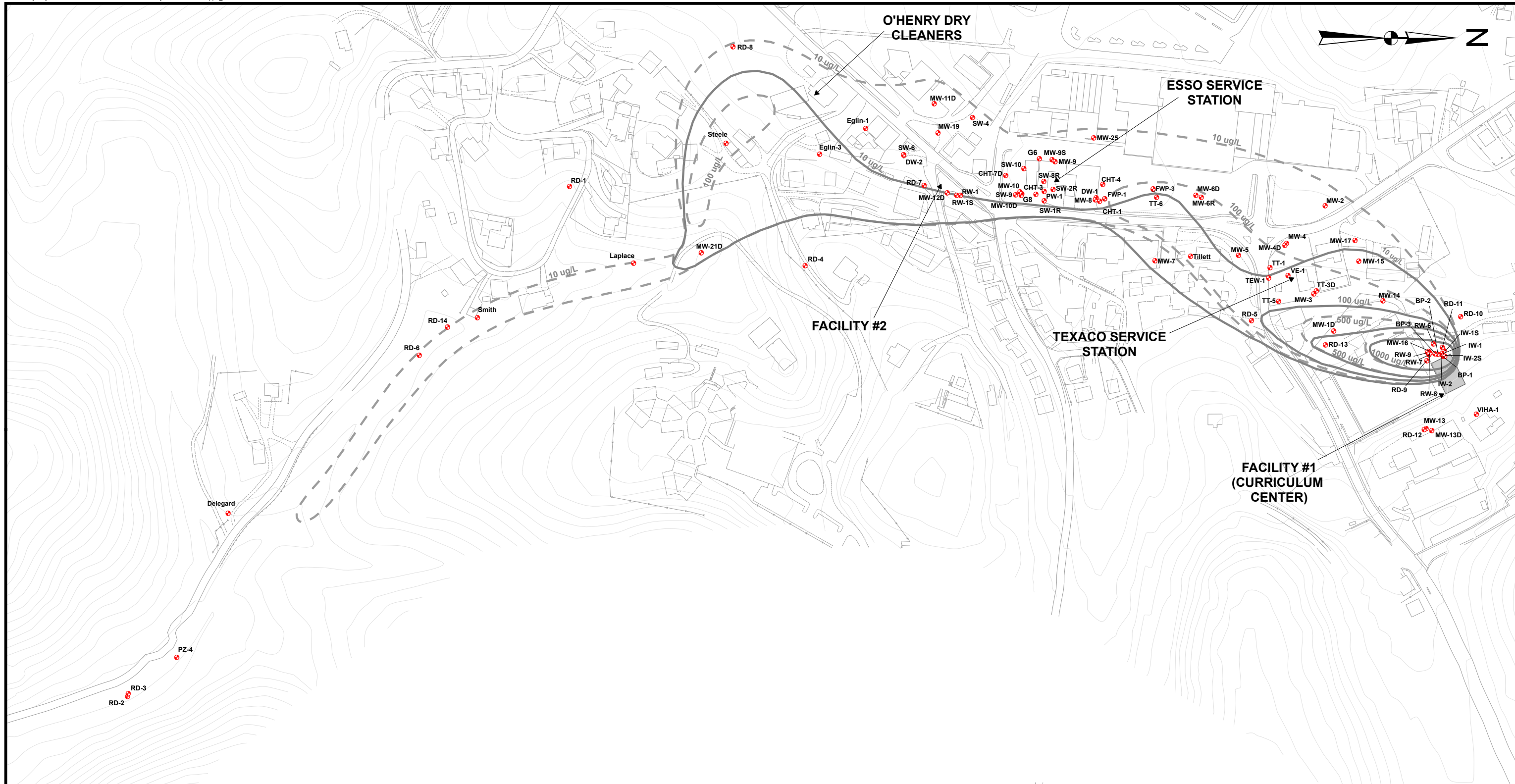
Liability Policy Renewal.

59. Lloyd's of London Policy No. LL 00461 effective 4/2/95 to 4/2/96.
60. Theodore Tunick & Co. Invoice No. 105803 MGM dated 4/16/96 for Independent Insurance Advisors Policy LL00493 marked "On Acct 4/22/96."
61. Theodore Tunick & Co. Invoice for Policy No. LL00493 marked "Paid 4/3/96" with attached Insurance Binder for Lloyd's of London effective 4/2/96 to 4/2/97.
62. Theodore Tunick & Co. memorandum dated 3/29/96 with attached Schedule.
63. Theodore Tunick & Co. letter dated 2/26/96 with attached Notice of Non-Renewal of Generali Policy No. LCP2162050 effective 2/6/96; Notice of Non-Renewal of Lloyd's of London Policy LL0461 effective 4/2/96; and, Notice of Non-Renewal of TOPA Policy XL7755 effective 4/2/96.
64. Generali Policy No. LCP-2162-050 effective 4/2/95 to 4/2/96.
65. TOPA Insurance Company Policy No. XL-7755 effective 4/2/95 to 4/2/96.
66. Unidentified Invoice for Policy No. LL00461 marked "Paid 5/3/95."
67. Theodore Tunick Invoice for Policy LL00461 marked "paid 4/7/95" with attached Endorsements effective 5/26/95.
68. Marshall & Sterling letter dated 3/6/95.
69. Theodore Tunick & Co. Invoice for Policy LL0461 marked "Paid in full 6/21/95".
70. Theodore Tunick & Co. letter dated 7/6/95.
71. Unidentified invoice for Policy No. LL0461 marked "Paid 6/7/95."
72. Theodore Tunick & Co. letter dated 2/17/95 with attached Schedule of Insurance.
73. Theodore Tunick & Co. letter dated 3/25/94 with attached Schedule of Insurance.
74. Theodore Tunick & Co. letter dated 5/23/95.
75. Theodore Tunick & Co. letter dated 3/29/95 with attached Invoice for Generali Policy.
76. Theodore Tunick & Co. Invoice for TOPA Insurance Company Policy XL5042 marked "Paid 4/5/95" with attached page 2 and 3 of Insurance Binder effective 4/2/95 to 4/2/96.

77. Theodore Tunick & Co. Invoice for Policy LL00383 with attached Lloyd's of London Policy LL00383 effective 4/2/94 to 4/2/95.
78. Theodore Tunick & Co. letter dated 5/2/94 with attached Renewal Certificate for TOPA Insurance Company Policy No. XL 5042 effective 4/2/94 to 4/2/95.
79. Theodore Tunick & Co. Invoices for TOPA Insurance Company Policy XL5042 marked "Paid 4/22/94"; and, Lloyd's of London Policy No. LL0365 marked "Paid 4/25/94."
80. Theodore Tunick & Co. letter dated 2/16/94 with attached Application to Dorchester Insurance Company, Ltd.
81. Lloyd's of London Policy effective 4/2/94 to 4/2/95.
82. Bradley & Francois, Inc. Invoices dated 10/4/1983 for Sun Alliance Policy No.; SMP 10487 and Invoice dated 8/22/83 for Alliance Policy No. SMP 10487 with attached Sun Alliance Change Endorsement No. 1 and Loss of Rents Endorsement effective 9/15/83.
83. Sun Alliance Insurance Company of Puerto Rico Policy No. SMP 10487 effective 8/1/83 to 8/1/86.
84. Alliance Assurance Company, Ltd. Change Endorsement No. 4 effective 8/1/80 to 8/1/83.
85. Bradley & Francois, Inc. Invoice dated 4/5/83 for Alliance Policy No. PT 10020 marked "Received Payment 4/26/83", and 7/15/82 for Alliance Policy SMP 10963 marked "Paid in Full."
86. Bradley & Francois, Inc. Invoices dated 10/28/81 for Alliance Policy No. SMP 10963 marked "Received Payment 11/5/81", 3/8/83 for Alliance Policy 11971570 marked "Received Payment 328/83."
87. Bradley & Francois, Inc. Invoice dated 3/24/82 for Alliance Policy No. 64GLA127081 marked "Paid 4/28/82."
88. Bradley & Francois, Inc. Invoices dated 3/9/82 for Alliance Policy No. 64PT93416 marked "Paid 4/28/82", and 3/16/82 for Alliance Policy 11971570 marked "Paid 4/28/82."
89. Bradley & Francois, Inc. Invoice dated 7/15/82 for Alliance Policy No. SMP 10963 and Receipt for payment dated 7/20/82.
90. Bradley & Francois, Inc. Invoice dated 5/5/82 for Alliance Policy 1197 1570 marked "Paid 5/11/82."

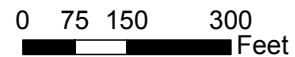
91. Change Endorsement No. 4 fore Sun Alliance Insurance Company of Puerto Rico, Inc. Policy SMP 10963 effective 8/1/80 to 8/1/83 with attached Bradley & Francois Invoice dated 11/29/82 for Alliance Policy SMP 10963 marked "Received Payment 12/20/82."
92. Alliance Assurance Company Limited Policy No. SMP 10963 effective 8/1/80 to 8/1/83.
93. Bradley & Francois, Inc. Invoice dated 3/8/83 for Alliance Policy 64 GLA 127081.
94. Invoice marked "Received Payment 3/28/83" by Bradley & Francois, Inc.
95. Unsigned handwritten document dated 9/22/81.

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Legend

- Groundwater Monitoring Well
- 10 ug/L April 2010 Groundwater Total CVOC Concentration Iso-contours (ug/L)
- 10 ug/L Baseline (April 2004) Groundwater Total CVOC Concentration Iso-contours (ug/L)



Attachment C
 Site Map
 Tutu Wellfield Superfund Site
 U.S. v. Government of the U.S. Virgin Islands Consent Decree
 Civil No. 2009/122

