

**SETTLEMENT AGREEMENT AMONG THE UNITED STATES OF AMERICA ON BEHALF OF THE DEPARTMENT OF COMMERCE, THROUGH THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, THE DEPARTMENT OF THE INTERIOR, THROUGH THE FISH AND WILDLIFE SERVICE, AND THE SOCIEDAD NAVIERA ULTRAGAS LTDA.**

**I. Introduction**

A. The United States of America, on behalf of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA") and the U.S. Department of the Interior, Fish and Wildlife Service ("FWS") (hereinafter referred to together as the "Settling Agencies"), and the Sociedad Naviera Ultragas Ltda. ("Sociedad") (hereinafter referred to collectively as the "Parties") enter into this Settlement Agreement to settle, without litigation, the United States' civil claims under the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq. ("OPA") for damages for injuries to natural resources resulting from the oil spill from the M/V POSAVINA that occurred in Chelsea Creek, East Boston, Massachusetts on June 8, 2000 (the "Incident"). The United States is a co-trustee of the injured natural resources, and this Settlement Agreement is executed on behalf of the United States as co-trustee.

B. Under OPA, each responsible party for a vessel from which oil is discharged into or upon the navigable waters is liable for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage.

**II. Parties Bound**

The provisions of this Settlement Agreement shall apply to and be binding upon the Sociedad Naviera Ultragas Ltda. and its successors and assigns (collectively, "Sociedad"), and upon the United States, on behalf of the Settling Agencies.

### **III. Definitions**

Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in OPA or in the natural resource damage assessment regulations promulgated under OPA shall have the meaning assigned to them in OPA or in such regulations.

### **IV. Payment of Certain Costs and Damages**

A. Within thirty (30) days after the effective date of this Settlement Agreement, Sociedad shall pay to NOAA the sum of one hundred and forty-two thousand, one hundred and thirty six dollars (\$142,136.00). Of this amount, \$100,000.00 is to be utilized by the Settling Agencies and the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts ("Commonwealth") for the implementation of natural resource restoration projects, described in Section V hereof, and \$42,136.00 shall be used to reimburse NOAA for damage assessment costs.

B. Payment of the amount set forth in Section IV.A. shall be in the form of a check payable to the U.S. Department of Commerce - NOAA and shall be sent directly to:

NOAA  
Office of General Counsel for Natural Resources  
Room 15107, SSMC#3  
1315 East-West Highway  
Silver Spring, MD 20910-3282  
Attn: Kim Kendall

The following information must be annotated on the check:

Name of Case: POSAVINA

A copy of the check payable to the U.S. Department of Commerce - NOAA and any accompanying correspondence shall be sent to:

Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

C. Within thirty (30) days after the effective date of this Settlement Agreement, Sociedad shall pay to the U.S. Department of the Interior, the sum of six thousand, four hundred and seventy nine dollars (\$6,479.00) to reimburse the U.S. Fish and Wildlife Service for damage assessment costs.

D. Payment of the amount set forth in Section IV.C. shall be in the form of a check payable to the U.S. Department of the Interior and shall be sent directly to:

Department of the Interior  
NBC/Division of Financial Management Services  
Branch of Accounting Operations  
Mail Stop 1313  
1849 C Street, NW  
Washington, DC 20240

The following information must be included with the check:

Account Number: 14X5198 (NRDAR)  
Name of case: POSAVINA  
Location of Site: Chelsea Creek, East Boston, Massachusetts  
Name of Paying Party: Sociedad Naviera Ultragas Ltda.

A copy of the check payable to the U.S. Department of the Interior and any accompanying correspondence shall be sent to the following recipients:

Marcia F. Gittes  
Office of the Northeast Regional Solicitor  
U.S. Department of the Interior  
One Gateway Center - Suite 612  
Newton, MA 02458

and

Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

E. i. If Sociedad executes and returns this Settlement Agreement to NOAA within fifteen (15) days of the date of its receipt of this Settlement Agreement, and its payment pursuant to this Section IV is timely, no interest shall accrue;

ii. if Sociedad executes and returns this Settlement Agreement to NOAA within fifteen (15) days of the date of its receipt of this Settlement Agreement, but its payment pursuant to this Section IV is not timely, interest shall be calculated from the date 30 days after the effective date of this Settlement Agreement until the date of payment; and

iii. if Sociedad executes and returns this Settlement Agreement to NOAA later than fifteen (15) days after its receipt of this Settlement Agreement, interest shall be calculated commencing on the fifteenth day after receipt by Sociedad of this Settlement Agreement and continue until the date of payment.

iv. Sociedad shall pay interest on payments due pursuant to Sections IV.A. through IV.F. hereof at the rate specified in 33 U.S.C. § 2705(b)(4).

F. 1. If Sociedad fails to make any payment under this Section by the required due date, Sociedad shall be in violation of this Settlement Agreement and shall pay as a stipulated penalty, in addition to the interest required by Subparagraph E, \$1,000 per day that such payment is late. The stipulated penalties are due and payable within 30 days of the date of the demand for payment

of the penalties by the United States. All payments under this Subparagraph F.1. shall be identified as "stipulated penalties" and shall be made to the United States by certified check made payable to "U.S. Department of Justice." Such payment shall reference this Settlement Agreement and Sociedad's name and address and be mailed to:

Financial Litigation Unit  
United States Attorney's Office  
District of Massachusetts, 1 Courthouse Way  
John Joseph Moakley Courthouse  
Boston, MA 02210

At the time of payment, Sociedad shall send notice of such payment to the Settling Agencies at the addresses set forth in Subparagraphs B and D of this Section. Penalties shall accrue as provided in this Subparagraph regardless of whether the United States has notified Sociedad 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 is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

2. Payments made under this Subparagraph F shall be in addition to any other remedies or sanctions available to the United States by virtue of Sociedad's failure to comply with the requirements of this Settlement Agreement. Notwithstanding any other provision of this Section, the United States may, in its own unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement.

G. Sociedad shall be liable for attorneys' fees and costs incurred by the United States to collect any amount due under this Settlement Agreement that is not timely paid.

### **V. Restoration Projects**

It is the present intent of the Settling Agencies and the Commonwealth that the funds identified in Section IV.A. as for natural resource restoration projects will be used to conduct the Mill Creek Salt Marsh Restoration in Chelsea, Massachusetts and the Belle Isle Inlet Restoration in East Boston, Massachusetts. These projects are described in Appendix A. In the event that one or both of these projects is reconsidered based on public comments received, or becomes unsuitable or otherwise unavailable to receive the funding, the Settling Agencies and the Commonwealth will jointly identify alternate restoration projects that meet the same restoration goals, jointly determine the feasibility of performing such projects, and shall jointly implement such alternative project(s).

### **VI. Covenants Not to Sue and Reservation of Rights by the United States**

A. In consideration of the payments to be made by Sociedad, the United States, on behalf of the National Oceanic and Atmospheric Administration and the Fish and Wildlife Service, covenants not to sue Sociedad for (i) damages for injury to, destruction of, loss of, or loss of use of, natural resources arising from the Incident, including natural resource damage assessment and restoration monitoring costs associated with the Incident; and (ii) other than as set forth in Section IV above, for costs, attorneys' fees, other fees, or expenses incurred by the United States to recover such natural resource damages in connection with the Incident. This covenant not to sue is not effective until, and is conditioned upon, complete and satisfactory performance by Sociedad of its obligations under this Settlement Agreement.

B. Notwithstanding any other provision of this Settlement Agreement, the United States

reserves, and this Settlement Agreement is without prejudice to, any claims not included in Section VI, including, but not limited to:

i) claims based upon a failure of Sociedad to meet a requirement of this Settlement Agreement;

ii) civil fines and penalties

iii) criminal liability;

iv) claims for removal costs or damages that the United States, other than NOAA and FWS, may have under applicable law;

v) claims for amounts paid to third parties from the Oil Spill Liability Trust Fund for reimbursement of removal costs and damages resulting from the Incident; and

vi) claims for additional costs if conditions attributable to the Incident, previously unknown to the Settling Agencies, are discovered, or information previously unknown to the Settling Agencies, is received, in whole or in part, and the Settling Agencies determine that these previously unknown conditions or information together with any other relevant information indicates that the costs and damages identified in Section IV are inadequate to address the injury to natural resources or natural resource damage assessment costs arising from the Incident.

**VII. Covenant Not to Sue by Sociedad Naviera Ultragas Ltda.**

A. Sociedad hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, or its employees, agents, experts or contractors, for

i) any claim pursuant to admiralty law, any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund, or any claim pursuant to any other

provisions of law, for payments made or costs incurred pursuant to this Settlement Agreement;

ii) any claims arising out of any removal activities undertaken by the United States;

iii) any claims for costs, attorneys' fees, other fees, or expenses incurred in connection with this Settlement Agreement.

B. In any subsequent administrative or judicial proceeding initiated by the United States relating to the Incident, as defined in Section I.A., Sociedad 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 settled in this Settlement Agreement; provided, however, that nothing in this Section affects the enforceability of the covenants not to sue set forth in Section VI herein.

#### **VIII. Public Notice Requirements**

The Parties acknowledge that final approval by the United States and the effectiveness of this Settlement Agreement are subject to public notice and comment for a period of thirty days after publication of notice of the Agreement in the Federal Register. The Parties further acknowledge that the United States reserves the right to withdraw or withhold its consent if the comments regarding this Agreement disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate. Further, if the comments received raise substantive issues which require the preparation of a response by FWS and/or NOAA and consideration by a court, the United States reserves the right to present this Agreement to a court simultaneously with the filing of a complaint and a motion to approve and

enter this Agreement as a final judgment.

#### **IX. Effective Date**

A. The effective date of this Settlement Agreement shall be the date upon which the United States issues written notice to Sociedad that the public comment period pursuant to Section VIII has closed and that comments received, if any, do not require modification of or United States withdrawal from this Settlement Agreement.

B. If the United States withholds its consent and the court denies a final judgment as described in Section VIII, or if the United States withdraws its consent, then this Settlement Agreement is considered null and void.

#### **X. Signatories**

Each undersigned representative of Sociedad, and the United States on behalf of NOAA and the U.S. Fish and Wildlife Service, certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such party to this document.

SETTLEMENT AGREEMENT AMONG THE UNITED STATES OF AMERICA ON BEHALF OF THE DEPARTMENT OF COMMERCE, THROUGH THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, THE DEPARTMENT OF THE INTERIOR, THROUGH THE FISH AND WILDLIFE SERVICE, AND THE SOCIEDAD NAVIERA ULTRAGAS LTDA.

For the United States of America

On behalf of the National Oceanic and Atmospheric Administration and the Department of the Interior

Date:

3/1/04



CATHERINE R. MCCABE

Deputy Section Chief

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

FROM

98: FEB 11 2004

3-31PM

FROM

(TUE) FEB 10 2004 9:21/ST. 9:11/NO. 6387455865 P 15

SETTLEMENT AGREEMENT AMONG THE UNITED STATES OF AMERICA ON BEHALF  
OF THE DEPARTMENT OF COMMERCE, THROUGH THE NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION, THE DEPARTMENT OF THE INTERIOR, THROUGH  
THE FISH AND WILDLIFE SERVICE, AND THE SOCIEDAD NAVIERA ULTRAGAS  
LTDA.

For Sociedad Naviera Ultragas Ltda.

Date: \_\_\_\_\_

  
Richard S. Stinson

Director

Sociedad Naviera Ultragas Ltda.

Message Continues...

## APPENDIX A

### POSAVINA OIL SPILL NATURAL RESOURCE RESTORATION PROJECTS

#### I. Project Name: Mill Creek Salt Marsh Restoration

Location: Mill Creek, Chelsea, Massachusetts (just upstream from POSAVINA oil spill area)

Sponsor Organization: Chelsea Green Space and Recreation Committee  
300 Broadway  
Chelsea, MA 02150

Project Partners: Watershed Institute, BSC Group, Massachusetts Riverways Program, Massachusetts Wetlands Restoration Program, Conservation Law Foundation, NOAA Fisheries Restoration Center Partnership with NFWF Five Star program, Massachusetts Highway Department

Project Summary and Description: The Chelsea Open Space and Recreation Committee is leading a resident driven, community-based salt marsh restoration project on Mill Creek, in Chelsea, Massachusetts. The project site is an approximately 1.5 acre marsh at the far end of the Chelsea River/ Mill Creek. The site is surrounded by high density low-income housing, highway exit ramps and a practically abandoned shopping mall and associated parking lot. The site has been heavily impacted from stormwater sedimentation and historic fill. Photography over the past decade documents an almost complete conversion from typical salt marsh vegetation to monoculture of invasive *phragmites australis*. The basic project design includes the Massachusetts Highway Department taking all appropriate steps to remove all stormwater sediments in the marsh creek and design, construct and maintain an appropriate stormwater retention basin.

NOAA community-based restoration funds and in-kind services will be used to design and implement an Open Marsh Water Management (OMWM) design on the remainder of the marsh areas (about 1 acre). The preliminary design calls for minor regrading (6 – 12 inches) of the sediments on the marsh surface to directly remove phragmites vegetation and lower the marsh grade to an elevation that would support native marsh vegetation and animals. The design is being cooperatively developed by staff from the NOAA Fisheries Restoration Center Gloucester field office and the Massachusetts Wetlands Restoration Program.

**APPENDIX A (CONTINUED)****POSAVINA OIL SPILL NATURAL RESOURCE RESTORATION PROJECTS****II. Project Name: Salt Marsh Restoration at Belle Isle Inlet**

Location: Belle Isle Inlet, East Boston, Massachusetts

Sponsor: City of Boston Parks Department  
1010 Massachusetts Ave  
Boston, MA 02118

Project Partner: Commonwealth of Massachusetts Wetlands Restoration Program

Project Summary and Description: The project site consists of approximately 1.6 acres off Saratoga Street in East Boston. The property, which was formally owned by the Belle Island Fish Company, is a salt marsh that has undergone historic filling with demolition materials such as concrete, wood, brick, and other debris. The City is required to remove and dispose of contaminated sediments from the site pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act (M.G.L. Chapter 21E).

The Trustees will fund the salt marsh restoration after the sediment removal. The site will be properly graded and backfilled with salt marsh substrate and planted with indigenous, herbaceous salt marsh plant species for restoration of the salt marsh habitat.

The remediation and restoration will enhance the wetland/wildlife values of the site and will provide a recreation area for residents of this area.