

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

HILDA L. SOLIS, Secretary of Labor,)	
United States Department of Labor)	
)	
Complainant,)	
)	OSHRC Docket No. 08-1104
v.)	
)	
IMPERIAL SUGAR COMPANY; IMPERIAL-)	
SAVANNAH, L.P.; and their successors)	OSHA Inspection No. 310988712
)	
Respondents,)	

SETTLEMENT AGREEMENT

I.

Scope and Intent of Agreement

A. Complainant, Hilda L. Solis, Secretary of Labor, United States Department of Labor (“Complainant”), through the Occupational Safety and Health Administration (“OSHA”), and Respondents, Imperial Sugar Company and Imperial-Savannah, L.P. (hereinafter collectively “Respondent”), submit the following settlement agreement (hereinafter “Agreement” or “Settlement Agreement”) pursuant to Rule 2200.100 of the Occupational Safety and Health Review Commission’s (“OSHRC”) Rules of Procedure.

B. This Settlement Agreement constitutes a full and complete settlement of the contested Citations, proposed penalties, and abatement dates at issue and disposes of all issues in the above-styled case, OSHRC Docket No. 08-1104, arising from OSHA Inspection No. 310988712.

C. Respondent certifies that there is no authorized employee representative at Respondent's workplace located at 201 Oxnard Drive, Port Wentworth, Georgia.

II.

Amendment of the Citations and Notifications of Penalty

A. The parties agree that the Citations issued in Inspection No. 310988712 are amended by this Agreement to include the full terms of this Agreement including the abatement actions and dates stated herein.

B. Complainant hereby amends Citation 2, Item 2, by reclassifying instance "a" as instance "c" of Citation 1, Item 5. The penalties proposed in OSHA Inspection No. 310988712, forming the basis of OSHRC Docket No. 08-1104, are amended to a total amount of \$4,050,000.00.

C. For purposes of this Agreement, the term "affected employee" means an employee of Respondent who may be exposed to a potential hazard at Respondent's workplace.

D. For purposes of this Agreement, the term "affected contractor employee" means an employee of a contractor who performs work at Respondent's workplace and may be exposed to a potential hazard at Respondent's workplace.

III.

Withdrawal of Notice of Contest and Entry of Final Order

Respondent hereby withdraws its notice of contest to the Citations, proposed penalties and abatement dates, as amended and set forth herein, and the parties agree to the entry of a final enforceable order of the OSHRC consistent with the terms of this Agreement.

IV.

Payment of Penalties

Respondent agrees to pay the total amended penalties of \$4,050,000.00 in four (4) equal quarterly installments, as follows: The first quarterly payment of \$1,012,500.00 shall be due on the 10th day after this Agreement becomes a final order of the OSHRC, with each successive quarterly payment of \$1,012,500.00 due and payable within ninety (90) calendar days of the preceding payment due date to: **Occupational Safety and Health Administration, Savannah Area Office, 450 Mall Boulevard, Suite J, Savannah, Georgia, 31406-1418**. All checks should be made payable to **“U. S. Department of Labor - OSHA.”** In the event of default on any of the payments, the total amended penalty balance shall become immediately due and payable and interest shall be assessed against such remaining balance at the rate provided by 28 U.S.C. § 1961 from the date of default until the total amount is paid in full. A payment shall be deemed in default if it is not received by OSHA within fifteen (15) calendar days after the indicated due date. Requirement of the accelerated payment shall be at OSHA’s sole discretion.

V.

Abatement, Certification and Documentation

A. Respondent states that the specific conditions described in all Citations, inclusive of all Items therein, together with any and all subparts, have been abated at Respondent’s sugar refining facility located in Port Wentworth, Georgia (“Port Wentworth facility”), except that the following Items will be abated in the manner and on the schedule set forth below:

1. Respondent agrees to abate Citation 1, Items 18g (“A Boiler”), h (“D Boiler”), j (“C Boiler”), and m (“Raw Sugar Warehouses 1, 2 and 3”) related to emergency lighting no later than December 31, 2010. Respondent certifies that the

following interim measures are in place: interim lighting of egress routes has been installed; affected employees and affected contractor employees assigned to the areas have been trained on evacuation routes; the Port Wentworth facility conducts a facility-wide emergency evacuation drill at least once per year; and the Port Wentworth facility conducts monthly emergency evacuation drills such that each department has a practice drill at least once per year.

2. Respondent agrees to abate Citation 2, Items 59 through 69 related to electrical classification no later than December 31, 2010. Respondent certifies that the following interim measures are in place: housekeeping procedures and audits; control of ignition sources through continued enforcement of “hot work” permit requirements; training of affected employees and affected contractor employees about the potential hazards of combustible dust and control methods for reducing risks; and deployment of the management of change procedure.

B. Respondent will comply with all applicable abatement verification provisions of 29 C.F.R. § 1903.19 including, but not limited to, all certification, documentation and posting requirements.

C. Abatement certification for the Citations and the specific abatement measures set forth in Section V and VI of this Agreement shall be accomplished within ten (10) calendar days after the abatement date by mailing a letter to: **Occupational Safety and Health Administration, Savannah Area Office, 450 Mall Boulevard, Suite J, Savannah, Georgia 31406-1418**, certifying that affected employees have been informed of the abatement. Any required abatement documentation shall be submitted along with the abatement certification.

D. The parties agree that the Citations as amended and the specific abatement measures set forth in Sections V and VI of this Agreement, including all subparts therein, shall be considered required abatement of the cited conditions and that the failure to perform any measures required in the Agreement may be cited as failure to abate under Section 10(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, et seq. (“the Act”), 29 U.S.C. § 659(b), to the same extent as if these abatement measures had been set forth from the outset in the Citations issued in this matter.

E. Respondent further agrees that failure to implement the abatement measures set forth in Sections V and VI of this Agreement may be subject to an enforcement action brought by Complainant pursuant to Section 11(b) of the Act, 29 U.S.C. § 660(b), to the same extent as if these abatement measures had been set forth from the outset in the Citations issued in this matter. Without waiving any defense Respondent may have to any allegation that it has failed to abate any citation herein or violated this Agreement, Respondent agrees that it will not oppose the entry of such an order of enforcement by the United States Court of Appeals to which Complainant presents this Agreement and supporting documents.

VI.

Additional Abatement Measures by Respondent

In furtherance of abating certain conditions and improving safety and health at the Port Wentworth facility, Respondent additionally agrees to perform the following for the term of the Agreement:

A. **Combustible Dust Training.** As part of its training program, Respondent has developed, and will maintain, with the assistance of outside consultants with expertise in combustible dust and in developing training materials, computer-based training (“CBT”) and

digital video disk based training (“DVD”) regarding combustible dust. Such CBT and DVD training for all Respondent’s employees and contractor employees, as indicated, shall include, but not be limited, to, the following:

1. The physical hazards and hazardous properties including, but not limited to, combustibility and explosivity of sugar, powdered sugar, cornstarch and coal dusts for Respondent’s employees and all contractor employees;
2. The prevention and mitigation of combustible dust hazards including, but not limited to, dust accumulation, ignition sources, and housekeeping for Respondent’s employees and contractor employees;
3. The specification, ordering, development of electrical classification drawings, installation, maintenance and control of change of electrical equipment, with an emphasis on approved electrical equipment for hazardous classified areas designated in OSHA’s standards at Subpart S – Electrical, for all Respondent’s employees and contractor employees who may be involved in the listed activities in this sub-Section, VI.A.3;
4. The hazard recognition and reporting of electrical equipment which is not properly installed or maintained, e.g., unapproved extension cords or box fans in hazardous locations, frayed electrical conductors on a product machine, the addition of an “ordinary” light fixture in a hazardous classified area, etc. for all Respondent’s employees and contractor employees; and
5. Reasons for wearing fire retardant clothing for all Respondent’s employees and contractor employees.

On or before July 1, 2010, Respondent shall require: (1) all Respondent's employees then employed at Respondent's Port Wentworth facility, and (2) all contractor employees who may have access to areas at the Port Wentworth facility that may have combustible dust, to successfully complete either CBT or DVD Module 1 or Module 2A and B (or their equivalents), as applicable for their job. Any employee of Respondent hired after July 1, 2010 will receive such training before entering areas that may have combustible dust. After July 1, 2010, Respondent will require its contractors to certify that their employees who may have access to the areas that may have combustible dust at the Port Wentworth facility have successfully completed CBT or DVD Module 1 or Module 2A and B (or their equivalents), as applicable for their job before entering areas that may have combustible dust and annual refresher training thereafter. Contractor employees for whom such certification has not been received will not be permitted access to areas that may have combustible dust at the Port Wentworth facility. Respondent further agrees that Respondent shall require its employees and contractor employees to be re-trained at least annually on the recognition and means of control of combustible dust. Respondent agrees to follow the training policy for contractor employees, as attached hereto as Exhibit "A" and incorporated by reference as part of this Agreement.

B. Advanced Training for Personnel. In addition to the training obligations set forth above in Section VI.A,

1. No later than December 31, 2010, Respondent agrees to ensure that certain Port Wentworth managers, superintendents, engineers and supervisors will complete the following advanced training applicable to their responsibilities: advanced combustible dust management; NFPA 61; NFPA 654; NFPA 499; NFPA 68; NFPA 69; and NFPA 101.

2. No later than July 1, 2010, Respondent agrees to commence advanced training to ensure that all Port Wentworth managers, superintendents, engineers and supervisors will complete training on the following: OSHA 30-hour course; safety leadership; effective safety communications; behavioral-based safety (designed to encourage and enhance employee involvement in safety); risk assessment; Imperial Safety Management System; OSHA recordkeeping; management of change; incident investigation; safe, standard operating procedures; industrial security; emergency preparedness for supervisors; evaluating employee safety performance; ergonomics for supervisors; and asbestos.

3. No later than July 1, 2010, Respondent agrees to commence advanced training to ensure that certain Port Wentworth managers, superintendents, engineers and supervisors will complete the following training applicable to their responsibilities: electrical safe work practices (arc flash); NFPA 70; advanced machinery guarding; advanced fall protection; confined space entry rescue; powered industrial trucks; hoists, cranes, and lifting devices; welding techniques and practices; maintenance of fire protection and explosion protection systems and equipment; contractor safety; and industrial ventilation.

C. Hire and Retention of Safety Personnel at the Port Wentworth Facility.

Respondent agrees that it will continue to employ a full-time safety professional at its Port Wentworth facility who has received a certification as a Certified Industrial Hygienist (CIH) or a Certified Safety Professional (CSP), and that the safety professional's primary responsibility shall be regarding the Port Wentworth facility. In the event that Respondent fails to employ a safety professional with the credentials described in this paragraph for a period of two or more

consecutive weeks, Respondent agrees to assign or contract with an individual certified as a CIH or CSP to assume the Port Wentworth safety professional's responsibilities until another safety professional is employed on a full-time basis.

D. **Internal Safety Inspections.** No later than September 30, 2010, in addition to the ongoing regular inspections being conducted at the Port Wentworth facility, Respondent agrees to (1) commence quarterly safety inspections at the Port Wentworth facility regarding potential combustible dust hazards (including housekeeping), fall hazards, electrical hazards, as well as machine guarding and the life safety code; (2) document those safety inspections and any deficiencies observed; (3) communicate any deficiencies noted to plant and corporate management; (4) post conspicuously the results of those inspections where affected employees and affected contractor employees can review them; (5) implement corrective action promptly; and (6) track progress and completion of corrective action. The quarterly inspections shall be so designed such that each Port Wentworth department is inspected at least once per year. The CSP or CIH shall lead the inspection and accompany the inspection team on each quarterly inspection. The inspection team shall consist of individuals who have completed either the OSHA 30-hour course or received relevant training pursuant to Section VI.B above. The inspection team shall consult with, and consider input from, affected employees and affected contractor employees at the Port Wentworth facility. In the event any deficiencies observed in the inspections cannot be promptly corrected, Respondent agrees to provide interim measures immediately to ensure that affected employees and affected contractor employees are not exposed to hazards. If Respondent believes the deficiencies observed are not feasible to correct or cannot be corrected within ninety (90) calendar days from the inspection date, no later than ninety (90) calendar days from the inspection date, Respondent shall document the reasons for

such infeasibility or the delay in correction, the interim measures in place, the permanent or alternative corrective measures to be implemented, and the schedule for implementation.

E. **Management Responsibility and Accountability for Safety.** Effective July 1, 2010, Respondent shall communicate its policy which gives full authority to all operators, safety and health personnel, managers, superintendents, and supervisors to discontinue immediately any unsafe or unhealthy practices at the Port Wentworth facility without the prior approval of upper management, including the authority to shut down production or other work activities if necessary until the safety and health personnel, manager, superintendent, and/or or supervisor determines that the unsafe or unhealthy practices have been corrected and/or the equipment or work activities are safe to re-start. Effective July 1, 2010, Respondent agrees to develop and maintain a program to assure accountability for safety throughout its manufacturing and engineering organization, by ensuring that all manufacturing and engineering leadership will have a set of result targets and one of those result areas will be safety. Respondent shall assess performance on these result targets annually.

F. **Safety and Health Experts.**

1. ***Existing Experts.*** Respondent has previously contracted with consulting experts in the field of combustible dust as well as certified safety professionals who have provided guidance and assistance regarding Respondent's safety and health program, including but not limited to: interpretation and application of consensus standards relating to the control/mitigation of the hazards related to combustible dust; development of computer-based training materials related to combustible dust; providing training regarding combustible dust; review and designation of classified areas for electrical equipment; facilitation and participation in process hazard analyses; engineering and

design of equipment for control/mitigation of the hazards related to combustible dust; and review and assistance regarding drafting and implementation of safety and health policies.

2. ***Retention of Experts to Conduct Audits.*** Respondent agrees to retain one or more independent safety and health professionals who are qualified by education, experience and training with expertise in the fields of analyzing and evaluating combustible dust and related work place hazards (“Safety and Health Experts”), which may include the professionals described in this Section VI.F.1. Each independent Safety and Health Expert engaged under this Section shall be competent to address any, or all, of the topics set forth in Section VI.G, below. Respondent shall ensure that each Safety and Health Expert engaged under this Section will consult with, and consider input from, affected employees and affected contractor employees at the Port Wentworth facility.

3. ***Audits and Written Reports.*** Each Safety and Health Expert engaged under this Section shall evaluate and make specific recommendations regarding Respondent’s development, documentation, implementation, and effectiveness of the items contained in Section VI.G, below, relating to Respondent’s Port Wentworth facility, and document findings in a report (“the Safety and Health Report”). These shall be conducted semi-annually in the first year of this Agreement, and annually for an additional two years. Respondent shall provide written notice to Complainant of completion of each audit. The results of the Safety and Health Reports shall be posted conspicuously where affected employees and affected contractor employees can review them. The Safety and Health Reports shall be provided to Complainant upon request.

4. ***Implementation of Recommendations.*** Respondent will implement all feasible recommendations included in the Safety and Health Reports. In the event any recommendations and/or deficiencies noted in the Safety and Health Reports cannot be promptly implemented and/or corrected, Respondent agrees to provide interim measures immediately to ensure that employees and contractors are not exposed to hazards. If Respondent believes the recommendations and/or deficiencies observed are not feasible to implement and/or correct or cannot be implemented and/or corrected within a period of ninety (90) calendar days from the inspection date, no later than ninety (90) calendar days from the inspection date, Respondent shall document the reasons for such infeasibility or the delay in implementation and/or correction, the interim measures in place, the permanent or alternative corrective measures to be implemented, and the schedule for implementation. Such documents shall be provided to Complainant upon request.

G. **Programs and Procedures Relating to Combustible Dust Hazards.** No later than August 31, 2010, in consultation with Safety and Health Experts described in Section VI.F., above, Respondent agrees to develop, document, and implement the following programs and policies, referenced below in numbered Sections VI.G.1-7, at its Port Wentworth facility. In the development, implementation and/or maintenance of each such program or policy, Respondent shall consult with, and consider input from, affected employees; provide input from the affected employees to the Safety and Health Experts; communicate relevant policies and programs to appropriate contractors; provide training to all affected employees; implement a policy to take disciplinary action for a failure to comply; and provide and communicate to affected employees the availability of alternative avenues of raising concerns or complaints, including anonymously, regarding compliance with the programs or policies or safety and health generally.

1. ***Emergency Action Plan and Fire Prevention Plan.*** Respondent has implemented and will maintain an Emergency Action Plan and Fire Prevention Plan pursuant to 29 C.F.R. §§ 1910.38 and 1910.39.

2. ***Combustible Dust Housekeeping Program.*** Respondent has implemented and will maintain a combustible dust housekeeping program compliant with 29 C.F.R. § 1910.22 to ensure sugar dust, cornstarch dust, or other combustible dust does not accumulate to hazardous quantities on overhead surfaces, equipment, or floors. Such housekeeping program includes the following elements: (1) housekeeping policy that explains intent, general requirements, and how to report problems; (2) specific housekeeping procedures for sugar handling areas; (3) procedures for removing dust and cleaning; and (4) auditing procedures to assure that housekeeping standards are maintained and housekeeping procedures are observed.

3. ***Hot Work Program.*** Respondent has implemented and will maintain a hot work permitting program compliant with 29 C.F.R. § 1910.252.

4. ***Electrical Classification.*** Respondent shall implement and maintain an electrical classification policy compliant with 29 C.F.R. § 1910.307. Such policy shall include the development, implementation and documentation of a final mapping system for Class II hazardous locations to ensure appropriate classification of electrical equipment in all areas of the Port Wentworth facility and management of change procedures for re-evaluating and updating the mapping system as necessary when changes to equipment, processing or production occur. A preliminary classification map has been completed and management of change has been implemented.

5. ***Incident Investigation.*** Respondent has implemented and will maintain an incident investigation procedure that is designed to encourage reporting of: personal injury incidents; a release of sugar of 50 pounds or more that cannot be cleaned up immediately; dust accumulation that exceeds 1/32 inches over 5% of floor, overhead surfaces and walls, or over 1,000 sq. ft of floor, overhead surfaces and walls if area exceeds 20,000 sq. ft; dust accumulation in areas not covered by routine housekeeping; failure, defeat or activation (including false alarms) of safety systems and critical interlocks; any fire, smoke or explosion regardless of how significant; any electrical arc, flash or shock; property damage or loss of more than \$25,000; and “near-misses” that have the realistic potential to cause combustible dust incidents.

6. ***Preventative Maintenance Program.*** Respondent has implemented and will maintain a program to inspect refining and packaging equipment for problems or defects permitting the escape of fugitive dust; to repair, replace, or remove from service the equipment; and to institute interim protective measures if equipment cannot be removed or taken out of service immediately.

7. ***Personal Protective Equipment (PPE) Assessment.*** Respondent shall conduct a hazard assessment pursuant to 29 C.F.R. § 1910.132(d) regarding combustible dust hazards, including specifically, a hazard assessment for personnel in Class II locations within the meaning of 29 C.F.R. § 1910.399, and shall select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment. Pursuant to 29 C.F.R. § 1910.132(d)(2), Respondent will verify that the hazard assessment has been performed through a written certification that identifies: the workplace evaluated; the person certifying that the

evaluation has been performed; the date(s) of the hazard assessment; and which identifies the document as a certification of hazard assessment. In the interim, all of Respondent's employees and visitors are required to wear the following personal protective equipment while working in or visiting operating areas: fire resistant uniforms or coveralls; safety boots or shoes; hard hats; and safety glasses. Other special PPE is required as needed (e.g., hearing protection equipment in high noise areas, heat resistant gloves when handling hot objects, etc.).

H. **Organizational Expert.** Respondent agrees to retain one, or more, independent experts who are qualified by education, experience or training in organizational communication, organizational behavior or organizational analysis ("Organizational Expert"). Respondent shall ensure that each Organizational Expert engaged under this Section will consult with, and consider input from, Port Wentworth facility employees. Each independent Organizational Expert engaged under this Section shall be competent to address any, or all, of the topics set forth below.

1. **Written Reports.** Each Organizational Expert engaged under this Section will provide a written assessment of avenues of communications within Respondent's organization with respect to safety and safety commitment semi-annually for a period of one (1) year from the date this settlement agreement is executed by Complainant ("Organizational Reports"). The Organizational Reports will evaluate the effectiveness of avenues of communications that impact the implementation of safety practices, policies and procedures by, within and between the following groups: management employees, supervisors, and non-management employees. Such Organizational Reports

will include, but will not be limited to, specific review regarding the following items relating to the Port Wentworth facility:

- a. Means and methods to ensure that safety and health issues and concerns are communicated to the level of management who can most appropriately act on the issues and concerns, which includes, but is not limited to, the Senior Director of Environmental, Safety and Health who reports to the President and Chief Executive Officer.
- b. Communication systems to allow Respondent to quickly analyze and address safety and health complaints as well as trends in accidents and near-misses.
- c. The encouragement of employees to report to management any safety and health concerns.
- d. Communication of Respondent's policy on safe and healthful work and working conditions so that all personnel understand the priority of safety and health in relation to other organizational values.
- e. Respondent's culture of communication and cooperation to encourage and enable effective employee involvement in the planning and operation of the safety and health program and in decisions that affect employees' safety and health. Such employee involvement may include, but shall not be limited to, employee participation in safety and health problem-solving groups, hazard reviews, accident and incident investigations, health and safety committees, the development of training programs and procedures, the

development of employee improvement suggestion programs regarding training, acting as safety observers, and inspections and audits.

f. The authority and resources provided to responsible parties so that assigned safety and health responsibilities can be fully met.

2. **Notice of Reports.** Respondent shall provide written notice to Complainant of completion of each Organizational Report. The Organizational Reports shall be provided to Complainant upon request.

3. **Implementation of Report Recommendations.** Respondent will implement all feasible recommendations included in the Organizational Reports.

I. **Employee Safety and Health Complaints.** On or before July 1, 2010, Respondent agrees to develop, document, and implement a program under which employees and contractor employees may, without fear of reprisal, notify appropriate management or safety personnel of apparent safety and health hazards. The program shall include procedures to advise the employee, if known, of the status of proposed and/or implemented actions to address the complaint within thirty (30) calendar days, management's response, and corrective action(s) taken to resolve the issue.

J. **OSHA 300 Logs.** Respondent agrees to produce to Complainant its logs of occupational injuries and illnesses ("OSHA 300 logs") for the Port Wentworth facility within forty-eight (48) hours of receipt of a telephonic request. In addition, Respondent agrees to permit Complainant access to the work place at its Port Wentworth facility to inspect and investigate any such accident or injury recorded in the OSHA 300 log without requiring OSHA to obtain a warrant and to produce additional records, such as OSHA 301 reports, without requiring OSHA to issue a subpoena.

K. Notification and Approval of Experts. Respondent shall provide written notice to Complainant for each Safety and Health Expert and Organizational Expert retained for the obligations specified in this Agreement, including a general description of the scope of their work (as applicable) and their qualifications. Complainant will have seven (7) calendar days after receipt of such notice to object to any candidate proposed by Respondent. If Complainant objects to any candidate, Respondent shall make another selection within fourteen (14) calendar days and that name will be submitted to Complainant who will have seven (7) calendar days to object, until the experts are fully selected. If Complainant does not respond to Respondent's selected candidates within seven (7) calendar days, the selections shall be deemed acceptable. Complainant's consent to such Experts shall not be unreasonably withheld. Respondent shall forward its written notice(s) regarding proposed Experts and completion of audits and reports to the OSHA Savannah and Regional Offices with a copy to the Regional Solicitor's Office at the following addresses:

OSHA Savannah Area Office
Attn: Area Director
450 Mall Boulevard
Suite J
Savannah, GA 31406-1418

OSHA Region IV
Attn: ARA - Enforcement
61 Forsyth Street, S.W.
Room 6T50
Atlanta, GA 30303

Office of the Solicitor
Attn: OSHA Counsel
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303

VII.

Non-Admission

Neither this Settlement Agreement nor Respondent's consent to entry of a final order by the OSHRC pursuant to this Agreement constitutes any admission by the Respondent, their parent, subsidiary and affiliated companies, and their respective affiliated entities, directors, officers or employees of violations of the Act, regulations or standards promulgated thereunder, or the allegations contained within the Citations and notification of penalties. This Settlement Agreement represents the compromise of disputed claims within the meaning of Federal Rule of Evidence 408, and the foregoing agreements, statements, stipulations, findings, and actions taken by Respondent herein are made for the purpose of settling this matter economically and amicably.

VIII.

Term and Expiration of Agreement

A. **Term and Expiration.** This Agreement shall expire two (2) years from the date it becomes a final order of the OSHRC, except that Respondent's obligations in Section VI.F, regarding Safety and Health Experts shall continue for a period of three (3) years from the date this Agreement becomes a final order of the OSHRC. Respondent expressly agrees that all duties and obligations relating to its specific abatement actions required herein shall be fully completed and implemented prior to the expiration of this Agreement. In the event Respondent fails to timely abate and comply with the terms of this Agreement, Respondent will not assert that this expiration date in any way affects Respondent's duty to fully comply with the Agreement.

B. Notice of Outstanding Obligations. If Respondent has not fully performed, completed and implemented all duties and obligations as set forth herein at least ninety (90) calendar days prior to the above-referenced expiration of the Agreement, Respondent shall provide a written Notice of Outstanding Obligations to Complainant. Respondent shall detail which specific duties and obligations have not been fully met under the terms of the Agreement, whether such uncompleted duties and obligations will be fully performed, completed and implemented by the expiration of the Agreement and shall specify any and all asserted reasons for such lack of performance, completion or implementation under the Agreement.

C. Petition for Modification of Abatement. Respondent may exercise its right to timely file a Petition for Modification of Abatement (“PMA”).

D. Specific Notice Requirements Relating to Outstanding Obligations or Requests for Extension of Agreement. Respondent agrees that all Notifications of Outstanding Obligations and/or any PMA filed by Respondent under this Section shall be forwarded to the OSHA Savannah and Regional Offices with a copy to the Regional Solicitor’s Office at the following addresses:

OSHA Savannah Area Office
Attn: Area Director
450 Mall Boulevard
Suite J
Savannah, GA 31406-1418

OSHA Region IV
Attn: ARA - Enforcement
61 Forsyth Street, S.W.
Room 6T50
Atlanta, GA 30303

Office of the Solicitor
Attn: OSHA Counsel
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303

Complainant shall have thirty (30) calendar days after receipt of the Notification of Outstanding Obligations and/or any PMA under the terms of the Agreement to provide a written response to Respondent. Respondent expressly agrees to fully cooperate in good faith with Complainant during such thirty (30) day period in the event Complainant requests from Respondent any additional information, documentation or other materials, conferencing with select representatives and/or conducting on-site visits at the Port Wentworth facility in order to formulate a response to Respondent's Notification of Outstanding Obligations and/or PMA.

IX.

Further Action by OSHA

A. The parties agree that OSHA may regularly monitor progress and compliance with this Agreement, investigate and verify notification regarding action taken in response to the expert's recommendations, the plan of abatement, and other matters set forth in this Agreement, and to verify final abatement. Respondent agrees to require no warrant for entry by OSHA, and to require no subpoenas for access to documents related to compliance with this Agreement.

B. This Agreement shall not restrict OSHA's ability to take any and all enforcement measures permitted under the Act, including measures to address imminent dangers.

C. OSHA retains the right to conduct programmed inspections of conditions not covered by this Agreement and to conduct all other types of inspections of Respondent permitted under the Act, and nothing in this Agreement shall be construed to alter or affect Respondent's rights and obligations under the Act with regard to such inspections.

X.

Notice, Service and Posting Requirements

A. Respondent certifies that affected employees at the Port Wentworth facility are not represented by a certified bargaining representative.

B. Respondent certifies that on July 7, 2010, notice of the foregoing was given to employees by posting a true copy (as executed by Respondent) of this Agreement, in accordance with OSHRC Rules 7(g) and 100(c), 29 C.F.R. §§ 2200.7(g) and 2200.100(c).

C. Unless otherwise specified in this Agreement, all written notices and communications shall be made to the following persons:

1. To Complainant:

OSHA Savannah Area Office
Attn: Area Director
450 Mall Boulevard
Suite J
Savannah, GA 31406-1418

OSHA Region IV
Attn: ARA - Enforcement
61 Forsyth Street, S.W.
Room 6T50
Atlanta, GA 30303

Office of the Solicitor
Attn: OSHA Counsel
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303

2. To Respondent:

Louis T. Bolognini
General Counsel
Imperial Sugar Company
P.O. Box 9
Sugar Land, TX 77484-0009

Charles H. Morgan
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424

D. Notice shall be accomplished by certified mail or express overnight delivery and shall be effective upon receipt.

XI.

Dispute Resolution

OSHA agrees that, during the term of this Agreement, if it reaches a preliminary determination that Respondent may not be in compliance with this Agreement, OSHA shall notify Respondent. Respondent has fifteen (15) working days from receipt of OSHA's notification to provide a written response. Within twenty (20) calendar days thereafter, the parties will enter into good faith discussions in an attempt to resolve the issue. This paragraph is not intended to limit Complainant's right to use enforcement methods provided by the Act.

XII.

Costs

Each party agrees to bear its own attorney's fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

XIII.

No Alteration of Employee Rights

Nothing in this Agreement alters in any manner the rights afforded employees under the Act.

Respectfully submitted this 7th day of July, 2010.

IMPERIAL SUGAR COMPANY, and
IMPERIAL-SAVANNAH, L.P.

s/ Charles H. Morgan
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61 Forsyth Street, SW, Room 7T10
Atlanta GA 30303
Telephone: (404) 302-5435
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Atl.Fedcourt@dol.gov

Attorneys for Complainant

NOTICE TO AFFECTED EMPLOYEES NOT
REPRESENTED BY A LABOR ORGANIZATION

EACH AFFECTED EMPLOYEE WHO IS NOT REPRESENTED BY A LABOR ORGANIZATION HEREBY IS GIVEN NOTICE THAT ANY OBJECTIONS TO THE ENTRY OF AN ORDER APPROVING THIS SETTLEMENT AGREEMENT MUST BE FILED WITHIN TEN (10) CALENDAR DAYS FROM THE DATE THAT THIS SETTLEMENT AGREEMENT IS POSTED. SUCH OBJECTIONS MUST BE SET FORTH IN WRITING AND MAILED TO:

The Honorable Covette Rooney
Administrative Law Judge
Occupational Safety and Health Review Commission
1120 20th Street, N.W., 9th Floor
Washington, D. C. 20036-3457

Imperial-Savannah, L.P.
Combustible Dust Training and Notification Requirements for Contractors, Visitors, and Business Invitees

A. Each plant will categorize contractors, visitors, and business invitees into one of the following groups:

1. Nested Contractors: An employer that provides personnel working full-time on Imperial's premises under contract providing personnel or services for Imperial. Examples of this type of contractor include providers such as Stokes Contracting, Inc. and Savannah Bridge Co.

2. Non-Nested Contractor: An employer on site that is not a nested contractor whose employees may enter areas of Imperial's premises where combustible dust may be present.

3. Visitors/Business Invitee: Anyone entering Imperial's premises who is not an employee of Imperial, a nested contractor, or a non-nested contractor. Examples include: drivers, delivery people, job applicants, sales people, consultants, customers, stevedores, weighers, and governmental personnel. Included in this category are contractors and other service providers who will not be entering areas where combustible dust may be present.

B. No contractor or visitor shall enter areas of the plant that may have combustible dust without being provided the combustible dust training or notification specified below.

C. Training for Contractors

1. All Nested Contractors shall receive the same combustible dust training as is provided to Imperial personnel.

2. All Non-Nested Contractors who may enter areas of the plant that may have combustible dust present shall receive training on CBT Module 1 or its DVD equivalent as a minimum.

D. Notification/Training for Visitors/Business Invitees

All unaccompanied Visitors/Business Invitees shall receive a written notification of the hazards of combustible dust prior to entry into any areas of the plant that may have combustible dust present.