UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:
Granville High School Mercury
Superfund Site
Creedmoor, Granville County,
North Carolina

Granville County Board of Education,
Settling Party

SETTLEMENT AGREEMENT

U.S. EPA Region 4
Docket No.: CERCLA-04-2009-3978

Proceeding Under Section 122(h)(1) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9622(h)(1)

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IN THE MATTER OF:	)	AGREEMENT
	)	
Granville High School Mercury	)	
Superfund Site	)	U.S. EPA Region 4
Creedmoor, Granville County,	)	Docket No. CERCLA-04-2009-3978
North Carolina	)	
	)	
Granville County Board of Education,	)	PROCEEDING UNDER SECTION
Settling Party	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D through the Director, Superfund Division, to the Chief, Waste Programs Branch, known in Region 4 as the Chief, Superfund Enforcement & Information Management Branch.

2. This Settlement Agreement is made and entered into by EPA and Granville County Board of Education (hereinafter "Settling party"). Settling party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Granville High School Mercury Superfund Site ("Site") which means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action including South Granville High School located at 701 Crescent Drive, Creedmoor, Granville County, North Carolina, and two residential properties located at 3678 Creek Bend, Wake Forest, North Carolina, and 9713 Dogwood Lane, Wake Forest, North Carolina. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing a response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by Settling party to determine whether Settling party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling party has a limited financial ability to pay for response costs incurred and to be incurred at the Site.

8. EPA and Settling party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling party to make a cash payment to address its alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which 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 Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

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

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, 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.

c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVII.

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

e. "Financial Information" shall mean those financial documents identified in Appendix A.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded 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.

g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling party.

i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

j. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

k. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

l. "Settling party" shall mean Granville County Board of Education.

m. "Site" shall mean the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action including South Granville High School located at 701 Crescent Drive, Creedmoor, Granville County, North Carolina, and two residential properties located at 3678 Creek Bend, Wake Forest, North Carolina, and 9713 Dogwood Lane, Wake Forest, North Carolina.

n. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. PAYMENT OF RESPONSE COSTS

12. Within thirty (30) days after the Effective Date, Settling party shall pay to the EPA Hazardous Substance Superfund an amount in the sum of Fifteen Thousand Dollars ($15,000.00).

Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling party, the Site name, the EPA Region and Site/Spill ID # A4KT, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments, Region IV
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

At the time of payment, Settling party also shall send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID # A4KT and the EPA docket number for this action.

13. The total amount to be paid by Settling Party pursuant to Paragraph 12 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

14. Interest on Late Payments. If Settling party fails to make any payment required by Paragraph 12 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. In addition to the Interest payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling party's failure to comply with the requirements of this Settlement Agreement, if Settling party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

VIII. COVENANT NOT TO SUE BY EPA

16. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling party 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, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Settlement Agreement). This covenant is conditioned upon the satisfactory performance by Settling party of its obligations under this Settlement Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling party shall forfeit all payments made pursuant to this Settlement Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling party's false or materially inaccurate information. This covenant not to sue extends only to Settling party and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

17. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 16. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling party with respect to:

a. liability for failure of Settling party to meet a requirement of this Settlement Agreement;

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;

d. liability, based upon Settling party's ownership or operation of the Site, or upon Settling party'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 Settlement Agreement by Settling party; and

e. 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.

18. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement 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 Settlement Agreement, if the Financial Information provided by Settling party, or the financial certification made by Settling party in Paragraph 28(b), is false or, in an material respect, inaccurate.

19. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a

release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

20. Settling party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, 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 North Carolina 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 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 22 (Waiver of Claims) and Paragraph 25 (Waiver of Claim-Splitting 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 the reservations set forth in Paragraph 17(c) - (e), but only to the extent that Settling party's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

21. Nothing in this Settlement Agreement 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).

22. Settling party agrees not to assert any claims or 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. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

23. Except as provided in Paragraph 22, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Paragraph 22, each of the Parties expressly reserve any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that 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 Settlement Agreement 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).

24. The Parties agree that this settlement constitutes an administrative settlement for purposes of Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling party are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement 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 State; provided, however, that if the United States exercises rights under the reservations in Section VIII (Covenant Not to Sue by EPA), other than in Paragraphs 17a (claims for failure to meet a requirement of the settlement) or 17b (criminal liability), the "matters addressed" in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

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 party 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 addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

XII. RETENTION OF RECORDS

26. Until ten (10) years after the Effective Date, Settling party shall preserve and retain all 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 response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

27. After the conclusion of the document retention period in the preceding paragraph, Settling party shall notify EPA at least ninety (90) days prior to the destruction of any such records, and, upon request by EPA, Settling party shall deliver any such records to EPA. Settling party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling party asserts such a privilege, it shall provide EPA 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 applies only to a portion of a record, the record will be provided to EPA in redacted form to mask the privileged portion only. Settling party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

XIII. CERTIFICATION

28. Settling party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the state or the filing of a suit against them regarding the Site and that it has fully complied with any and all EPA requests for documents or information regarding the Site and Settling party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

b. 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 party executes this Settlement Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

XIV. NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Settlement Agreement, 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 Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling party.

As to EPA:

C. Jade Rutland
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Paula Painter
U.S. Environmental Protection Agency, Region 4
Superfund Division
Superfund Enforcement & Information Management Branch
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

As to Settling party:

Granville County Board of Education
101 Delacroix Street
Post Office Box 927
Oxford, NC 27565

XV. INTEGRATION/APPENDICES

30. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A is a list of the financial documents submitted to EPA by Settling party.

XVI. PUBLIC COMMENT

31. This Settlement Agreement shall be subject to a public comment period of not less than thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVII. EFFECTIVE DATE

32. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 31 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

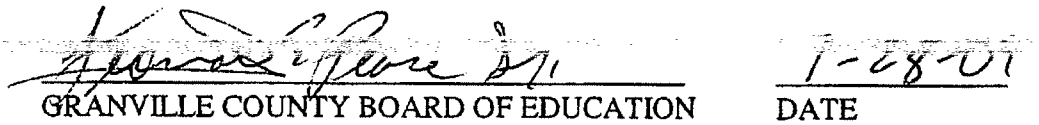
IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ _____

Anita L. Davis, Chief DATE
Superfund Enforcement & Information
Management Branch

FOR SETTLING PARTY:



GRANVILLE COUNTY BOARD OF EDUCATION

DATE

101 Delacroix Street
Post Office Box 927
Oxford, NC 27565