IN THE MATTER OF:	)	SETTLEMENT AGREEMENT
	)	
ORE KNOB MINE SUPERFUND SITE	)	U.S. EPA REGION 4
LAUREL SPRINGS, ASHE COUNTY,	)	Docket No. CERCLA-04-2010-3766
NORTH CAROLINA	)	
	)	
THE MARSH FOUNDATION, INC.,	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
SETTLING PARTY.	)	42 U.S.C. § 9622(h)(1)
	)	

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	)	

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, and further redelegated from the Regional Administrator through the Director of the Superfund Division (formerly the Waste Management Division), through the Associate Division Director, Office of Superfund and Emergency Response, to the Chief of the Superfund Enforcement and Information Management Branch by EPA Regional Delegation No. R-14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this Settlement Agreement, has been delegated to the Assistant Attorney General.

2. This Settlement Agreement is made and entered into by EPA and The Marsh Foundation, Inc. (the latter known as the "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 Ore Knob Mine Superfund Site ("Site") located in Laurel Springs, Ashe County, 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, and will undertake additional response actions in the future. The following events have occurred:

a. EPA collected mining waste samples from the 19th Century Operations Area at the Site during the Expanded Site Inspection ("ESI") performed in July 2007, and analyses revealed that they exceeded ecological risk soil screening values for a variety of metals; exceeded residential and/or industrial outdoor worker soil screening levels for iron, copper, benzo(a)pyrene, aluminum, manganese, zinc; and exceeded cancer-risk screening levels for arsenic.

b. EPA collected ore, tailings, and soil samples from the 1950s Mine and Mill Site during the ESI, and analyses revealed that they are strongly acid-generating; exceeded one or more residential soil screening values for iron, copper, thallium, zinc, and polycyclic aromatic hydrocarbons ("PAH"); and exceeded cancer-risk screening levels for arsenic. Surface water samples of downstream receiving waters revealed high levels of total aluminum, copper, and manganese.

c. EPA collected tailings samples from the Tailings Impoundment during the ESI, and analyses revealed that they are strongly acid-generating; exceeded ecological risk screening values for a variety of metals; and exceeded the residential and/or industrial outdoor worker soil screening values for arsenic, iron, and copper. Surface water samples collected from the Tailings Impoundment exhibited high concentrations of metals, acidity, sulfate, and total dissolved solids; and exceeded surface water quality criteria for aluminum, copper, iron, manganese, silver, zinc, and sulfate. Sampling of downstream receiving waters revealed high levels of aluminum, cadmium, copper, manganese, and zinc, and acidic pH levels.

d. In March 2008, the United States Bureau of Reclamation ("BOR") inspected the dam at the Tailings Impoundment to determine the severity of erosion, the likelihood of dam failure, and the likelihood of the sediment pond downstream of the dam overtopping. BOR found that the Tailings Impoundment dam was in poor condition and was in danger of failure.

e. EPA issued an Action Memorandum on September 15, 2008 to begin an emergency removal action to address the potential failure of the Tailings Impoundment dam, and began its removal action on or about October 20, 2008. EPA's Action Memorandum authorized an exemption from the statutory limits of $2 million dollars or 12 months pursuant to CERCLA Section 104(c)(1), 42 U.S.C. § 9604(c)(1).

f. EPA proposed the Site for listing on the National Priorities List ("NPL") on April 9, 2009, and the Site was listed as final on the NPL on September 23, 2009.

g. In April 2010, EPA discovered that the groundwater serving residential homes around the Site was contaminated with excess levels of manganese, and began providing bottled water to the affected residences as an interim measure.

h. EPA performed additional sampling activities at the Site in anticipation of performance of remedial activities at the Site.

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

6. Settling Party owned the portion of the Site containing the Tailings Impoundment and portions of the 19th Century Operations Area from September 6, 1991 until July 6, 1995. Settling Party did not perform mining operations at the Site. EPA alleges that, during the course of Settling Party's ownership, hazardous substances were continuously disposed of at the Site by the migration of tailings from the Tailings Impoundment to the Ore Knob Branch downstream.

7. 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.

8. 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 limited financial ability to pay for response costs incurred and to be incurred at the Site, consistent with EPA's "Guidance on Administrative Response Cost Settlements under Section 122(h) of CERCLA and Administrative Cashout Settlements with Peripheral Parties under Section 122(h) of CERCLA and Attorney General Authority," dated September 30, 1998.

9. 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

10. 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 legally bind the Party represented by him or her.

IV. STATEMENT OF PURPOSE

11. 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

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

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

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 The Marsh Foundation, Inc.

m. "Site" shall mean the Ore Knob Mine Superfund Site, located in Laurel Springs, Ashe County, North Carolina and generally shown on the map included in Appendix B. The Site consists of three principal areas affected by past mining operations: the 19th Century Operations Area; the 1950s Mine and Mill Site; and the Tailings Impoundment. The 19th Century Operations Area encompasses approximately 10 acres, the 1950s Mine and Mill Site encompasses approximately 15 acres, and the Tailings Impoundment encompasses approximately 20 acres.

n. "State" shall mean the State of North Carolina.

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

VI. PAYMENT OF RESPONSE COSTS

13. Within 30 days after the Effective Date of this Settlement Agreement as defined by Paragraph 36, The Marsh Foundation, Inc. shall pay to the EPA Hazardous Substance Superfund $325,000, plus an additional sum for Interest on that amount calculated from September 1, 2010 through the date of payment. Payment shall be made in accordance with the procedures provided in Paragraph 14.

14. Payment shall be made by EFT, and shall be accompanied by a statement identifying the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID # A4ND, and the EPA docket number for this action. EFT payments shall be directed to the Federal Reserve Bank of New York and contain the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message shall read, "D 68010727 Environmental Protection Agency," and shall reference Site/Spill ID #A4ND, and the EPA docket number for this action.

At the time of payment, Settling Party shall send notice that such payment has been made to EPA's Regional Financial Management Officer in accordance with Section XIII (Notices and Submissions), and to the EPA Cincinnati Finance Center by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Center
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall identify the Region and Site/Spill ID # A4ND and the EPA docket number for this action.

15. The total amount to be paid by Settling Party pursuant to Paragraph 13 shall be deposited by EPA in the Ore Knob Mine Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

16. Interest on Late Payments. If the Settling Party fails to make any payment required by Paragraph 13 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

17. Stipulated Penalty.

a. If any amount due under Paragraph 13 is not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16, $1,000.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall 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 # A4ND, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

c. At the time of payment, Settling Party shall send notice that such payment has been made to EPA's Regional Financial Management Officer in accordance with Section XIII (Notices and Submissions), and to the EPA Cincinnati Finance Center by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Center
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall identify the Region and Site/Spill ID # A4ND and the EPA docket number for this action.

d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party 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.

18. In addition to the Interest and Stipulated Penalty 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, the noncompliant Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse that Settling Party from payment as required by Paragraph 13, or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANT NOT TO SUE BY EPA

20. 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 not to sue 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

21. 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 20. 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.

22. 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 32(b), is false or, in an material respect, inaccurate.

23. 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

24. 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 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to the Site.

Except as provided in Paragraph 26 (Waiver of Claims) and Paragraph 29 (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 any of the reservations set forth in Paragraph 21(c) - (e), but only to the extent that Settling Party' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

25. 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).

26. Settling Party 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 Party may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

27. Except as provided in Paragraph 26, 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 26, each of the Parties expressly reserves any and all rights (including, but not limited to, those pursuant to Section 113 of CERCLA), defenses, claims, demands, and causes of action which each Party 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).

28. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party is 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 IX (Reservations of Rights by EPA), other than in Paragraphs 21(a) (claims for failure to meet a requirement of the Settlement Agreement), or 21(b) (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.

29. 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.

30. Settling Party shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify in writing EPA within 10 days of service of the complaint on Settling Party. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of any order from a court setting a case for trial.

31. Effective upon the execution of this Settlement Agreement by Settling Party, Settling Party agrees that the time period after the date of its execution shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 28 of this Settlement Agreement, and that, in any action brought by the United States related to the "matters addressed" as defined in Paragraph 28 of this Settling Agreement, Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time after its execution of this

Settlement Agreement. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XII. CERTIFICATION

32. 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 it 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.

XIII. NOTICES AND SUBMISSIONS

33. 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:

Suzanne K. Armor, Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

As to EPA's Regional Financial Management Officer:

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

As to The Marsh Foundation, Inc.:

William W. Toole, Esq.
Robinson Bradshaw & Hinson
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

XIV. INTEGRATION/APPENDICES

34. This 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 the Settling Party.

Appendix B is a map of the Ore Knob Mine Superfund Site.

XV. PUBLIC COMMENT

35. This Settlement Agreement shall be subject to a public comment period of not less than 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.

XVI. EFFECTIVE DATE

36. 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 35 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:

In the matter of the Ore Knob Mine Superfund Site, Docket No. CERCLA-04-2010-3766

The Marsh Foundation, Inc.

By: Gretchen M. Johnston — 10-5-10

Gretchen M. Johnston, President — Date

In the matter of the Ore Knob Mine Superfund Site, Docket No. CERCLA-04-2010-3766

U.S. Environmental Protection Agency

By: _____ 10/7/10
Date

Anita L. Davis, Chief
Superfund Enforcement and Information
Management Branch
Superfund Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303