

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:)
)
OMO MANUFACTURING SITE) SETTLEMENT AGREEMENT
MIDDLETOWN, MIDDLESEX COUNTY)
CONNECTICUT) U.S. EPA REGION 1
) CERCLA Docket No. 01-2012-0040
CITY OF MIDDLETOWN, CT and)
RLO PROPERTIES, INC.) PROCEEDING UNDER SECTIONS
) 122(h)(1) AND 104(e)(6) OF CERCLA
SETTLING PARTIES.) 42 U.S.C. §§ 9622(h)(1) AND 9604(e)(6)
_____)

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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 Sections 104(e)(6) and 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604(e)(6) and 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. On September 3, 1996, this authority was further delegated to the Director of EPA Region I's Office of Site Remediation and Restoration. 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, has been delegated to the Deputy Section Chief of the Environmental Enforcement Section.

2. This Settlement Agreement is made and entered into by EPA, and the City of Middletown, CT and RLO Properties, Inc. ("Settling Parties"). Each 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.

3. This Settlement Agreement requires the Settling Parties to grant access and/or to permit EPA to conduct removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment presented by the actual or threatened release of hazardous substances at or from the Site.

II. BACKGROUND

4. This Settlement Agreement concerns the Omo Manufacturing Site ("Site") located in Middletown, Connecticut. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5. In response to the release or threatened release of hazardous substances at or from the Site, EPA has undertaken 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 pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, including but not limited to:

- a) excavation and disposal of drums and containers at an EPA-approved disposal facility;
- b) excavation, treatment, and/or disposal of contaminated soil at an EPA-approved disposal facility and/or capping of contaminated soil on-Site;
- c) decontamination and temporary or permanent relocation of items stored in outdoor areas of the Site in order to conduct the response actions referred to herein; and
- d) repair of response related damage.

6. To perform the response actions described above, it will be necessary for employees, agents, contractors, and other representatives of EPA to enter and have continued access to the Site for the duration of the response actions.

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

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

9. EPA has reviewed the Financial Information submitted by Municipal Settling Party to determine whether Municipal 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 Municipal Settling Party has limited financial ability to pay for response costs incurred and to be incurred at the Site.

10. EPA has reviewed the Financial Information submitted by Owner Settling Party to determine whether Owner 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 Owner Settling Party is unable to pay for response costs incurred and to be incurred at the Site.

11. EPA and Settling Parties 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 Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain 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

12. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter such 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

13. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing the City of Middletown, Connecticut ("Municipal Settling Party") to make a cash payment to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and by allowing RLO Properties, Inc. (Owner Settling Party) to also resolve its alleged civil liability under Sections 104(e), 106 and 107 of CERCLA, 42 U.S.C. §§ 9604(e), 9606 and 9607, with regard to the Site as provided in the Covenant Not to Sue by EPA in Section IX, subject to the Reservations of Rights by EPA in Section X.

14. By entering into this Settlement Agreement, the Parties seek to cooperatively facilitate EPA's access to the Site in order to perform response actions at the Site. Owner Settling Party agrees to grant EPA and its authorized representatives entry and continued access to the Site for the purpose of performing response actions, as specified in Paragraph 5, above, at or in connection with the Site. In addition, as set forth in VII (Site Access), Owner Settling Party agrees to make best efforts to secure grants of access from Site tenants during EPA's performance of response actions at the Site.

V. DEFINITIONS

15. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings 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 XIX.
- 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 D.

- 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. The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/budget/finstatement/superfund/int_rate.htm.
- g. "Municipal Settling Party" shall mean the City of Middletown, Connecticut, a generator of waste to the Site and former owner and operator of the Site.
- h. "Owner Settling Party" shall mean RLO Properties, Inc., which is presently the Site owner.
- i. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.
- j. "Parties" shall mean EPA and Settling Parties.
- k. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- l. "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.
- m. "Settling Parties" shall mean the City of Middletown, Connecticut and RLO Properties, Inc.
- n. "Site" shall mean the Omo Manufacturing Superfund site, encompassing approximately 10.2 acres, located at 50 Walnut Street in Middletown, Middlesex County, CT and depicted generally on the map attached as Appendix C.
- o. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. PAYMENT OF RESPONSE COSTS

16. Municipal Settling Party shall pay the amount of \$2,800,000, in total, to the EPA Hazardous Substance Superfund in five (5) equal amounts, as specified below, plus an additional sum for Interest on each payment calculated from the Effective Date through the date of payment.

- a. Within thirty (30) days after the Effective Date of this Settlement Agreement as defined by Paragraph 47, Municipal Settling Party shall pay the total sum of \$560,000, plus Interest;
- b. Municipal Settling Party shall make four (4) additional payments of \$560,000 plus Interest 365 days after each prior payment;
- c. Municipal Settling Party shall use best efforts to accelerate payment(s) and may do so at any time, and Interest due on the accelerated payments shall be reduced accordingly.

17. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Municipal Settling Party by EPA Region 1, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID # 01M3, and the EPA docket number for this action.

At the time of payment, Municipal Settling Party shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268;

At the time of payment, the Municipal Settling Party shall also send notice that payment has been made to EPA in accordance with Section XVI (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID # 01M3 and the EPA docket number for this action.

18. The total amount to be paid by Municipal Settling Party pursuant to Paragraph 16 shall be deposited by EPA in the Omo Manufacturing 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. SITE ACCESS

19. Commencing upon the Effective Date of this Settlement Agreement, Owner Settling Party agrees to provide EPA and its representatives and contractors access at all reasonable times to the Site for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring, investigation, removal, remedial or other activities at the Site, including, but not limited to, the response activities identified in Paragraph 5;
- b. Verifying any data or information submitted to EPA;

- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site; and
- f. Assessing the need for and, if deemed necessary for performance of response actions at or near the Site, temporarily relocating any personal and/or business property stored in the outside yard area of the Site to an off-Site location for the duration of response activities.

20. Owner Settling Party agrees to make best efforts to obtain written Consent for Access to Property agreements, in the form attached hereto as Appendix C, from all tenants at the Site during the duration of all response actions described in Paragraph 5 herein. Best efforts shall include, but not be limited to, providing tenants with financial incentives or lease accommodations.

- a. Owner Settling Party agrees to provide original copies of each signed Consent for Access to Property agreement to EPA within thirty (30) days of the Effective Date of this Settlement Agreement.
- b. If Owner Settling Party leases any property at the Site to a new tenant, or renews any existing leases for a property at the Site, during the performance of response activities described in Paragraph 5, Owner Settling Defendant will obtain a written Consent for Access to Property agreement as a condition of the lease.

21. Except for any covenant taking effect under Paragraph 27, notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, and any other applicable statutes or regulations.

VIII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

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

23. Stipulated Penalties.

- a. If any amounts due to EPA under Paragraph 16 are not paid by the required date, Municipal 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 22, the following stipulated penalties per violation per day that such payment is late.

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$150 | 1st through 14th day |
| \$250 | 15th through 30th day |
| \$750 | 31st day and beyond |

- b. If Owner Settling Party does not comply with requirements for access to the Site specified in Paragraphs 19 and 20, Owner Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$200 per violation per day of such noncompliance.

The accrual of stipulated penalties is in addition to EPA's access rights and authorities specified in Paragraph 21.

- c. Stipulated penalties are due and payable within thirty (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 be made by either a certified or cashier's check(s) made payable to "EPA Hazardous Substance Superfund," or by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Parties by EPA Region 1.

- i. Payments by check. For payment by check, the check, or a letter accompanying the check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID # 01M3, and the EPA docket number for this action, and shall be sent to:

EPA
 Superfund Payments
 Cincinnati Finance Center
 P.O. Box 979076
 St. Louis, MO 63197-9000

- ii. Payments by EFT. Payment made to EPA by Electronic Funds Transfer ("EFT") shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID # 01M3, and the EPA docket number for this action.
- d. At the time of each payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XVI (Notices and Submissions). Such notice shall identify the EPA Region and Site-Spill ID # 01M3 and the EPA Docket Number for this action.
- e. Stipulated penalties shall accrue as provided above regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is

due, or the day a violation occurs, and shall continue to accrue through the date of payment, or the final day of correction of the noncompliance or satisfaction of the obligations herein. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

24. 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 a Settling Party's failure to comply with the requirements of this Settlement Agreement, any Settling Party who fails or refuses to comply with any term or condition of this Settlement Agreement 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 Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

25. 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 Parties' payment of stipulated penalties shall not excuse Municipal Settling Party from payment as required by Section VI, or the Settling Parties from performance of any requirements of this Settlement Agreement.

IX. COVENANT NOT TO SUE BY EPA

26. Except as specifically provided in Section X (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against each 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 VIII (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by each Settling Party of its obligations under this Settlement Agreement. This covenant not to sue is conditioned upon the veracity and completeness of the Financial Information provided to EPA by each Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, the 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 the Settling Party's false or materially inaccurate information. This covenant not to sue extends only to each Settling Party and does not extend to any other person.

27. EPA covenants not to sue or take administrative action against Owner Settling Party pursuant to Section 104(e) access provisions of CERCLA, 42 U.S.C. § 9604(e), with regard to the Site. This covenant not to sue is conditioned upon satisfactory performance by Owner Settling Party of its obligations under this Settlement Agreement. This covenant not to sue extends only to Owner Settling Party and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY EPA

28. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against each Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Section IX. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties 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 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 the 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.

29. 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 against a Settling Party other than as provided in this Settlement Agreement, if the Financial Information provided by such Settling Party, or the financial certification made by such Settling Party in Paragraph 42, is false or, in any material respect, inaccurate.

30. 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.

XI. COVENANT NOT TO SUE BY SETTLING PARTIES

31. Settling Parties covenant not to sue and agree 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 claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Connecticut 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; and
- 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 33 (Waiver of Claims) and Paragraph 36 (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 28(c) and (d), but only to the extent that the Settling Parties' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

32. 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).

33. Settling Parties agree not to assert any claims or causes of action that they may have for response costs relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Parties may have against any person if such person asserts a claim or cause of action relating to the Site against it.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

34. Except as provided in Paragraph 33, 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. EPA reserves any and all rights (including, but not limited to, any right to contribution), 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).

35. The Parties agree that this Settlement Agreement constitutes an administrative settlement for the purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Parties 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), 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 by any other person. The "matters addressed" in this Settlement Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Settlement Agreement (except for claims for failure to comply with this Settlement Agreement), in the event that EPA asserts rights against a Settling Party coming within the scope of such reservations. In the event that a Settling Party's waiver of claims becomes inapplicable in accordance with Paragraph 33, the Settling Parties and EPA further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Party has resolved its liability to the United States, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for "matters addressed" as defined above.

36. In any subsequent administrative or judicial proceeding initiated by EPA, or the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties 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 EPA, or the United States on behalf of EPA, in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section IX.

XIII. ACCESS TO INFORMATION

37. Settling Parties shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

38. Confidential Business Information and Privileged Documents.

a. Settling Parties may assert business confidentiality claims covering part or all of the records submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Parties that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such documents or information without further notice to Settling Parties.

b. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege in lieu of providing records, they 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 shall be provided to EPA in redacted form to mask the privileged portion only. Settling Parties shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' 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.

39. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIV. RETENTION OF RECORDS

40. Until 10 (ten) years after the Effective Date of this Settlement Agreement, each Settling Party shall preserve and retain all 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.

41. After the conclusion of the document retention period in the preceding paragraph, Settling Parties shall notify EPA at least ninety (90) days prior to the destruction of any such record, and, upon request by EPA, Settling Parties shall deliver such records to EPA. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they 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 shall be provided to EPA in redacted form to mask the privileged portion only. Settling Parties shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' 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.

XV. CERTIFICATION

42. Each Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has 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 information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

43. Each Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, has 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 each Settling Party executes this Agreement.

XVI. NOTICES AND SUBMISSIONS

44. 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 Parties 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 Parties.

As to EPA:

Cynthia A. Lewis, Senior Enforcement Counsel
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912
lewis.cindy@epa.gov

As to City of Middletown, CT:

Mark J. Zimmermann, Esq.
Updike, Kelly & Spellacy, P.C.
100 Pearl Street
Hartford, CT 06103
mzimmermann@uks.com

As to RLO Properties, Inc.:

Diane Whitney, Esq.

Pullman & Comley
90 State House Square
Hartford, CT 06103
dwhitney@pullcom.com

XVII. INTEGRATION/APPENDICES

45. This Settlement Agreement and its appendices constitute the final, complete and exclusive Settlement Agreement and understanding among 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, OMO Removal Site Action Memorandum; Appendix B, Site Map; Appendix C, Model Consent for Access to Property for Site Tenants; and Appendix D, a list of the financial information submitted to EPA by each Settling Party.

XVIII. PUBLIC COMMENT

46. 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.


XIX. EFFECTIVE DATE

47. 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 46 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

The UNDERSIGNED enters into this Settlement Agreement in the matter of CERCLA Docket No. 01-2012-0040, relating to the Omo Manufacturing Site, Middletown, Connecticut.

IT IS SO AGREED:

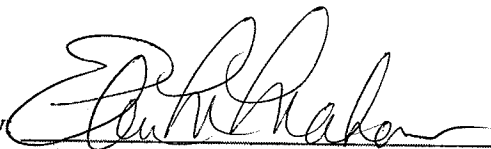
U.S. Environmental Protection Agency

By: 
James T. Owens, III, Director
Office of Site Remediation & Restoration

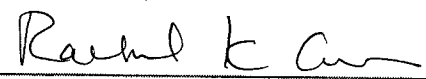

Date

The UNDERSIGNED enters into this Settlement Agreement in the matter of CERCLA Docket No. 01-2012-0040, relating to the Omo Manufacturing Site, Middletown, Connecticut.

U.S. Department of Justice

By: 
Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

7/9/12
Date

By: 
Rachel K. Evans
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

7/9/12
Date

The UNDERSIGNED enters into this Settlement Agreement in the matter of CERCLA Docket No. 01-2012-0040, relating to the Omo Manufacturing Site, Middletown, Connecticut.

City of Middletown, CT

By: 

5/10/12
Date

Name: Daniel T. Drew

Title: Mayor

The UNDERSIGNED enters into this Settlement Agreement in the matter of CERCLA Docket No. 01-2012-0040, relating to the Omo Manufacturing Site, Middletown, Connecticut.

RLO Properties, Inc.

By: JR Marino

5/22/12
Date

Name: ETR MARINO

Title: OWNER