

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

HILDA L. SOLIS, Secretary of Labor,)	
United States Department of Labor)	
)	
Complainant,)	
)	OSHRC Docket Nos. 08-0533 and
v.)	08-1195
)	
IMPERIAL SUGAR COMPANY; IMPERIAL)	
SAVANNAH, L.P.; IMPERIAL)	
DISTRIBUTION, INC., and its successors)	
)	OSHA Inspection No. 311522858
)	
Respondents,)	
)	
UFCW, LOCAL 1167-P,)	
)	
Authorized Employee)	
Representative)	

SETTLEMENT AGREEMENT

I.

Scope and Intent of Agreement

A. Come now the Secretary of Labor, Hilda L. Solis, Complainant (hereinafter “Complainant”) and Imperial Sugar Company, and Imperial Savannah, L.P. and Imperial Distribution, Inc., Respondent (hereinafter collectively “Respondent”) and 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. Since the issuance of the citations docketed OSHRC Docket Nos. 08-0533 and 08-1195, as observed by OSHA, Respondent has established programs to improve significantly conditions at its Gramercy facility, including a housekeeping program: (1) to control combustible dust levels; and (2) to assure that electrical equipment is safe for use where the possibility of combustible dust exists.

Respondent also retained safety consultants to recommend engineering controls to abate fire and explosion hazards and is in the process of implementing these controls.

C. 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 Nos. 08-0533 and 08-1195, arising from OSHA Inspection No. 311522858.

D. Affected employees have not filed objections to the reasonableness of any abatement time.

II.

Amendment of the Citations and Notifications of Penalty

A. The parties agree that the Citations issued in Inspection No. 311522858 are amended by this Agreement to include the full terms of this Agreement including the abatement actions and dates stated herein.

B. The penalties proposed in OSHA Inspection No. 311522858, forming the basis of OSHRC Docket Nos. 08-0533 and 08-1195, are amended to a total amount of \$2,000,000.00.

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 \$2,000,000.00 in four (4) equal quarterly installments, as follows: The first quarterly payment of \$500,000.00 shall be due on the 10th day after this Agreement becomes a final order of the OSHRC, with each successive quarterly payment of \$500,000.00 due and payable within ninety (90) calendar days of the preceding payment due date to: **Occupational Safety and Health Administration, Baton Rouge Area Office, 9100 Bluebonnet Center, Suite 201, Baton Rouge LA, 70809-2985.** 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 Gramercy, Louisiana (“Gramercy facility”), except that the following Items will be abated in the manner and on the schedule set forth below:

1. Respondent represents that it retained a consultant to analyze abatement of the hazard described in Citation 3, Item 2(b), related to explosion venting in the Bosch packaging machines. Respondent represents that the consultant’s recommendations to install improvements to the local exhaust ventilation (“LEV”) system, housekeeping procedures,

and reduction of horizontal surfaces have already been implemented. Respondent states that the following additional measures will be implemented no later than September 15, 2010: (1) installation of additional LEV hoods; (2) installation of a central vacuum system equipped with a suppression system; (3) reconfiguration of sugar spillage collection points; and (4) reduction of all horizontal surfaces to the maximum feasible extent within the Bosch enclosure that may accumulate product.

2. Respondent agrees to abate Citation 3, Item 2(c), related to explosion venting for Bin 5, by disabling and taking Bin 5 out of service permanently no later than December 31, 2010. Specifically, the disabling of Bin 5 will be effected by removing all feeds and removal systems; moreover, since Bin 5 is constructed of wood, Respondent will further ensure Bin 5 is disabled by cutting holes throughout it in a way that preserves its structural integrity. Bin 5 is being replaced with two new bins which will be equipped with the isolation valves and explosion panels, as recommended by Respondent's consultant. Respondent represents that the following interim measures to address the hazard described in Citation 3, Item 2(c) are in place: the bin has been repaired to significantly minimize leakage of sugar and sugar dust and Standard Operating Procedures ("SOPs") have been implemented for enhanced housekeeping in this area to address any sugar leaks.
3. Respondent agrees to abate Citation 3, Item 2(d), related to explosion venting for bucket elevators 3 and 4, no later than July 1, 2010, by installing new explosion suppression systems. Respondent represents that it retained a consultant who performed an engineering analysis and determined that the optimal method for reducing the risk of dust fires and explosions in these elevators is explosion suppression. Installation of the explosion suppression systems is complete; and the equipment will be fully commissioned and all

affected employees trained on same by July 1, 2010. Respondent represents that it has further addressed the cited hazards through installation of: temperature monitors for bearings; belt alignment sensors; high-level probes and conveyor plugged discharge chute protection. An interlock control system to shut down the elevators if abnormal conditions are detected by any of the above monitors has been installed.

4. Respondent agrees to abate Citation 3, Item 2(e), related to explosion venting for the Fawema tank feed elevator, no later than July 1, 2010, by installing a new explosion suppression system. Respondent represents that it retained a consultant who determined that the optimum method for reducing the risk of dust fires and explosions in this elevator is explosion suppression. Installation of the explosion suppression system is complete; and the equipment will be fully commissioned and all affected employees trained on same by July 1, 2010. Respondent represents that it has further addressed the cited hazards through installation of: temperature monitors for bearings; belt alignment alarms; high-level probes and conveyor plugged discharge chute protection. An interlock control system to shut down the elevators if abnormal conditions are detected by any of the above monitors has been installed.
5. Respondent agrees to abate Citation 3, Item 2(f), related to explosion venting for fruit elevators 1 and 2, no later than December 31, 2010, by disabling and taking the elevators out of service permanently on or before that date. Specifically, Respondent will remove the drive and take the belts, buckets and pulleys out of the elevators, thereby rendering the elevators inoperable. Respondent represents that the following interim measures are in place: documented inspections of elevator buckets and belt alignment before and after fruit

elevators are placed into service and scheduled manual bearing temperature checks when the elevators are in operation.

6. Respondent agrees to abate Citation 3, Item 2(g), related to explosion venting for the cooler elevator, no later than July 1, 2010, by installing a new explosion suppression system.

Respondent represents that it retained a consultant who determined that the optimal method for reducing the risk of dust fires and explosions in this elevator is explosion suppression.

Installation of the explosion suppression system is complete and the equipment will be fully commissioned and all affected employees trained on same by July 1, 2010.

Respondent represents that it has further addressed the cited hazards through installation of: temperature monitors for bearings; belt alignment alarms; and high-level probes and conveyor plugged discharge chute protection. An interlock control system to shut down the elevators if abnormal conditions are detected by any of the above monitors has been installed.

7. Respondent agrees to abate Citation 3, Item 2(h), related to explosion venting for the Bosch Fawema Room, no later than July 1, 2010, by installing explosion venting. Respondent certifies that the following interim measures are in place: housekeeping procedures applicable to the area and audits to ensure that housekeeping standards are maintained.

8. Respondent agrees to abate Citation 3, Item 2(i), related to explosion protection for storage Bin 5, by disabling and taking Bin 5 out of service permanently no later than December 31, 2010. Specifically, the disabling of Bin 5 will be effected by removing all feeds and removal systems; moreover, since Bin 5 is constructed of wood, Respondent will further ensure Bin 5 is disabled by cutting holes throughout it in a way that preserves its structural integrity. Bin 5 is being replaced with two new bins which will be equipped with isolation

valves and explosion panels, as recommended by Respondent's consultant. Respondent represents that the following interim measures to abate the cited hazard until the bin is removed from service are in place: the bin has been repaired to significantly minimize leakage of sugar and sugar dust and SOPs have been implemented for housekeeping in this area to address any sugar leaks.

9. Respondent represents that it retained a consultant to analyze abatement of the hazard described in Citation 3, Item 2(1), related to granulators A, B, and C. Respondent represents that the consultant's recommendations to install pre-deflagration and steam or water ignition suppression systems will be installed no later than August 31, 2010. Respondent represents that the following interim measures are currently in place: enhanced housekeeping in the granulator area; the access door to the area near the inlets to the granulators has been locked to restrict personnel access; the size of the granulator inlets was reduced to minimize the opportunity for foreign material to be introduced into the equipment; preventative maintenance regimes for the screw conveyors associated with the granulators require maintenance employees to monitor bearing temperatures and to perform routine inspections to identify potential friction points; the bucket elevator (the cooler elevator), to which the granulators discharge, is equipped with chemical isolation to prevent propagation back to the granulators; the cyclones servicing the lower granulator A have been equipped with explosion vents; and training has been provided to inform operations personnel of the risk and proper actions to address identified potential upset conditions. Respondent will also add the following measures to the referenced bucket elevator to address fire and explosion hazards no later than July 1, 2010: a chemical suppression system; installation of temperature monitors of bearings; belt alignment

alarms; high-level probes and conveyor plugged discharge chute protection. An interlock control system to shut down the elevators if abnormal conditions are detected by any of the above monitors has been installed.

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, Baton Rouge Area Office, 9100 Bluebonnet Center, Suite 201, Baton Rouge LA, 70809-2985**, 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 Gramercy 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. Respondent has implemented CBT and DVD Module 1, designed for visitors and office personnel, and Modules 2A and 2B, designed for operational personnel. Respondent agrees that such CBT and DVD training includes the topic of the recognition and means of control of combustible dust hazards in training provided annually to employees and to all newly hired employees before they assume work duties. Such CBT and DVD training for all Respondent’s employees and contractor employees, as indicated, shall also 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 which is addressed in Modules 1 and 2A;
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 which is addressed in Modules 1 and 2A;
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 which is addressed in Module 2B;

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 which is addressed in Modules 1, 2A and 2B; and

5. Reasons for wearing fire retardant clothing for all Respondent's employees and contractor employees that is addressed in Modules 1 and 2A.

On or before July 1, 2010, Respondent shall require: (1) all Respondent's employees then employed at Respondent's Gramercy facility, and (2) all contractor employees who may have access to areas at the Gramercy 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 Gramercy 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 of the Gramercy facility that may have combustible dust. Respondent further agrees that it 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 January 15, 2011, Respondent agrees to ensure that certain Gramercy 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 Gramercy 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 Gramercy 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 Gramercy Facility.** Respondent agrees that it will continue to employ full-time safety personnel at its Gramercy facility who by education, experience or training have, at a minimum, expertise in the fields of combustible dust and related hazards. 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 a qualified safety substitute to assume such 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 Gramercy facility, Respondent agrees to (1) commence bi-annual safety inspections at the Gramercy 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 bi-annual inspections shall be so designed such that each Gramercy department is inspected at least once per year, but no later than 12 months between each such inspection. The Gramercy safety professional identified in sub paragraph C above shall lead the inspection and accompany the inspection team on each bi-annual 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, authorized employee representatives and affected contractor employees at the Gramercy 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 Gramercy 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.** 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.

G. **Programs and Procedures Relating to Combustible Dust Hazards.** No later than August 31, 2010, Respondent agrees to develop, document, and implement the following programs and policies, referenced below in numbered Sections VI.G.1-8, at its Gramercy facility. In the development, implementation and/or maintenance of each such program or policy, Respondent shall, during the term of this Agreement: retain and consult with at least one (1) independent safety and health professional who is qualified by education, experience and training, and who has expertise in the field of analyzing and evaluating combustible dust and related work place hazards; consult with, and consider input from, Gramercy facility employees through the facility safety committee and authorized employee representatives; 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 including, but not limited to, procedures in the event of fire for all employees, supervisors, managers and employees of contractors.

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 Gramercy 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 has implemented a policy and agrees to maintain such policy requiring employees and contract personnel to wear flame-resistant clothing while working in Class II locations within the meaning of 29 C.F.R. 1910.399. 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 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.).

8. **Deflagration Venting and Explosion Relief.** Respondent shall complete its review of all feasible and appropriate deflagration, venting and explosion relief measures for bucket elevators, storage bins, belt conveyors, dust collectors and granulators, consistent with the guidance of NFPA 61, 68 and 69. Respondent shall provide Complainant with a written

description of proposed remedial or mitigation measures along with planned completion dates within fifteen (15) days following Respondent's development of such measures.

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, Gramercy facility employees including, but not limited to, Respondent's authorized employee representative(s) as identified in Section X, paragraph A, of this Agreement. 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 Gramercy 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, including Respondent's top levels of management.

- 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.** Every six (6) months for a total period of two (2) years from the date this Agreement is executed, Respondent agrees to submit to Complainant and to Respondent's authorized employee representative its logs of occupational injuries and illnesses ("OSHA 300 logs") for the Gramercy facility. In addition, for a period of two (2) years from the date this Agreement is executed, Respondent agrees to notify the appropriate Area Office of any accident and injury at Respondent's Gramercy facility which results in an employee being hospitalized one or more days. Further, Respondent agrees to permit Complainant access to the work place at its Gramercy 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, and/or without requiring OSHA to issue a subpoena.

K. **Notification and Approval of Experts.** Respondent shall provide written notice to Complainant for each 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 reports to the OSHA Baton Rouge and Regional Offices with a copy to the Regional Solicitor's Office at the following addresses:

OSHA Baton Rouge Area Office
Attn: Area Director
9100 Bluebonnet Center, Suite 201
Baton Rouge, LA 70809-2985

OSHA Region VI
Attn: Assistant Regional Administrator, Enforcement
525 S. Griffin St., Suite 602
Dallas, TX 75201

Office of the Solicitor
Attn: Counsel for Occupational Safety and Health
525 S. Griffin St., Suite 501
Dallas, TX 75201

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 Respondents herein are made for the purpose of settling this matter economically and amicably.

VIII.

Term and Expiration of Agreement

A. **Term and Expiration.**

1. This Agreement shall expire two (2) years from the date it 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.

2. Respondent, Cargill, Incorporated and Sugar Growers and Refiners, Inc. are each one-third owners in Louisiana Sugar Refining, LLC ("LSR"), a joint venture formed and capitalized on November 19, 2009 for the purpose of building and operating a new sugar refinery (the "New Refinery") in Gramercy, Louisiana adjacent to the Respondent's existing sugar refinery (the "Existing Refinery"). Respondent's Existing Refinery is the subject of the Citations issued by Complainant in the above-styled actions. From November 19, 2009 through December 31, 2010, Respondent will continue to operate the Existing Refinery, using its own employees, with the sales and results of operations from the Existing Refinery for the Respondent's account. Effective January 1, 2011, control of the Existing Refinery, with the exception of the small bag packaging area, will switch to LSR, with LSR's employees operating the Existing Refinery and the sales and results of operations from the Existing Refinery then being for the account of LSR. Effective January 1, 2011, Respondent will only occupy a portion of the Existing Refinery, the small bag packaging area, and utilize its own employees to package bulk refined sugar purchased from LSR in packages smaller than 50 pounds ("Small Bag Operations"). Once LSR constructs the New Refinery and it becomes operational, LSR is expected to transition some of its unit's operations

from the Existing Refinery to the New Refinery. Subject to the terms and conditions of this Agreement and in recognition of LSR assuming operational control of the Existing Refinery on January 1, 2011, the scope of Respondent's duties and obligations under this Agreement thereafter will be consistent with its status as an "employer" of its own employees under Section 3(5) of the OSH Act, 29 U.S.C. 652(5) and Respondent does not waive any argument that it shall not be responsible for obligations under this Agreement that become under the control of LSR effective January 1, 2011.

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 Baton Rouge Area Office
Attn: Area Director
9100 Bluebonnet Center, Suite 201
Baton Rouge, LA 70809-2985

OSHA Region VI
Attn: Assistant Regional Administrator, Enforcement
525 S. Griffin St., Suite 602
Dallas, TX 75201

Office of the Solicitor
Attn: Counsel for Occupational Safety and Health
525 S. Griffin St., Suite 501
Dallas, TX 75201

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 Gramercy 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. Respondent agrees that any working condition presenting an imminent danger to employees shall be immediately corrected, regardless of the abatement date set forth in the Agreement, and that 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 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. When OSHA is conducting such an inspection, it will verify, with appropriate input from Respondent's safety professional as identified in Paragraph VI (C) of this Agreement and authorized employee representative(s), that Respondent is meeting its obligations and abatement under this Agreement

X.

Notice, Service and Posting Requirements

A. Respondent certifies that the names and address of all authorized employee representatives of affected employees are:

Ms. Robyn Robbins, Associate Director	Mr. Lloyd Kliebert, President
Occupational Safety & Health Office	United Food & Commercial Workers
United Food & Commercial Workers	International Union
International Union	Local No. 1167-P
1775 K Street	Post Office Box 520
Washington, DC 20006	Gramercy, LA 70052

B. Respondent further certifies that there are no other unions representing affected employees except those set forth above.

C. Pursuant to Commission Rules 7 and 100, 29 CFR Parts 2200.7 and 2200.100, Respondent served a copy of this Agreement on the authorized employee representatives by: Hand

Delivered to Lloyd Kliebert on _____

the 7th day of July, 2010.

D. Pursuant to Rules 7 and 100, 29 CFR Parts 2200.7 and 2200.100, Respondent served a copy of this Agreement on unrepresented employees by posting this document where the citation is required to be posted the 7th day of July, 2010.

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

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

1. To Complainant:

OSHA Baton Rouge Area Office
Attn: Area Director
9100 Bluebonnet Center, Suite 201
Baton Rouge, LA 70809-2985

OSHA Region VI
Attn: Assistant Regional Administrator, Enforcement
525 S. Griffin St., Suite 602
Dallas, TX 75201

Office of the Solicitor
Attn: Counsel for Occupational Safety and Health
525 S. Griffin St., Suite 501
Dallas, TX 75201

2. To Respondent:

Louis T. Bolognini, Esq.
Senior Vice President, General Counsel & Secretary
P.O. Box 9
Sugar Land, TX 77484-0009

Patrick J. Veters
Jane H. Heidingsfelder
JONES WALKER
201 St. Charles Avenue, 50th Floor
New Orleans, LA 70170-5100

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.

IMPERIAL SUGAR COMPANY,
IMPERIAL SAVANNAH, L.P., and
IMPERIAL DISTRIBUTION, INC.



PATRICK J. VETERS
Attorney

Signed this 7th day of

July, 2010

JONES WALKER
201 St. Charles Avenue
50th Floor
New Orleans, LA 70170-5100
Telephone: (504) 582-8000
Facsimile: (504) 582-8015

Attorneys for Respondent

Inspection No. 311522858



Robyn Robbins, Associate Director
Occupational Safety and Health Office
UFCW
1775 K Street
Washington, D.C. 20006
Tel: (202) 223-3111, x 1505
Fax: (202) 466-1562
Email: rrobbins@ufcw.org

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

JAMES E. CULP
Regional Solicitor

MADELEINE T. LE
Counsel for Occupational Safety and Health



MICHAEL D. SCHOEN
Senior Trial Attorney

Signed this 6th day of

July, 2010

Office of the Solicitor
525 S. Griffin St.
Suite 501
Dallas TX 75201
Telephone: (972) 850-3100
Facsimile: (972) 850-3101

Attorneys for Complainant

RSOL No. 08-01129

IMPERIAL SUGAR COMPANY,
~~IMPERIAL SAVANNAH L.P., and~~
IMPERIAL DISTRIBUTION, INC.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

JAMES E. CULP
Regional Solicitor

MADELEINE T. LE
Counsel for Occupational Safety and Health

PATRICK J. VETERS
Attorney

MICHAEL D. SCHOEN
Senior Trial Attorney

Signed this _____ day of
_____, 2010

Signed this _____ day of
_____, 2010

JONES WALKER
201 St. Charles Avenue
50th Floor
New Orleans, LA 70170-5100
Telephone: (504) 582-8000
Facsimile: (504) 582-8015

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Attorneys for Respondent

Attorneys for Complainant

Inspection No. 311522858

RSOL No. 08-01129


Jackie Nowell, Director
Robyn Robbins, Associate Director
Occupational Safety and Health Office
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1775 K Street
Washington, D.C. 20006
Tel: (202) 223-3111, x 1505
Fax: (202) 466-1562
Email: jjn0982@ufcw.org
Email: rrobbins@ufcw.org

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) DAYS FROM THE DATE THAT THIS SETTLEMENT AGREEMENT IS POSTED. SUCH OBJECTIONS MUST BE SET FORTH IN WRITING AND MAILED TO COVETTE ROONEY, ADMINISTRATIVE LAW JUDGE, OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, 1120 20TH STREET, N.W., 9TH FLOOR, WASHINGTON, D. C. 20036-3457.

NOTICE TO AUTHORIZED EMPLOYEE REPRESENTATIVES
OF AFFECTED EMPLOYEES

EACH AUTHORIZED EMPLOYEE REPRESENTATIVE OF AFFECTED EMPLOYEES IS HEREBY GIVEN NOTICE THAT ANY OBJECTION TO THE ENTRY OF AN ORDER TERMINATING THIS LITIGATION MUST BE FILED WITHIN TEN (10) DAYS OF THE DATE OF SERVICE OF THE SETTLEMENT AGREEMENT ON THEM, BY SETTING FORTH SUCH OBJECTIONS IN WRITING AND MAILING THEM TO COVETTE ROONEY, ADMINISTRATIVE LAW JUDGE, OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, 1120 20TH STREET, N.W., 9TH FLOOR, WASHINGTON, D. C. 20036-3457.

A COPY OF SAID OBJECTION SHOULD ALSO BE SENT TO:

COMPLAINANT: OSHA Region VI
Attn: Assistant Regional Administrator, Enforcement
525 S. Griffin St., Suite 602
Dallas, TX 75201

Office of the Solicitor
Attn: Counsel for Occupational Safety and Health
525 S. Griffin St., Suite 501
Dallas, Texas 75201

RESPONDENT: Patrick J. Veters, Esq.
Jane H. Heidingsfelder, Esq.
Jones, Walker, Waechter, Poitevent, Carrère & Denègre L.L.P.
201 St. Charles Avenue
New Orleans, Louisiana 70170

EXHIBIT A

Imperial Sugar Company, and Imperial Savannah, L.P. and Imperial Distribution, Inc. 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.
 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.