

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

THOMAS E. PEREZ, Secretary of Labor, :
United States Department of Labor, :
 : OSHRC DOCKET
Complainant, :
 : NO. 14-0686
v. :
 :
Dover Greens LLC, :
formerly known as Olivet Management, LLC,¹ :
 :
Respondent, :
and its successors. :
 :

REVISED STIPULATED SETTLEMENT

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Solicitor of Labor

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¹ The caption of this matter was amended by motion dated March __, 2016 to reflect the correct legal name of the Respondent. These citations were originally issued to Olivet Management, LLC. Olivet Management, LLC changed its legal name to Dover Greens, LLC on or about December 1, 2015.

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REVISED STIPULATED SETTLEMENT

Based upon the following recital, the Complainant and the Respondent herein agree to the following as a conclusion of this matter:

1. The Secretary hereby amends the total proposed penalties to reflect an amended proposed penalty of \$700,000, to be apportioned as set forth below:

Citation & Item Number	Standard	Original Proposed Penalty	Amended Classification	Amended Citation & Item Number	Amended Proposed Penalty
Citation 1, Item 1	1926.1101(k)(2)(ii)(C)	\$7,000	Willful	Citation 1, Item 1	\$34,000
Citation 2, Item 1a	1926.62(d)(2)(v)(F)	\$42,000	Willful	Citation 2, Item 1	\$34,000
Citation 2, Item 2a	1926.62(d)(2)(v)(F)	\$42,000	Vacated		\$0
Citation 2, Item 3a	1926.62(d)(2)(v)(F)	\$42,000	Vacated		\$0
Citation 2, Item 4a	1926.62(d)(2)(v)(F)	\$42,000	Vacated		\$0
Citation 2, Item 5a	1926.62(d)(2)(v)(F)	\$42,000	Vacated		\$0

Citation & Item Number	Standard	Original Proposed Penalty	Amended Classification	Amended Citation & Item Number	Amended Proposed Penalty
Citation 2, Item 6a	1926.62(d)(2)(v)(F)	\$42,000	Vacated		\$0
Citation 2, Item 7a	1926.62(d)(2)(v)(F)	\$42,000	Vacated		\$0
Citation 2, Item 8a	1926.62(d)(2)(v)(F)	\$42,000	Vacated		\$0
Citation 2, Item 9a	1926.62(d)(2)(v)(F)	\$42,000	Vacated		\$0
Citation 2, Item 10a	1926.62(d)(2)(v)(F)	\$42,000	Vacated		\$0
Citation 2, Item 1b	1926.21(b)(2)	\$0	Willful	Citation 2, Item 2	\$34,000
Citation 2, Item 2b	1926.21(b)(2)	\$0	Vacated		\$0
Citation 2, Item 3b	1926.21(b)(2)	\$0	Vacated		\$0
Citation 2, Item 4b	1926.21(b)(2)	\$0	Vacated		\$0
Citation 2, Item 5b	1926.21(b)(2)	\$0	Vacated		\$0
Citation 2, Item 6b	1926.21(b)(2)	\$0	Vacated		\$0
Citation 2, Item 7b	1926.21(b)(2)	\$0	Vacated		\$0
Citation 2, Item 8b	1926.21(b)(2)	\$0	Vacated		\$0
Citation 2, Item 9b	1926.21(b)(2)	\$0	Vacated		\$0
Citation 2, Item 10b	1926.21(b)(2)	\$0	Vacated		\$0
Citation 2, Item 11	1926.1101(k)(9)(i)	\$42,000	Serious	Citation 2, Item 11a	\$5,000
Citation 2, Item 12	1926.1101(k)(9)(i)	\$42,000	Grouped	Citation 2, Item 11b	\$0
Citation 2, Item 13	1926.1101(k)(9)(i)	\$42,000	Grouped	Citation 2, Item 11c	\$0
Citation 2, Item 14	1926.1101(k)(9)(i)	\$42,000	Grouped	Citation 2, Item 11d	\$0

Citation & Item Number	Standard	Original Proposed Penalty	Amended Classification	Amended Citation & Item Number	Amended Proposed Penalty
Citation 2, Item 15	1926.1101(k)(9)(i)	\$42,000	Grouped	Citation 2, Item 11e	\$0
Citation 2, Item 16	1926.1101(k)(9)(i)	\$42,000	Grouped	Citation 2, Item 11f	\$0
Citation 2, Item 17a	1926.1101(k)(2)(ii)(A)	\$70,000	Vacated	Citation 2, Item 17a	\$0
Citation 2, Item 18a	1926.1101(k)(2)(ii)(A)	\$70,000	Vacated	Citation 2, Item 18a	\$0
Citation 2, Item 19a	1926.1101(k)(2)(ii)(A)	\$70,000	Vacated	Citation 2, Item 19a	\$0
Citation 2, Item 20a	1926.1101(k)(2)(ii)(A)	\$70,000	Vacated	Citation 2, Item 20a	\$0
Citation 2, Item 17b	1926.1101(k)(2)(ii)(C)	\$0	Vacated	Citation 2, Item 17b	\$0
Citation 2, Item 18b	1926.1101(k)(2)(ii)(C)	\$0	Vacated	Citation 2, Item 18b	\$0
Citation 2, Item 19b	1926.1101(k)(2)(ii)(C)	\$0	Vacated	Citation 2, Item 19b	\$0
Citation 2, Item 20b	1926.1101(k)(2)(ii)(C)	\$0	Vacated	Citation 2, Item 20b	\$0
Citation 2, Item 21	1926.1101(k)(2)(ii)(C)	\$70,000	Vacated	Citation 2, Item 21	\$0
Citation 2, Item 22	1926.1101(k)(2)(ii)(C)	\$70,000	Vacated	Citation 2, Item 22	\$0
Citation 2, Item 23	1926.1101(k)(2)(ii)(C)	\$70,000	Vacated	Citation 2, Item 23	\$0
Citation 2, Item 24	1926.1101(k)(2)(ii)(C)	\$70,000	Vacated	Citation 2, Item 24	\$0
Citation 2, Item 25a	1926.62(d)(1)(i)	\$70,000	Willful	Citation 2, Item 25a	\$34,000
Citation 2, Item 25b	1926.62(d)(1)(iii)	\$0	Willful	Citation 2, Item 25b	\$34,000
Citation 2, Item 26a	1926.62(d)(2)(v)(A)	\$70,000	Willful	Citation 2, Item 26a	\$34,000
Citation 2, Item 26b	1926.62(f)(1)(iv)	\$0	Willful	Citation 2, Item 26b	\$34,000

Citation & Item Number	Standard	Original Proposed Penalty	Amended Classification	Amended Citation & Item Number	Amended Proposed Penalty
Citation 2, Item 26c	1926.62(d)(2)(v)(B)	\$0	Willful	Citation 2, Item 26c	\$34,000
Citation 2, Item 26d	1926.62(g)(1)	\$0	Willful	Citation 2, Item 26d	\$34,000
Citation 2, Item 27a	1926.62(d)(2)(v)(E)	\$70,000	Willful	Citation 2, Item 27a	\$34,000
Citation 2, Item 27b	1926.62(j)(1)(i)	\$0	Willful	Citation 2, Item 27b	\$34,000
Citation 2, Item 27c	1926.62(d)(2)(v)(C)	\$0	Willful	Citation 2, Item 27c	\$34,000
Citation 2, Item 27d	1926.62(i)(2)(i)	\$0	Willful	Citation 2, Item 27d	\$34,000
Citation 2, Item 27e	1926.62(d)(2)(v)(D)	\$0	Willful	Citation 2, Item 27e	\$34,000
Citation 2, Item 27f	1926.62(i)(5)(i)	\$0	Willful	Citation 2, Item 27f	\$34,000
Citation 2, Item 27g	1926.62(h)(1)	\$0	Willful	Citation 2, Item 27g	\$34,000
Citation 2, Item 27h	1926.62(h)(2)	\$0	Willful	Citation 2, Item 27h	\$34,000
Citation 2, Item 28a	1926.62(d)(2)(v)(F)	\$70,000	Willful	Citation 2, Item 28a	\$34,000
Citation 2, Item 28b	1926.21(b)(2)	\$0	Willful	Citation 2, Item 28b	\$34,000
Citation 2, Item 29	1926.1101(e)(1)	\$70,000	Serious	Citation 2, Item 29a	\$5,000
Citation 2, Item 30	1926.1101(f)(1)(i)	\$70,000	Grouped	Citation 2, Item 29b	\$0
Citation 2, Item 31a	1926.1101(g)(1)(i)	\$70,000	Serious	Citation 2, Item 31a	\$5,000
Citation 2, Item 31b	1926.1101(g)(1)(ii)	\$0	Grouped	Citation 2, Item 31b	\$0
Citation 2, Item 31c	1926.1101(g)(3)(iii)	\$0	Grouped	Citation 2, Item 31c	\$0
Citation 2, Item 32	1926.1101(g)(7)(i)	\$70,000	Grouped	Citation 2, Item 29c	\$0

Citation & Item Number	Standard	Original Proposed Penalty	Amended Classification	Amended Citation & Item Number	Amended Proposed Penalty
Citation 2, Item 33	1926.1101(g)(8)(i)(G)	\$70,000	Willful	Citation 2, Item 33	\$34,000
Citation 2, Item 34	1926.1101(h)(1)	\$70,000	Grouped	Citation 2, Item 29d	\$0
Citation 2, Item 35	1926.1101(i)(1)	\$70,000	Grouped	Citation 2, Item 29e	\$0
Citation 2, Item 36	1926.1101(j)(2)(i)	\$70,000	Grouped	Citation 2, Item 29f	\$0
Citation 2, Item 37	1926.1101(j)(2)(iii)	\$70,000	Grouped	Citation 2, Item 29g	\$0
Citation 2, Item 38a	1926.1101(k)(6)	\$70,000	Serious	Citation 2, Item 38a	\$5,000
Citation 2, Item 38b	1926.1101(k)(8)(i)	\$0	Grouped	Citation 2, Item 38b	\$0
Citation 2, Item 39	1926.1101(k)(9)(i)	\$70,000	Grouped	Citation 2, Item 11g	\$0
Citation 2, Item 40	1926.1101(l)(2)	\$70,000	Grouped	Citation 2, Item 38c	\$0
Total Penalty		\$2,359,000		Total Penalty	\$700,000

2.

2. The citations are amended as reflected in the chart above, and as follows:

- a) The AVD for Citation 1, Item 1 will be amended to substitute “contractors” for “Royal Carting Service and Winter Brothers Waste Systems CT”.
- b) The AVDs for Citation 2, Items 1 and 2 (as renumbered) will be amended to substitute "employees" for “employee A”.
- c) The AVDs for Citation 2, Items 29a through 29g (as renumbered) will be amended to read: “The employer did not provide records of an ambient air negative exposure assessment before performing Class II asbestos tile removal work in Bldg. 85. Absent sampling that showed no excessive ambient air

levels of asbestos, the employer did not: provide training for subcontractor employees; establish a regulated area; have the work supervised by a competent person; have employees use respirators; provide and require use of protective clothing; provide decontamination facilities for employees and their equipment; or require that HEPA vacuums be used to clean work clothing.”

- d) The AVD for Citation 2, Item 38c (as renumbered) will be amended to read:
“Asbestos waste resulting from Class II tile removal asbestos operations in Building 85 was not collected in sealed labelled bags.”
3. Based on the above, the Respondent, Dover Greens LLC Management, LLC herein withdraws its notice of contest as to the citations and proposed penalties, as modified herein.
 4. Respondent affirmatively states and Complainant acknowledges that:
 - a) The violations alleged in the Complaint have been abated, or will be abated as detailed in ¶ 5 below.
 - b) Respondent will continue its good faith efforts to comply with the Occupational Safety and Health Act and the regulations promulgated thereunder.
 5. Respondent affirms that it will take, or has already taken, the following additional affirmative actions set forth below as part of this settlement:
 - a) No later than execution of this Stipulated Settlement, Dover Greens LLC will retain a qualified independent safety consulting firm to monitor the project. The firm will provide consultants who have experience monitoring lead and asbestos abatement projects, and who are industrial hygienists (IH), certified

safety professionals (CSP), or otherwise acceptable to OSHA. A consultant will be on site whenever work pursuant to the Phase 1 or Phase 2 Site Plan or otherwise authorized pursuant to the May 11, 2015 letter from the Town of Dover Planning Board (Type II action pursuant to 6 NYCRR § 617.5) is being performed, other than landscaping work performed entirely outdoors without entry into to any building. On any day when no consultant is available due to illness or vacation, a substitute safety monitor with comparable knowledge and experience acceptable to OSHA shall be present on site, and shall have no duty that day except monitoring safety on site. Dover Greens LLC will submit abatement documentation (as detailed in ¶ f below) in the form of a resume for the consulting firm monitoring work on the site, and a resume for the proposed substitute safety monitor. Such documentation shall be submitted within thirty days of the execution of this Stipulated Settlement, and shall be updated whenever a different safety consulting firm or substitute safety monitor is used on the project.

- b) At least thirty days before any work at the site begins pursuant to the Phase 1 or Phase 2 Site Plan (other than single-building asbestos abatement projects that are entirely in the control of a licensed asbestos abatement contractor, and landscaping work performed entirely outdoors without entry into to any building), Dover Greens LLC will select and retain a general contractor or construction manager to manage the project. This general contractor or construction manager will be experienced in running multi-million dollar, multi-phase projects involving multiple buildings and types of construction or

have comparable experience acceptable to OSHA. The general contractor or construction manager will manage all work except: i) single-building asbestos abatement projects that are entirely in the control of a licensed asbestos abatement contractor, ii) landscaping work performed entirely outdoors without entry into to any building. Dover Greens LLC will submit abatement documentation (as detailed in ¶ f below) in the form of a Phase 1 Site Plan, notice of who the general contractor or construction manager will be, and notice of the Town of Dover Planning Board's approval of its Phase 1 Site Plan. Dover Greens LLC shall submit the Phase 1 Site Plan within thirty days of the execution of this Stipulated Settlement. The other notices required by this provision shall be submitted at least thirty days before any work at the site begins pursuant to the Phase 1 Site Plan. The Phase 2 Site Plan shall similarly be submitted to OSHA at least thirty days before work begins pursuant to that plan.

- c) Every contractor who is retained to perform work at the Dover Greens LLC site will be competent, through experience and/or training, in the work it is performing. Contractors whose employees may contact lead or asbestos will have documented training or work experience with work covered by those standards. Every contractor's on-site supervisors and foremen must complete the OSHA 30-hour course before the contractor begins work on the Dover Greens LLC site. Dover Greens LLC shall request and retain documentation that this training was completed, and shall produce such documentation to OSHA upon demand. Any general contractor doing work pursuant to the

Phase 1 or Phase 2 Site Plan shall maintain and enforce a site-specific health and safety program (HASP) or its equivalent for its work on the site, and shall require all subcontractors to follow the HASP. Dover Greens LLC shall request and retain each general contractor's site-specific health and safety program (HASP), and shall produce such documentation to OSHA upon demand.

- d) Dover Greens LLC will not oppose any worker's compensation claim brought by any employee who worked at the Dover Greens LLC site, for whom Dover Greens LLC is the responsible employer, for illness resulting from asbestos or lead exposure at the worksite between October 1, 2013 and November 1, 2013. Dover Greens LLC is the responsible employer for its own direct employees, and for any subcontractor's employees if the subcontractor was not adequately insured under New York State's workers' compensation program.
- e) Within thirty days of the execution of this Stipulated Settlement, employees who worked at the site between October 1, 2013 and November 1, 2013 will be given notice, in English, Spanish, and Korean, of their right to bring a claim under the New York State Worker's Compensation Program if they become ill, and the timeframe (2 years after onset of symptoms) for doing so. Such notice shall be forwarded to employees whose addresses are known, forwarded to all subcontractors, and posted at the work site. Dover Greens LLC will submit abatement documentation (as detailed in ¶ f below).

401 New Karner Rd. Ste 300
Albany, NY 12205
Garvey.Robert@dol.gov

6. The citations are hereby amended to include the terms of this Stipulated Settlement as required abatement of the underlying conditions referred to in the citations. Failure to comply with ¶ 5 above shall be a failure to abate the citations as written and amended.
7. Respondent certifies that on or before January 29, 2016^{CK}, this stipulation will be posted where affected employees may see it.
8. The total penalty proposed for the citations is \$2,359,000. In full and final settlement of the citations, Olivet Management, LLC agrees to pay this penalty as set forth in ¶ ¶ 9 and 10 below.
9. Olivet Management, LLC shall pay the sum of \$700,000 in ten equal annual installments of \$70,000.
 - a. The first payment shall be made within 180 days of the entry of a Final Order in this matter. Subsequent payments shall be made on or before November 15 of each year, beginning on November 15, 2017. If such date falls on a non-business day, weekend, or holiday, payment shall be made on the next succeeding business day.
 - b. Payments shall be made by check, made payable to "U.S. Department of Labor - OSHA," and mailed to:

**OSHA Albany Area Office
401 New Karner Rd. Ste 300
Albany, NY 12205**
 - c. A ten-day grace period shall be allowed for receipt of each payment. In the event that the Area Office does not receive any check within ten days after it is due, the

Albany, NY 12205

- c. A ten-day grace period shall be allowed for receipt of each payment. In the event that the Area Office does not receive any check within ten days after it is due, the Area Office will notify Respondent of such fact by regular mail. If the Area Office does not receive payment within ten days of such notification, the entire unpaid balance of \$700,000 shall become due immediately. No action or non-action by the Area Office shall constitute a waiver of this paragraph.
10. The suspended penalty of \$1,659,000 shall become due in case of substantial failure to comply, as follows:
- a) If OSHA reaches a preliminary determination that there has been a substantial failure to perform the obligations under this Agreement by Dover Greens LLC, OSHA shall follow the procedures set forth in ¶ 11 of this Agreement.
 - b) If, after following the procedures set forth in ¶ 11 of this Agreement, OSHA determines that there has been a substantial failure to perform the obligations under this Agreement and that Dover Greens LLC has failed to make an objectively reasonable good faith effort to cure the non-compliance, the Secretary may, at his sole election,
 - i. file a petition with the Second Circuit Court of Appeals under Section 11(b) of the Act, or
 - ii. issue a Notice of Failure to Abate under Section 10(b) of the Act.
 - c) In the event that
 - i. the Second Circuit Court of Appeals or the Occupational Safety and Health Commission determines that there was a substantial failure to

perform the obligations under this Agreement by Dover Greens LLC, and that Dover Greens LLC failed to make an objectively reasonable good faith effort to cure the non-compliance in accordance with ¶ 11 of this Agreement, or

ii. the Notice of Failure to Abate becomes a Final Order of the Occupational Safety and Health Commission,

then an additional amount of the penalties originally proposed for the citations, in the amount of \$1,659,000 (the "Suspended Penalties") shall be due and payable to OSHA.

d) The Suspended Penalties shall be paid in ten quarterly installments of \$165,900, on January 1, April 1, July 1, and October 1, beginning with the first quarterly due date after they become due pursuant to ¶ 10. c. above. The Suspended Penalties shall be paid concurrently with the penalties set forth in ¶ 9 above.

11. The following procedures shall apply in the event that OSHA determines that Dover Greens LLC is not in compliance with the requirements of ¶ 5 above:

a) If OSHA reaches a preliminary determination that Dover Greens LLC is not in compliance with the requirements of ¶ 5 above, OSHA shall promptly notify Dover Greens LLC in writing via email, with a copy sent by regular mail. Such notice via email and mail shall be deemed sufficient notice under this provision if it is sent to Philip Bae, Member, Board of Directors by first-class mail or other delivery service to Dover Greens LLC Management LLC, 73 Wheeler Drive, Wingdale, NY 12594 and by email to

philip.b@dovergreens.com and contains the following subject: NOTIFICATION OF NON-COMPLIANCE/ FAILURE-TO-ABATE (the "Initial Notice"). The Initial Notice shall articulate all bases for OSHA's preliminary determination with sufficient specificity for Dover Greens LLC to evaluate and respond to the Initial Notice.

- b) Dover Greens LLC will have thirty (30) business days to provide a written response to OSHA's Initial Notice.
- c) If OSHA is not satisfied with Dover Greens LLC's response, it will notify Dover Greens LLC in writing (by email or regular mail) within thirty (30) business days of receipt of Dover Greens LLC's response and provide Dover Greens LLC with a detailed explanation as to why the response does not resolve OSHA's concerns (the "Final Notice").
- d) Immediately after Dover Greens LLC has received OSHA's explanation, OSHA and Dover Greens LLC shall engage in good faith negotiations to resolve the matter, including, at a minimum, one in-person meeting at the OSHA New York Regional Office or the OSHA Albany Area Office. The time period for this good faith attempt to resolve the matter (the "Negotiation Period") shall last no longer than thirty (30) business days following Dover Greens LLC's receipt of OSHA's Final Notice. The parties may extend the Negotiation Period by mutual written consent to ensure full discussion of the issues.
- e) If after the Negotiation Period, Dover Greens LLC fails to make a good faith effort to cure the non-compliance, OSHA may take enforcement action under

Section 10(b) or Section 11(b) of the Act as detailed in ¶ 9 above. Under no circumstances shall OSHA take action, or seek penalties, under both Section 10(b) and Section 11(b) for the same acts of non compliance.

- f) Nothing in this Agreement shall limit Dover Greens LLC's defenses or arguments provided under relevant law in an action brought by the Secretary under Section 10(b) or Section 11(b) of the Act.
12. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.
13. This Agreement shall become effective on the date that it becomes a final order. The obligations in Paragraphs 5(a)-(c) of this Agreement shall remain in effect until the completion of work pursuant to the Phase 1 and Phase 2 Site Plans. Upon completion of this work, Dover Greens LLC will forward written certification, which will include all documents received from or filed with the Town of Dover Planning Board regarding the completion of Phase 1 and Phase 2 work, to OSHA. Within thirty days of OSHA's receipt of such certification, Dover Greens LLC will be released from the obligations in Paragraphs 5(a)-(c) of this Agreement, unless OSHA notifies Dover Greens LLC in writing that it does not agree that Phase 1 and Phase 2 work has been completed. The parties will confer in good faith to resolve any disputes of fact under this paragraph.
14. None of the foregoing agreements, statements, stipulations and actions taken by respondent shall be deemed an admission by respondent of the allegations contained within the citations, notifications of penalty and the complaint herein. The agreements, statements, stipulations, findings and actions taken herein are made for the purpose of settling this matter amicably and they shall not be used for any purpose, except for

proceedings and matters arising under the Occupational Safety and Health Act. Neither party waives any rights, remedies or defenses which they may have in any future litigation. This settlement, which Respondent has entered into to compromise disputed claims within the meaning of FRE 408, is entered into solely to resolve this matter without litigation. By entering into this Agreement, the Respondent does not admit that the conditions described in the citation were the cause, proximate or otherwise, of any accident, incident, injury or illness which may have occurred or will manifest in the future, and does not waive any argument or defense to future citations or penalties. Notwithstanding any of the foregoing, respondent specifically consents to the entry of a Final Order of the Review Commission affirming the citations as modified herein.

15. The Secretary did not allege, and Respondent does not admit, that any employee was exposed over the permissible exposure limit (PEL) for airborne asbestos or lead. Respondent represents that air monitoring performed during subsequent asbestos abatement projects (unrelated to the alleged violations described in ¶ 1 above) in Buildings 11 (samples taken on July 22, 2015) and 35 (samples taken on April 18, 2015) showed airborne asbestos concentrations of less than .01 fibers per cubic centimeter.

16. Respondent's representative Phillip Bae, whose signature appears below, attests under penalty of perjury pursuant to 28 U.S.C. § 1746, that:

- a) The legal name of the company to which these citations were issued on or about March 31, 2013 was Olivet Management, LLC. The company was, and is, a limited liability company registered in the state of Delaware.
- b) Olivet Management LLC's legal name was changed to Dover Greens LLC on or about December 1, 2015.

c) The legal name of the company to which these citations were issued is presently Dover Greens LLC.

d) I am authorized to execute this agreement on behalf of Dover Greens LLC.

Dated: March 18, 2016
New York, New York



Philip Bae
Member, Board of Directors
Dover Greens LLC

M. PATRICIA SMITH
Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor



SUZANNE DEMITRIO CAMPBELL
Senior Trial Attorney

Attorneys for Complainant
U.S. Department of Labor
THOMAS E. PEREZ, Secretary of Labor