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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
)
CHESAPEAKE PRODUCTS, INC., and)
FRIT, INC.)
)
Defendants.)
_____)

Civil Action No. 2:15cv434

CONSENT DECREE

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Chesapeake Products Superfund Site in Chesapeake, Virginia (“the Site”).

B. The Site is an inactive fertilizer production/packaging facility located in a heavily industrialized area of Chesapeake, Virginia. The Site is owned by Chesapeake Products, Inc. (“CPI”), which acquired the Site in 1992. Prior to that time, the Site was owned and operated by other companies. Industrial operations on the Site date back to as early as 1876.

C. In or about 2003, CPI ceased operations at the Site. The Site's buildings, damaged by severe weather event(s), fell into disrepair and suffered roof damage. Such disrepair and damage, in turn, exposed remaining material piles in the building to stormwater which collected in the buildings as flood water. The buildings were condemned by the City of Chesapeake as unsafe structures.

D. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future. EPA conducted removal assessments at the Site in 2005 and 2006. Analytical results indicated that Site soil, material piles, and flood water contained elevated levels of lead and other hazardous substances or pollutants and contaminants. On May 31, 2007, EPA initiated a time-critical removal action to address the lead contamination at the Site.

E. On August 30, 2007, EPA entered into a Settlement Agreement and Order on Consent for Removal Response Action ("AOC") with CPI and Frit Industries, Inc. ("Industries"), each of which is a wholly owned subsidiary of Frit, Inc. CPI and Industries agreed to remove material piles and flood water from the Site and to demolish Site buildings. All work agreed to under the AOC was completed between August 2008 and March 2009. On May 8, 2008, EPA issued CPI and Industries a Notice of Completion, pursuant to Section XXVI of the AOC.

F. EPA commenced the remaining removal activities at the Site in April 2009, including the removal of lead-contaminated surface soil and decontamination of concrete surfaces. In total, EPA removed approximately 4,412 tons of lead-contaminated soil and 83 tons of railroad ties, transporting them off-Site for disposal. Approximately 29,000 square feet of

contaminated surface soil was excavated to a depth of 1-2 feet below the surface. Excavated soil was replaced with clean fill which was then graded and seeded. The removal action was completed on February 26, 2010.

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

H. The United States alleges that Settling Defendants 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.

I. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint. Further, Frit, Inc., denies that it has any responsibility for the liabilities of CPI, CPI’s affiliates, or any subsidiary of Frit, Inc., and further denies responsibility for liabilities of any kind with respect to the removal action or the Site.

J. The United States has reviewed the Financial Information submitted by Settling Defendant CPI to determine whether Settling Defendant CPI is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendant CPI has limited financial ability to pay for response costs incurred and to be incurred at the Site.

K. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the admission or adjudication

of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree 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 Consent Decree or its appendices, the following definitions shall apply:

“Affected Property” means all real property at the Site and any other real property, owned or controlled by Owner Settling Defendant, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Financial Information” shall mean those financial documents identified in Appendix B.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually 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. Rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Owner Settling Defendant” shall mean Chesapeake Products, Inc.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and Settling Defendants.

“Past Response Costs” shall mean all costs, including but not limited to, direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the Effective Date, plus accrued Interest on all such costs through such date.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean Chesapeake Products, Inc. and Frit, Inc.

“Site” shall mean the Chesapeake Products Superfund Site, encompassing approximately seven and six-tenths acres (7.6 acres) adjacent to the southern branch of the Elizabeth River. The physical address of the Site is 1331 Priority Lane, Chesapeake, Virginia, and the map coordinates are latitude 36.8136150, and longitude -76.2873330. The Site is generally shown on the map included in Appendix A.

“State” shall mean the Commonwealth of Virginia.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

4. Payment by Settling Defendants for Past Response Costs. Settling Defendants shall pay to EPA the principal amount of \$200,000.00. Payment of the principal amount shall be made in two installments. The first installment payment of \$100,000.00 shall be made within thirty (30) days after the Effective Date and, if timely paid, shall include no Interest. The subsequent installment payment of \$100,000.00 is due on the one-year anniversary of the Effective Date. The subsequent installment payment shall also include an additional sum for Interest accrued on the unpaid portion of the principal amount calculated from the 30th day after the Effective Date, until the date of the payment. The Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Eastern District of Virginia shall send a calculation of the Interest due for the subsequent installment payment to Settling Defendants. Settling Defendants may pay the subsequent installment payment prior to the due date, but must contact the FLU in advance for a determination regarding the amount of Interest to be included with the payment. In the event any installment payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

5. Settling Defendants shall make payments by Fedwire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Eastern District of Virginia after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which shall be

used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Dr. Carl Schauble
Secretary, Chesapeake Products, Inc.
1792 Jodie Parker Road
Ozark, AL 36360

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIV (Notices and Submissions).

6. Deposit of Payment. The total amount of each payment to be paid pursuant to Paragraph 4 (Payment of Response Costs) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

7. Notice of Payment. At the time of each payment, Settling Defendants shall send notice that payment has been made to DOJ and EPA in accordance with Section XIV(Notices and Submissions), and to:

Lydia Guy, Docket Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC00)
Philadelphia, PA 19103

and to:

Barbara Borden
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3PM30)
Philadelphia, PA 19103

and to the EPA Cincinnati Finance Center by email at cinwd_acctsreceivable@epa.gov, or by mail to:

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

Such notice shall reference the CDCS Number, Site/Spill ID Number A3DVB, and DJ Number 90-11-3-10701.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Payments and Accelerated Payments. If Settling Defendants fail to make any payment required by Paragraph 4 (Payment by Settling Defendants for Past Response Costs) by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure, and if the first payment is not timely made, Interest shall accrue from the Effective Date. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

9. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 4 (Payment by Settling Defendants for Past Response Costs) are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$500.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days after the date of the 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 Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read “D 68010727
Environmental Protection Agency”

Each payment shall reference the CDCS Number, Site/Spill ID Number A3DV, and DJ Number 90-11-3-10701.

c. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 7.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY PLAINTIFF

14. Covenants for Settling Defendants by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree., including but not limited to, payment of all amounts due under Section V (Payment of Response Costs), and any Interest or stipulated penalties due thereon under Section VI (Failure to Comply with

Consent Decree). These covenants extend only to Settling Defendants and do not extend to any other person.

15. As it relates to Settling Defendant CPI, these covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant CPI and the financial and indemnity certification made by Settling Defendant CPI in Paragraph 36.

16. The United States agrees not to impose or enforce any liens on the Affected Property pursuant to Sections 107(l) or 107(r) of CERCLA, 42 U.S.C. §§ 9607(l) or 9607(r), as a result of response actions conducted at the Site by EPA as of the Effective Date.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

17. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Paragraph 14 (Covenants for Settling Defendants by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and

f. liability for any claims or causes of actions regarding the Site under RCRA.

18. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant CPI, or the financial or indemnity certification made by Settling Defendant CPI in Paragraph 36, is false or, in any material respect, inaccurate.

IX. COVENANTS BY SETTLING DEFENDANTS

19. Covenants by Settling Defendants. Settling Defendants 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 Past Response Costs and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response action at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the Commonwealth of Virginia, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.

20. Nothing in this Consent Decree 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).

21. Waiver of Claims by Settling Defendants.

a. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) De Micromis Waiver. For all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal,

treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) Ability to Pay Waiver. For response costs relating to the Site against any person that has entered into a final settlement based on limited ability to pay with EPA with respect to the Site.

b. Exceptions to Waivers.

(1) The waivers under this Paragraph 21 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

(2) The waiver under Paragraph 21.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site;

or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

22. Except as provided in Paragraph 21 (Waiver of Claims by Settling Defendants), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section VII (Covenants by Plaintiffs) and Section IX (Covenants by Settling Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree 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).

23. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs.

The “matters addressed” in this Consent Decree do not include any claims or causes of action regarding the Site under RCRA.

24. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, “resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).”

25. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within ten (10) days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within ten (10) days after service or receipt of any Motion for Summary Judgment, and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing

in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VII (Covenants by Plaintiff).

XI. PROPERTY REQUIREMENTS

27. Notice to Successors-in-Title.

a. Owner Settling Defendant shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; and (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA performed a response action at the Site; and (iii) that potentially responsible parties entered into a settlement that required implementation of such response action. Owner Settling Defendant shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Settling Defendant shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

- (1) Notify the proposed transferee that EPA performed a response action regarding the Site, that potentially responsible parties entered into a settlement to implement response actions regarding the Site, including information identifying such settlement; and

- (2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

28. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, Owner Settling Defendant shall continue to comply with its obligations under the Consent Decree.

29. Notwithstanding any provision of the Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

30. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site, 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 regarding the Site.

31. Privileged and Protected Claims.

a. Settling Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 31.b, and except as provided in Paragraph 31.e.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendants shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendants shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendants' favor.

c. Settling Defendants may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

32. Business Confidential Claims. Settling Defendants may assert that all or part of a Record submitted to Plaintiff under this Section or Section XIII (Retention of Records) is business confidential 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). Settling Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendants assert a business confidentiality claim. Records submitted to EPA 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 Defendants 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 Records without further notice to Settling Defendants.

33. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RETENTION OF RECORDS

34. Until ten (10) years after the Effective Date, each Settling Defendant shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site, must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

35. At the conclusion of the record retention period, Settling Defendants shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA or DOJ, and except as provided in Paragraph 31 (Privileged and Protected Claims), Settling Defendants shall deliver any such Records to EPA.

36. Each Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Defendant executes this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XIV. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Consent Decree, 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. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-10701

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-10701

As to EPA: Robin E. Eiseman
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC41)
Philadelphia, PA 19103
eiseman.robins@epa.gov

and

Kenneth I. Rose, III
Financial Analyst
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3HS62)
Philadelphia, PA 19103
rose.kenneth@epa.gov

As to Settling Defendants: Dr. Carl Schauble
Secretary, Chesapeake Products, Inc.
1792 Jodie Parker Road
Ozark, AL 36360

Shelton E. Allred
President, Frit Inc.
1792 Jodie Parker Road
Ozark, AL 36360

XV. RETENTION OF JURISDICTION

38. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

39. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a map of the Site, and "Appendix B" is a list of the financial documents submitted to EPA by Settling Defendant CPI.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

40. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or

considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate.

Settling Defendants consent to the entry of this Consent Decree without further notice.

41. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

42. Each undersigned representative of a Settling Defendant and of the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

43. Each Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

44. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XIX. FINAL JUDGMENT

45. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants.

The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED, THIS _____ DAY OF _____, 2015.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chesapeake Products, Inc., relating to the Chesapeake Products Superfund Site in Chesapeake, Virginia.

FOR THE UNITED STATES OF AMERICA:

9/23/2015

Dated



NATHANIEL DOUGLAS
Deputy Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611




ROBERT LEFEVRE
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

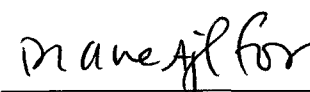
DANA J. BOENTE
United States Attorney
Eastern District of Virginia


A handwritten signature in black ink, appearing to read "Daniel Shean", written over a horizontal line.

DANIEL SHEAN
Assistant United States Attorney
United States Attorney's Office
101 West Main Street, Suite 8000
Norfolk, VA 23510

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chesapeake Products, Inc., relating to the Chesapeake Products Superfund Site in Chesapeake, Virginia.


SHAWN M. GARVIN
Regional Administrator
U.S. Environmental Protection Agency, Region III
1650 Arch Street, (3RA00)
Philadelphia, PA 19103

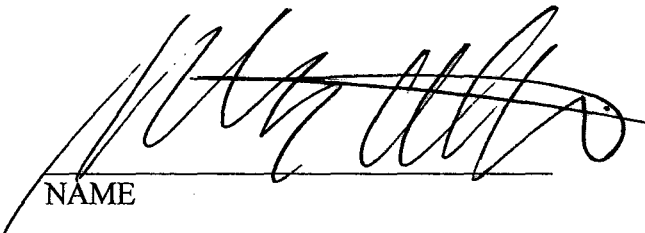

MARY COE
Acting Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street, (3RA00)
Philadelphia, PA 19103


ROBIN E. EISEMAN
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC41)
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chesapeake Products, Inc., relating to the Chesapeake Products Superfund Site in Chesapeake, Virginia.

FOR FRIT, INC.:

7/27/2015
Date


NAME

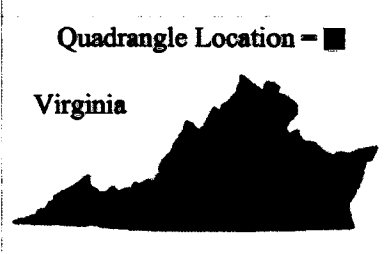
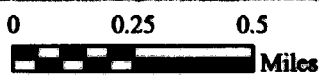
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): S.E. Allred
Title: President
Address: Po Box 1589, Ozark, AL 36361
Phone: 334 774 2515
email: seallred@fritinc.com

Appendix A



Source: Modified from USGS 7.5-Minute Series Topographic Quadrangle; Norfolk South, Virginia, 1965, Photorevised 1986



Chesapeake Products Site
Chesapeake, Virginia

Figure 1
Site Location Map

TDD No. E43-026-09-11-002
EPA Contract No. EP-S3-05-02

Map created on July 12, 2009
by D. Call, Tetra Tech EM Inc.



Appendix B

DECLARATION OF CARL SCHAUBLE, ON BEHALF OF CHESAPEAKE PRODUCTS, INC., IDENTIFYING FINANCIAL DOCUMENTS/INFORMATION PROVIDED TO THE UNITED STATES RELATED TO THE CONSENT DECREE IN THIS CIVIL ACTION BETWEEN THE UNITED STATES AND SETTLING DEFENDANTS

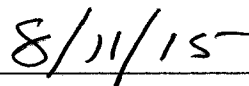
I, Carl Schauble, hereby certify that to the best of my knowledge, information and belief the following documents represent true, accurate and complete responses to the United States' requests concerning my financial condition and the financial condition of Chesapeake Products, Inc. I further certify that there are no other documents that would show a materially different financial position.

1. Financial Statement of Corporate Debtor signed by Carl E. Schauble on November 7, 2005.
2. Financial Statement of Corporate Debtor signed by Carl E. Schauble on September 9, 2011.
3. Frit, Inc. and Subsidiaries Federal Income Tax Form 1120 for the fiscal years ending June 30, 2006, through June 30, 2013.
4. Frit, Inc. Alabama Corporation Income Tax Form 20C for the fiscal years ending June 30, 2006, through June 30, 2013.
5. Third Amended and Restated Loan and Security Agreement, dated July 2006, between Frit, Inc., et.al and Wachovia Bank, National Association.

I declare under penalty of perjury under the laws of the United States of America that the foregoing documents and information are true and correct to best of my knowledge, recognizing that some of the documents and/or information were prepared by third parties based upon information that was supplied by me.



Carl Schauble, Secretary



Date

