

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA)
and the MISSISSIPPI)
COMMISSION ON)
ENVIRONMENTAL QUALITY,)

Plaintiffs,)

v.)

ESTATE OF WILLIAM TROY)
BURFORD and SONFORD)
PRODUCTS CORPORATION,)

Defendants.)

Civil Action No. 3:16cv869 CWR-FKB

CONSENT DECREE

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the Mississippi Commission on Environmental Quality (“Commission”), acting by and through the Mississippi Department of Environmental Quality (“MDEQ”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9607, and the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. §§ 49-17-1, et seq. (Rev. 2012), and the Solid Wastes Disposal Law of 1974, Miss. Code Ann. §§ 17-17-1, et seq. (Rev. 2012), 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 Sonford Products Superfund Site (“Site”), and to recover damages for injury to, destruction of, or loss of natural resources at the



Site and surrounding riparian corridors, including the reasonable costs of assessing such injury, destruction or loss.

B. The 6-acre Site is located on Flowood Drive in Flowood, Rankin County, Mississippi. The Site includes the Sonford Products parcel, an undeveloped parcel referred to as the Wixson parcel, and the Payne Drive neighborhood. Dense woods cover the Wixson parcel. The Payne Drive neighborhood includes 22 permanent and mobile homes. The homes in the neighborhood are occupied by both homeowners and tenants.

C. From 1972 to 1985, Sonford Products Corporation and a separate entity known as Sonford International operated, respectively, two separate chemical manufacturing plants at the Site. Currently, a concrete septic tank manufacturing facility operates its businesses at the Site.

D. Contamination resulted from operations at the Site. Site investigations found contamination in soil, sediment, surface water and groundwater that could potentially harm people in the area. Contaminants of concern include pentachlorophenol (“PCP”), dioxin, pesticides and metals. Contamination affected soil in the Payne Drive neighborhood above an unacceptable risk at eight parcels and in an adjacent ditch separating the Sonford Products parcel from the neighborhood. Groundwater contamination remains at the Site. However, groundwater contamination does not pose a threat to people because a water line connects residences and businesses onsite to the public water supply.

E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 7, 2007.

F. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA,

42 U.S.C. § 9604, and will undertake additional response actions in the future. Site investigations and cleanup activities focus on two areas, which EPA refers to as operable units, or OUs. These areas include OU-1: contaminated subsurface soil and ground water; and OU-2: contaminated surface soil, sediment and surface water. In 2009, EPA issued a cleanup plan (a “Record of Decision” or “ROD”) for OU-1. The plan included the following activities: (a) Removing non-aqueous phase liquid (NAPL), the contamination source; (b) Treating contaminated soil and groundwater using chemical oxidation and living organisms to break down contamination; (c) Injecting chemicals into the subsurface soil to treat contamination; and (d) Using monitored natural attenuation to address contaminated groundwater. In 2010, EPA issued a ROD for OU-2. The plan included the following activities: (a) Digging up and consolidating contaminated soil on site and off site; (b) Using a liner system to cover contaminated soil and sediment on site and to prevent leaching of contamination into subsurface soil; and (c) Using monitored natural attenuation to address contaminated surface water.

G. In performing response actions at the Site, Plaintiffs have incurred response costs and will continue to incur response costs in the future.

H. The Estate of William T. Burford (“Burford Estate”) is a testamentary estate existing under the laws of the State of Mississippi. William T. Burford was a natural person residing in Ridgeland, Mississippi. Mr. Burford owned a portion of the Site at the time of a disposal of a hazardous substance at the Site. Mr. Burford is also the former President and Director of Sonford Products Corporation. Sonford Products Corporation was incorporated in, and dissolved by, the State of Mississippi. Mr. Burford died in October, 2014. William T. Burford’s son, John W. Burford, is executor of the Burford Estate, and his role in this case is

solely in his capacity as Executor of the Burford Estate, for the single purpose of facilitating the payment of insurance settlement proceeds from the Estate to the Plaintiffs.

I. Plaintiffs allege that 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, and for natural resource damages at the Site.

J. EPA has reviewed the Financial Information submitted by William T. Burford in his individual capacity, and by Sonford Products, to determine whether Defendants are financially able to pay response costs incurred and to be incurred, and for natural resource damages at the Site. Based upon this Financial Information, Plaintiffs have determined that Defendants have no financial ability to pay for response costs incurred and to be incurred, and for natural resource damages at the Site.

K. EPA has also reviewed the Insurance Policies submitted by William T. Burford on behalf of Sonford Products. No later than the date of Defendants' signature of this Consent Decree, Defendants and their insurers shall have entered into confidential settlement agreements related to Defendants' claims under the Insurance Policies and arising out of the Plaintiffs' claims in this matter ("Confidential Settlement Agreements"). As set forth in Section VI (Confession and Satisfaction of Judgment), Defendants' payments to Plaintiffs under this Consent Decree shall be paid from proceeds received by Defendants pursuant to the Confidential Settlement Agreements.

L. The payment of the sums required pursuant to Paragraph 6 will, upon receipt by Plaintiffs of such payment, satisfy the judgment set forth in Paragraph 5 as it relates to the Insurance Policies. Further, upon information and belief, it is Plaintiffs' understanding that, pursuant to the terms of the Confidential Settlement Agreements between Defendants and their

insurers, no rights to insurance proceeds will remain under the Insurance Policies, or any other insurance policies allegedly issued by Defendants' insurers, from which the judgment set forth in Paragraph 5 may be satisfied.

M. Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

N. Plaintiffs and 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 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 Consent 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 Defendants. Defendants consent to and shall not challenge entry 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, the State, and upon Defendants and their predecessors, successors, assigns, affiliates, officers, and principals.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "Site" shall mean the Sonford Products Superfund Site.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- c. "Confidential Settlement Agreements" shall mean those confidential agreements entered into by the Defendants with each of the issuers of the Insurance Policies resolving Defendants' claims under the Insurance Policies.

d. "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.

e. "Date of Entry" shall mean the date the Court signs this Consent Decree.

f. "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 holiday, the period shall run until the close of business of the next working day.

g. "Defendants" shall mean the Burford Estate and Sonford Products Corporation.

h. "DOJ" shall mean the United States Department of Justice and its successor departments, agencies or instrumentalities.

i. "Effective Date" shall mean the date upon which the approval of this Consent Decree is recorded on the Court's docket.

j. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies or instrumentalities.

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

l. "Financial Information" shall mean the financial information submitted by William T. Burford to EPA on or about December 3, 2007, and January 15, 2008.

m. "Insurance Policies" shall mean those policies issued by Hartford Fire Insurance Company (Policy No. 43SMPWY5408), Nationwide Mutual Fire

Insurance Company (Policy No. 63 SM107 831 0001), and Illinois Employers Insurance of Wausau (Policy No. 81 GA 26194).

n. "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.

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

p. "Parties" shall mean the United States, the Mississippi Commission on Environmental Quality, and Defendants.

q. "Plaintiffs" shall mean the United States and the Mississippi Commission on Environmental Quality.

r. "Response Costs" shall mean all costs of response, including but not limited to direct and indirect costs that the United States or the State has incurred or will incur at or in connection with the Site through the Date of Entry of this Consent Decree.

s. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

t. "State" shall mean the State of Mississippi, acting by and through MDEQ and the Commission.

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

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is to avoid litigation by allowing Defendants to make cash payments from the proceeds of insurance claims to address their alleged civil liability for the Site, as provided in the Covenant Not to Sue by Plaintiffs in Section IX, and subject to the Reservations of Rights by Plaintiffs in Section X.

VI. CONFESSION AND SATISFACTION OF JUDGMENT

5. Defendants hereby agree and confess to entry of a judgment against themselves and in favor of the Plaintiffs in the amount of \$27,516,648.30. Although Plaintiffs may file this judgment as and where necessary to preserve secured creditor status in favor of Plaintiffs, Defendants acknowledge that such filing is not a condition precedent to Plaintiffs' secured creditor status. This judgment shall remain in effect until Defendants have complied with all requirements in this Consent Decree. Such judgment shall be satisfied solely through recovery of insurance proceeds from the Insurance Policies and any other relevant insurance policies that may be identified or discovered after the Effective Date held by Defendants, their predecessors in interest, or affiliates. Any cash payments made by Defendants pursuant to this Consent Decree shall, in the aggregate, not exceed the judgment amount. Upon approval and entry, this Consent Decree shall constitute the final judgment for resolution of the Plaintiffs' claims against Defendants, and no other form of judgment shall be required.

6. **Insurance Settlements.**

a. Defendants may retain and disperse from any proceeds paid under the Confidential Settlement Agreements (i) the sum of \$2,500.00; plus (ii) reasonable fees

and expenses associated with administration of the Estate of William Troy Burford; provided, however, that such fees and expenses (A) are substantiated in writing by Defendants to the Plaintiffs; and (B) are approved in writing by the United States prior to any disbursement of such fees and expenses.

b. The amount remaining after such reasonable fees and expenses have been deducted from the proceeds obtained under the Confidential Settlement Agreements shall be paid consistent with the instructions for payment in Paragraph 7 below, within 30 days of the Effective Date, as follows: (i) 95 percent (95%) to the United States; and 5 percent (5%) to the State.

7. Payment instructions.

a. Payments to the United States pursuant to Paragraph 6 shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Southern District of Mississippi 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 FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures provided by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of Mississippi shall reference the Civil Action Number assigned to this case and DOJ File Number 90-11-3-10806. At the time of payment, Defendants shall send notice that payment has been made to DOJ and EPA in accordance with Section XV

(Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

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

and to:

Paula V. Painter
Environmental Protection Specialist
SD-SEIMB, 11th Floor
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Such notice shall reference the CDCS Number, Site/Spill ID Number 04J5, and DOJ Case Number 90-11-3-10806.

b. Payments to the State pursuant to Paragraph 6 shall be made by check or money order made payable to MDEQ and delivered to the following:

Mailing address: Mississippi Dept. of Environmental Quality
Legal Division
P.O. Box 2261
Jackson, MS 39225

Shipping address: Mississippi Dept. of Environmental Quality
Legal Division
515 E. Amite Street
Jackson, MS 39201

VII. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments and Stipulated Penalty.
- a. If any amounts due under Paragraph 6 are not paid by the required date, Interest shall accrue on the unpaid balance through the date of payment.
- b. If any amounts due under Paragraph 6 are not paid by the required date, Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated

penalty, in addition to Interest required by subparagraph 8(a), \$100 per violation per day that such payment is late.

c. If Defendants do not comply with the non-payment obligations set forth in the Consent Decree, including obligations related to access and institutional controls, Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$1,000 per violation per day of such noncompliance.

d. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. Defendants shall identify all payments to EPA under this Paragraph as “stipulated penalties” and shall pay them by official bank check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall identify the name and address of the party making payment, the Site name, Site/Spill ID Number 04J5, the CDCS Number, and DJ # 90-11-3-10806, and shall be sent to:

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

At the time of payment, Defendants shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 28.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified 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 or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or

completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

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

11. 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 Defendants from payment as required by Paragraph 6, or from performance of any other requirements of this Consent Decree.

VIII. CERTIFICATION

12. Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, that they:

a. have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to their potential liability regarding the Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for documents or information regarding the Site and their financial circumstances;

b. have submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have

not materially changed between the time the Financial Information was submitted to EPA and the time Defendants executed this Consent Decree; and

c. have fully disclosed the existence of any insurance policies, or evidence of such policies, that may cover claims relating to cleanup of the Site, including the Insurance Policies and, except for the Confidential Settlement Agreements related to Defendants' claims under the Insurance Policies, that they have not settled, compromised or assigned any insurance rights or the assigned claims proceeds prior to approval of this Consent Decree.

IX. COVENANTS NOT TO SUE BY PLAINTIFFS

13. Except as specifically provided in Paragraph 14 (Reservation of Rights by Plaintiffs), Plaintiffs covenant not to sue or to take administrative action against Defendants for actions relating to the Site (i) pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Miss. Code Ann. §§ 49-17-43, and Miss. Code Ann. §§ 17-17-29, to recover Response Costs incurred at the Site; (ii) pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606; and (iii) pursuant to Section 107(a)(4)(c) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), and Miss. Code Ann. §§ 49-17-43, and Miss. Code Ann. §§ 17-17-29, to recover damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss. These covenants not to sue, and all reservations thereto in this Consent Decree, shall also apply to Defendants' predecessors, successors, assigns, officers, principals, and to John W. Burford in his capacity as executor of the Burford Estate, but only to the extent that the alleged liability is based on its/his status and in its/his capacity as a predecessor, successor, assign, officer, principal, or executor. These covenants not to sue do not extend to any other

person. With respect to both present and future liability, these covenants not to sue shall take effect upon receipt by Plaintiffs of all payments required under Paragraph 6. These covenants not to sue are conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree, including but not limited to cooperation in addressing inquiries by insurers, and execution of all necessary agreements to allow the pursuit and collection of insurance claims proceeds. These covenants not to sue are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by William T. Burford. If the Financial Information is subsequently determined by the Plaintiffs to be false or, in any material respect, inaccurate, these covenants not to sue and the contribution protection in Paragraph 20 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the Plaintiffs' right to pursue any other causes of action arising from William T. Burford's false or materially inaccurate information.

X. RESERVATION OF RIGHTS BY PLAINTIFFS

14. The Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve all rights against Defendants with respect to:

- a. liability for failure of Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;

c. liability based on the ownership or operation of the Site by Defendants when such ownership or operation commences after signature of this Consent Decree by Defendants;

d. liability based on Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Defendants; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

15. Notwithstanding any other provision of this Consent Decree, Plaintiffs reserve, 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 any of the certifications made by Defendants in Paragraph 12 are false or, in any material respect, inaccurate.

XI. COVENANTS NOT TO SUE BY DEFENDANTS

16. Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site, or this Consent Decree, including but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Mississippi Constitution, the Tucker Act, 28 U.S.C. § 1491, and the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the Plaintiffs pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

17. 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).

18. Defendants agree not to assert any claims or causes of action that they may have for matters relating to the Site, including for contribution and for natural resource damages and assessment costs, against any other person, except as requested by Plaintiffs as necessary to the pursuit of insurance claims proceeds. Furthermore, nothing herein shall be deemed to limit in any way any rights, claims, causes of action, or entitlements that Defendants and the Plaintiffs may have to seek and obtain payment from other entities for the full amount of Defendants' liability at the Site.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

19. Except as provided in Paragraph 18, 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 Paragraph 18, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they 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).

20. The Parties agree, and by entering this Consent Decree this Court finds, that Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are: all response actions taken or to be taken and all Response Costs incurred or to be incurred; and recovery for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss associated with the Site. Provided, however, that if the United States exercises rights under the reservations in Section X (Reservations of Rights by United States), other than in Paragraphs .a (liability for failure to meet a requirement of Consent Decree) or .b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

21. Defendants agree that, with respect to any suit or claim brought by them for matters related to this Consent Decree, they will notify the Plaintiffs in writing no later than 60 days prior to the initiation of such suit or claim. Defendants also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ and the State in writing within ten days after service of the complaint or claim upon it. In addition, Defendants shall notify EPA and DOJ and the

State within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

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

XIII. SITE ACCESS AND ENVIRONMENTAL COVENANTS

23. If any portion of the Site, or any other real property where access or land/water use restrictions are needed is now owned or controlled by Defendants, or subsequently acquired by Defendants, Defendants shall:

a. Provide the United States, the State, and their representatives, contractors and subcontractors access at all reasonable times to the Site or other such real property to conduct any activity relating to the response action at the Site, including but not limited to:

1. Monitoring, investigation, removal, remedial, or other activities;
2. Verifying any data or information submitted to the United States or the

State;

3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples; and
5. Assessing the need for, planning, or implementing response actions at or near the Site.

6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Defendants or their agents;

7. Assessing compliance by Defendants;

8. Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

9. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. Refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal or remedial measures to be performed at the Site.

c. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Site, Defendants shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls.

25. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. RETENTION OF RECORDS

26. Until five years after entry of this Consent Decree, Defendants shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to the Insurance Policies or evidence of the Insurance Policies, or to response actions taken at the Site.

27. After the conclusion of the five-year document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records, and, upon request by the United States or the State, Defendants shall deliver any such records to the requesting Party. Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the State shall be withheld on the grounds that they are privileged.

XV. NOTICES AND SUBMISSIONS

28. 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. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the State, and Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-10806)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Director, Superfund Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta Georgia 30303

and:

Paula V. Painter
Environmental Protection Specialist
SD-SEIMB, 11th Floor
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

As to the State:

Mississippi Dept. of Environmental Quality
Legal Division
P.O. Box 2261
Jackson, MS 39225

As to Defendants:

Paul Gunn
Watkins & Eager PLLC
400 East Capitol Street

Jackson MS 39201

XVI. RETENTION OF JURISDICTION

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

XVII. INTEGRATION/APPENDICES

30. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between 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.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

31. This Consent Decree shall be lodged with the Court for a period of not less than 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 which indicate that this Consent Decree is inappropriate, improper, or inadequate. The State and Defendants consent to the entry of this Consent Decree without further notice.

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

XIX. SIGNATORIES/SERVICE

33. The undersigned representatives of the Parties each certify 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.

34. Defendants hereby agree 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 Defendants in writing that it no longer supports entry of the Consent Decree.

35. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree 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.

XX. FINAL JUDGMENT

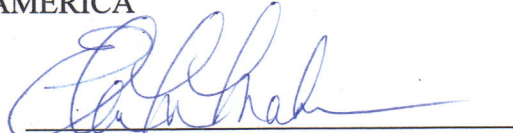
36. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 20____.

United States District Judge

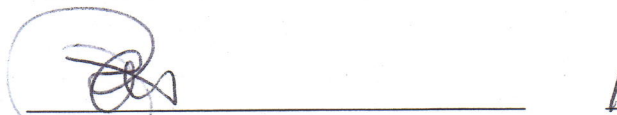
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Estate of William Troy Burford et al., relating to the Sonford Products Superfund Site.

FOR THE UNITED STATES OF AMERICA



ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section

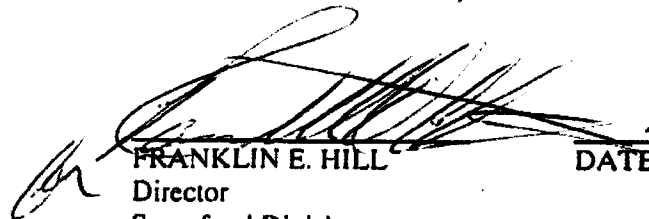
7/12/16
DATE



PATRICIA L. HURST
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

11/11/16
DATE

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4


 **FRANKLIN E. HILL** **DATE** 11/27/16

Director
Superfund Division
U.S. EPA Region 4
Superfund Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Of Counsel:

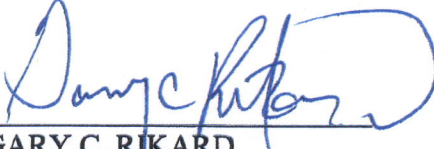
Gwendolen Bivins
Attorney-Adviser
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

FOR THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, AND
THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY



ROY FURRH 8/18/16
DATE
General Counsel, Mississippi Department of
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P.O. Box 2261
Jackson, MS 39225
Tel: (601) 961-5260
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ATTORNEY FOR MISSISSIPPI DEPARTMENT
OF ENVIRONMENTAL QUALITY AND
MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY



GARY C. RIKARD 8/19/16
DATE
Executive Director
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225

FOR THE ESTATE OF WILLIAM TROY BURFORD AND SONFORD PRODUCTS CORPORATION

Date: 8/11/2016

By: 
JOHN W. BURFORD,
As Executor for
the Estate of William Troy Burford

2016-11-04 15:53