

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

UNITED STATES OF AMERICA;
SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL, AND SOUTH CAROLINA
DEPARTMENT OF NATURAL
RESOURCES, AS AGENCIES OF THE
STATE OF SOUTH CAROLINA AND
AS TRUSTEES FOR NATURAL
RESOURCES,

Plaintiffs,

v.

BEAZER EAST, INC.,

Defendant.

CIVIL NO. 2:18-cv-3051-DCN

CONSENT DECREE

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I. BACKGROUND

A. The United States of America, on behalf of the United States Department of the Interior (“DOI”) and the National Oceanic and Atmospheric Administration (“NOAA”) of the United States Department of Commerce, filed the complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”) and Section 311(f) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(f), seeking reimbursement for Natural Resource Damages (defined below) due to releases of hazardous substances from the National Priorities List (“NPL”) Superfund site known as the *Koppers Co., Inc. (Charleston Plant) NPL Site* (“Koppers Site”) in Charleston, South Carolina. DOI, acting through the United States Fish and Wildlife Service (“FWS”), and NOAA have been designated as Federal Trustees under Section 107(f) of CERCLA, 42 U.S.C. § 9607(f) and under the CWA, 33 U.S.C. § 2706(b). See Executive Order 12580, as amended by Executive Order 12777, and the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 C.F.R. Part 300.

B. The Office of the Governor of the State of South Carolina through the South Carolina Department of Health and Environmental Control (“SCDHEC”) and the South Carolina Department of Natural Resources (“SCDNR”) (collectively, the “State Trustees”), are co-plaintiffs on the complaint in this matter, and seek damages for injury to natural resources pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and pursuant to South Carolina Code Ann. Section 44-56-200. The State Trustees are acting in their capacity as Trustees for Natural Resources which have been affected by the releases of hazardous substances. 40 C.F.R. § 300.605.

C. In the Complaint, the Plaintiffs allege that Beazer East, Inc. (“Defendant”), formerly known as Koppers Company, Inc., is liable for injury to, destruction of, loss of, or loss of use of certain Natural Resources resulting from the release of oil or hazardous substances including, but not limited to, polycyclic aromatic hydrocarbons (“PAHs”), arsenic, copper, chromium, lead, and zinc into the soils, sediments, surface water and groundwater at or from the Koppers Site.

D. The Federal and State Trustees share trusteeship for Natural Resources alleged to be affected by the Release and have worked together to assess the alleged Natural Resources injuries and losses allegedly caused by the Release and to plan restoration to compensate for those losses. The Trustees believe the obligations of the Defendant set forth in this Consent Decree, including the obligation to perform restoration and pay additional sums as described herein, constitute adequate compensation for Natural Resources Damages allegedly arising from the Release.

E. On October 21, 2016, the Federal and State Trustees jointly published a document entitled “Draft Damage Assessment and Restoration Plan and Environmental Assessment for The Koppers Site, Charleston, South Carolina” (“Draft DARP/EA”) that outlines a proposal to restore salt marsh and benthic habitat at two sites within the Charleston Harbor estuary to compensate the public for alleged injuries to Natural Resources, including ecological services allegedly injured, lost or destroyed due to the Release. Public notice of the Draft DARP/EA was published in a major local newspaper of general circulation, and the public was provided 30 days to submit comments on the Draft DARP/EA. No comments were received and, on July 10, 2017, the Federal and State Trustees issued a Final DARP/EA and Finding of No

Significant Impact.

F. Neither the execution of this Consent Decree by the Defendant nor the entry of this Consent Decree by the United States District Court shall be deemed or construed to be: (1) an admission by the Defendant of any liability arising out of the transactions or occurrences alleged in the Complaint; (2) an admission by the Defendant that the Plaintiffs' assessment of the Natural Resource Damages allegedly resulting from the Release is correct or that there has been any damage to Natural Resources; (3) an acknowledgement that a release of oil or hazardous substances at the Koppers Site caused Natural Resource Damages; or (4) a waiver or estoppel of Defendant's factual and legal defenses to any alleged liability for Natural Resource Damages at this or any other location.

G. The Defendant does not admit, does not waive and reserves the right to dispute any factual or legal statements, positions or assertions set forth in this Consent Decree except in an action to enforce the Consent Decree. Defendant denies all allegations in the Complaint.

H. This Consent Decree resolves alleged Natural Resource Damages recoverable by the United States and the State from Defendant for injury to, destruction of, or loss of use or impairment of Natural Resources, except as otherwise set forth in this Consent Decree.

I. The Parties to this Consent Decree agree, and the Court by entering this Consent Decree finds, that this Consent Decree: (i) has been negotiated by the Parties in good faith; (ii) will avoid prolonged and complicated litigation among the Parties; (iii) will expedite the restoration of Natural Resources or resource services that were allegedly injured or lost due to the Release; and (iv) is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367(a), 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 1321(f). This Court also has personal jurisdiction over the Defendant. The United States and each State Trustee are authorized to bring this action pursuant to 42 U.S.C. § 9607(f). Solely for the purposes of this Consent Decree, including the enforcement thereof, Defendant waives all objections and defenses that it may have to jurisdiction of this Court or to venue in this District. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b).

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State Trustees, and upon the Defendant and its 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 the Defendant under this Consent Decree.

3. The undersigned representative of the Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Defendant to this document, and has identified 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. Defendant shall notify the U.S. Department of Justice, NOAA, DOI, SCDNR and SCDHEC of any change in the identity or address of the Defendant, its agent for service, or its counsel.

4. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent

Decree, as well as to any vendor, supplier, or contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of their officers, directors, employees, agents, vendors, suppliers, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

6. Unless otherwise defined herein, terms used in this Consent Decree that are defined in CERCLA, 42 U.S.C. § 9601, or in regulations promulgated pursuant to CERCLA, shall have the meanings assigned to them in that statute or regulation. Whenever the terms set forth below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. “CERCLA” means the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. “Clean Water Act” or “CWA” means the Clean Water Act of 1972, 33 U.S.C. §1251, *et seq.*
- c. “Complaint” means the Complaint filed by the United States, SCDNR and SCDHEC in this action.
- d. “Consent Decree” or “Decree” means this Consent Decree and all appendices attached hereto. All appendices are incorporated herein by reference.
- e. “Day” means a calendar day unless expressly stated to be a Working Day.
- f. “Defendant” means Beazer East, Inc.

- g. “DOI” means the United States Department of the Interior and any successor departments or agencies of the United States.
- h. “Drayton Hall Restoration Project” means the natural resource restoration project required by Section VI, and as more fully described in the Drayton Hall Restoration Project Statement of Work attached as Appendix A, of this Consent Decree.
- i. “Effective Date” means the effective date of this Consent Decree as provided in Section XIV of this Consent Decree.
- j. “Federal Trustees” means the United States Department of the Interior, acting through the United States Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration of the United States Department of Commerce.
- k. “FWS” means the Fish and Wildlife Service of the United States Department of the Interior, and any successor departments or agencies of the United States.
- l. “Interest” means interest calculated in the manner specified by CERCLA Section 107(a), 42 U.S.C. § 9607(a).
- m. “Natural Resources” means that definition as provided in 42 U.S.C. § 9601(16) and 9607(a)(4)(C), and applicable regulations at 43 C.F.R. Part 11, as well as applicable South Carolina law, and shall include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, pertaining to, or otherwise controlled by the United States or the State of South Carolina.
- n. “Natural Resource Damages” means any damages recoverable by the United States or the State of South Carolina on behalf of the public for injury to, destruction of,

loss of, or loss of use of Natural Resources at the Koppers Site as a result of an alleged release of oil or hazardous substances, including but not limited to: (i) the reasonable costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in value, or loss of use of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable state law and recoverable under CERCLA Section 107(a), 42 U.S.C. § 9607(a) and under Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321.

o. “NOAA” means the National Oceanic and Atmospheric Administration of the United States Department of Commerce.

p. “NTHP” means the National Trust for Historic Preservation.

q. “Paragraph” means a portion of this Decree identified by an Arabic numeral or an upper-case letter.

r. “Parties” means the Defendant, the United States, and SCDNR and SCDHEC as agencies of the State of South Carolina, and “Party” means any one of the named “Parties.”

s. “Plaintiffs” means the United States, SCDNR and SCDHEC; each separately, “Plaintiff.”

t. “Release” means the release of oil or hazardous substances including, but not limited to, polycyclic aromatic hydrocarbons (PAHs), arsenic, copper, chromium, lead, and zinc into the soils, sediments, surface water and groundwater at or from the Koppers Site.

- u. “Section” means a portion of this Decree identified by a Roman numeral.
- v. “Koppers Site” means the National Priorities List (“NPL”) Superfund site known as the *Koppers Co., Inc. (Charleston Plant) NPL Site*, located in Charleston, South Carolina, including particularly the Koppers Company wood-treatment facility on approximately 45 acres of the Site that is generally bounded on the north by Milford Street, on the south by Braswell Street, on the east by the King Street Extension, and on the west by the Ashley River.
- w. “SCDHEC” means the South Carolina Department of Health and Environmental Control.
- x. “SCDNR” means the South Carolina Department of Natural Resources.
- y. “SOW” means the Statement of Work for the Drayton Hall Restoration Project, attached as Appendix A to this Consent Decree.
- z. “State” means the State of South Carolina.
- aa. “State Trustees” means SCDNR and SCDHEC.
- bb. “Subparagraph” means a portion of this Consent Decree identified by a lower case letter or an Arabic number in parenthesis.
- cc. “Subsection” means a portion of this Consent Decree identified by a Roman numeral and an upper-case letter.
- dd. “Trustees” or “Natural Resource Trustees” means, collectively and/or individually, the State Trustees and the Federal Trustees.
- ee. “United States” means the United States of America, acting on behalf of DOI and NOAA, as Natural Resource Trustees.

ff. “Working Day” shall mean a day other than a Saturday, Sunday, or Federal holiday. 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.

V. GENERAL PROVISIONS

7. This Consent Decree provides the terms upon which the Parties agree to settle all claims of the Plaintiffs against the Defendant, under applicable state and federal law, for Natural Resource Damages allegedly resulting from the Release.

8. In settlement of the claims of the Natural Resource Trustees, Defendant will perform those actions provided in Section VI (Compensation for Natural Resource Injuries) and make the payments set forth in Section VII (Reimbursement of Costs) below.

9. All activities undertaken by the Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

VI. COMPENSATION FOR NATURAL RESOURCE INJURIES

A. DRAYTON HALL RESTORATION PROJECT

10. Defendant shall fund, perform, and complete the Drayton Hall Restoration Project Statement of Work described in Appendix A to this Consent Decree (all provisions of which are incorporated in and enforceable under this Consent Decree), in accordance with the procedures set forth in this Section and the Statement of Work. In the event of a conflict between the procedures outlined in this Section and the procedures outlined in the Statement of Work, the Statement of Work controls.

11. Defendant's Project Coordinator. Not later than 30 Days after the Effective Date of this Consent Decree, Defendant shall notify the Trustees, in writing, of the name, address, and telephone number of its designated Project Coordinator. The person so designated shall have technical expertise sufficient to adequately manage all aspects of the Drayton Hall Restoration Project and shall be responsible for supervising and directing all activities necessary to implement the Drayton Hall Restoration Project in accordance with the terms of this Consent Decree. Defendant may subsequently change its designated Project Coordinator by providing written notice to the Trustees at least 30 Days prior to the change.

12. Trustee Council. The Trustees shall oversee implementation of the Drayton Hall Restoration Project specified in this Consent Decree. Such oversight shall be effected through a Trustee Council, consisting of one representative designated by each of FWS, NOAA, SCDHEC, and SCDNR. This Council shall act on behalf of the Trustees, and by consensus, on all matters related to the Drayton Hall Restoration Project under the terms of this Consent Decree, including, but not limited to:

- a. overseeing implementation of the Drayton Hall Restoration Project, including construction and monitoring;
- b. reviewing and approving appropriate Corrective Actions pursuant to Section 3.5 of the SOW to ensure that the Performance Criteria set forth in Section 3.4 of the SOW (*see* Appendix A to this Consent Decree) will be met;
- c. providing Defendant with a Construction Completion Certificate when the Construction Requirements set forth in Section 3.1 of the SOW have been met and a Project Completion Certificate when the Performance Criteria set forth in Section 3.4 of the SOW have

been met; and,

d. performing duties associated with the formal dispute resolution process, whenever necessary, as described in this Consent Decree (Section XI).

13. Restoration Project Implementation. The following implementation requirements of the SOW are each separately enforceable requirements of this Consent Decree subject to Stipulated Penalties (Section XII) for non-performance:

Table 1:

Requirement	Deadline
Defendant Designates Restoration Project Coordinator	Within 30 Days of Effective Date of Consent Decree
Defendant or its designee submits timely, technically, and administratively complete applications for all Federal, State and local permits and other consultations required by Section 3.1.3 of the SOW	Within 45 Days of Effective Date of Consent Decree
Commencement of Invasive Species Removal activities required by Section 3.1.2 of the SOW	During the first March 1 to May 31 period, following issuance of the permits required by Section 3.1.3 of the SOW, but no later than 24 months after the Effective Date of the Consent Decree
Commencement of Dike Breaching construction activities required by Section 3.1.1 of the SOW	Within 12 months of the issuance of the permits required by Section 3.1.3 of the SOW, but no later than 24 months after the Effective Date of the Consent Decree
Submit Post-Construction Report	Within 60 Days of Construction Completion as defined by Section 3.1.1 of the SOW
Second application of herbicide as required by the Invasive Species Removal activities required by Section 3.1.2 of the SOW	During the first March 1 to May 31 period, following Trustee approval of the Post-Construction Report required by Section 3.3.2 of the SOW
Conduct Annual Monitoring protocol	At 12, 24, and 36 months following Construction Completion as defined by Section 3.1.1 of the SOW
Submit Annual Monitoring Report	At 15 and 27 months following Construction Completion as defined by Section 3.1.1 of the SOW
Submit Final Report	At 39 months following Construction Completion as defined by Section 3.1.1 of the SOW, <u>or</u> 90 Days after Corrective Action

14. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

15. Restoration Project Construction Completion.

a. In accordance with Section 3.3.2 of the SOW, Defendant shall provide the Trustee Council with a Post-Construction Report no later than 60 Days after Construction Completion of the Drayton Hall Restoration Project. Such report shall be signed by a registered professional engineer and Defendant's Project Coordinator and include information sufficient to show that all activities necessary to construction of the Drayton Hall Restoration Project have been completed in accordance with the Construction Requirements identified in Section 3.1 of the SOW. The report shall include the following statement, signed by a responsible corporate official of the Defendant:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The Trustee Council or its designees will inspect the Drayton Hall Restoration Project after

receipt of such report.

b. If, based upon its post-construction inspection of the Drayton Hall Restoration Project and consideration of any other relevant information, the Trustee Council determines that construction of the Drayton Hall Restoration Project is in accordance with the Construction Requirements identified in Section 3.1 of the SOW, the Trustee Council shall issue and provide to Defendant a dated “Construction Completion Certificate,” certifying that construction of the Drayton Hall Restoration Project is complete.

c. If the Trustee Council determines that the Drayton Hall Restoration Project has not been constructed in accordance with the Construction Requirements identified in Section 3.1 of the SOW:

(1) The Trustee Council will determine what additional activities or corrective actions must be undertaken by Defendant for construction of the Drayton Hall Restoration Project to conform to the Construction Requirements identified in Section 3.1 of the SOW and will provide written notice to the Defendant identifying those activities or corrective actions.

(2) Within 30 Working Days after receipt of such notice, Defendant shall submit a draft work plan for conducting such activities or corrective actions, with the schedule for implementation, to the Trustee Council.

(3) The Trustee Council will approve the draft work plan or disapprove such plan with comments. In the event of disapproval, Defendant will have 30 Working Days following receipt of the Trustee Council’s comments to revise and resubmit the draft work plan for approval. This process will be repeated until the draft work plan is approved by the Trustee Council or until dispute resolution is invoked pursuant to Section XI of this Consent Decree.

Upon approval by the Trustee Council, the draft work plan shall become the final work plan for completion of the Drayton Hall Restoration Project. Defendant shall implement the work plan according to the schedule identified therein.

(4) Defendant shall notify the Trustee Council of its completion of such activities and the Trustee Council shall thereafter again evaluate whether the Drayton Hall Restoration Project has been constructed in accordance with the Construction Requirements identified in Section 3.1 of the SOW. If the Trustee Council determines construction is complete, then it shall so certify as provided in Paragraph 15(b). If the Trustee Council determines that the Construction Requirements have not been achieved, it shall again follow the procedures specified in Paragraph 15(c) until Defendant has met the Construction Requirements set forth in Section 3.1 of the SOW, or, if dispute resolution is invoked under Section XI (Dispute Resolution), the issuance of a final determination that no further action to complete construction is necessary.

16. Restoration Project Site Protection. No later than 60 Days following the Effective Date of this Consent Decree, Defendant, working in concert with the NTHP, shall act to place and record on the Drayton Hall Restoration Project site a Conservation Easement in substantially the form of Appendix B to this Consent Decree that restricts future use(s) of the Drayton Hall Restoration Project site in a manner sufficient to protect and preserve the ecological benefits of the Drayton Hall Restoration Project in perpetuity. Defendant shall act to ensure that the conservation easement shall be recorded in the public records of Charleston County, South Carolina, and shall provide proof of recording to the United States and the Trustee representatives as identified in Appendix C.

17. Restoration Project Monitoring. Following the date of issuance of the Construction Completion Certificate, Defendant shall initiate the post construction monitoring requirements set forth in Section 3.2.5.2 of the SOW and the annual monitoring requirements set forth in Section 3.2.5.3 of the SOW and submit all monitoring reports to the Trustee Council as required therein.

18. Restoration Project Completion. At the end of the period prescribed for monitoring performance of the Drayton Hall Restoration Project in the SOW, and after receipt of the final report required by Section 3.3.4 of the SOW, the Trustee Council shall determine whether the Performance Criteria for the Drayton Hall Restoration Project specified in Section 3.4 of the SOW have been achieved. If the Trustee Council finds that the Performance Criteria have been achieved, then it shall issue and provide to Defendant a dated “Project Completion Certificate” certifying that the Drayton Hall Restoration Project is complete. If the Trustee Council finds that any of the Performance Criteria set forth in Sections 3.4.1 through 3.4.4 of the SOW has not been achieved, the Trustee Council shall identify and notify Defendant of the applicable and corresponding Corrective Actions set forth in Sections 3.5.1 through 3.5.5 of the SOW that need to be undertaken in order for the Drayton Hall Restoration Project to meet its Performance Criteria. Subject to the limitations set forth in Section 3.5 of the SOW, the procedures specified in Paragraph 15(c) of this Consent Decree shall be followed until Defendant has met the Performance Criteria set forth in Section 3.4 of the SOW for the Drayton Hall Restoration Project, or, if dispute resolution is involved under Section XI (Dispute Resolution), a final determination is issued that no further actions are required to be undertaken by Defendant. Upon issuance of the Project Completion Certificate by the Trustees, Defendant shall have fully

performed its obligation to implement the Drayton Hall Restoration Project under this Consent Decree.

19. Access. For the purpose of overseeing and monitoring implementation of the Drayton Hall Restoration Project, Defendant agrees that it shall cooperate with the Trustees, as appropriate, and shall not contest that the Trustees and their designated representatives should be granted:

a. the right to be present at all times that Defendant is performing any field activity involved in the construction, monitoring, or correction of the Drayton Hall Restoration Project;

b. access, to the extent within Defendants' control, at all reasonable times to the locations (including vessels) being used by Defendant, including its contractors, during field implementation of the Drayton Hall Restoration Project; and,

c. access to all non-privileged documents of Defendant or its contractors relating to the Drayton Hall Restoration Project.

The Trustees may designate other representatives, including, but not limited to, Federal and State employees, and Federal and State contractors and consultants, to observe, monitor, assess, or assist in overseeing the progress of the Drayton Hall Restoration Project.

20. Use of Contractors by Defendant. Defendant shall provide a copy of this Consent Decree to all contractors hired to perform any Drayton Hall Restoration Project work or activity, and to each person representing Defendant with respect to the Drayton Hall Restoration Project, and shall condition all contracts entered into for the purposes of performing any Restoration Project work or activity upon performance of that work or activity in conformity with the terms of this Consent Decree. Defendant or its contractors shall provide written notice of the Consent

Decree to all subcontractors hired to perform any portion of the Drayton Hall Restoration Project. Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Drayton Hall Restoration Project contemplated herein in accordance with this Consent Decree.

B. PAYMENT OF ADDITIONAL DAMAGES

21. Within 30 Days of the Effective Date of this Consent Decree, Defendant shall pay damages in the amount of \$400,000.00 to compensate for additional damages to Natural Resources allegedly due to the Release, but not compensated for through the Drayton Hall Restoration Project. Said damages shall be paid into NOAA's Damage Assessment and Restoration Revolving Fund (DARRF), for deposit and maintenance in a sub-account within that Fund to be known as the "Beazer East (Koppers Charleston Superfund Site) Restoration Account." Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-08343. Payment shall be made in accordance with instructions provided to Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of South Carolina following lodging of this Consent Decree. Any payments received by the Department of Justice after 4:00 pm (Eastern Time) will be credited on the next business day. Defendant shall provide written notice of this payment to all Trustees in accordance with Section XVII (Notice). The funds paid into the DARRF shall be held in that account for use by the Trustees, acting through the Trustee Council, solely to plan and implement a future restoration action of benefit to Natural Resources allegedly affected by the Release.

22. Within 30 Days of the Effective Date of this Consent Decree, Defendant shall pay damages in the amount of \$390,000.00 to compensate for injury to groundwater allegedly due to the Release not compensated for by the Drayton Hall Restoration Project. Said damages shall be paid to SCDHEC by cashier's or certified check made payable to the South Carolina Department of Health and Environmental Control. Defendant shall send the check and notice of payment, referencing "Beazer East (Koppers Co.) Charleston Superfund Site)" Natural Resource Damages Groundwater Settlement and this civil action case name and number to Susan Fulmer, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201. Defendant shall provide written notice of this payment to all Trustees in accordance with Section XVII (Notice). The funds paid to the SCDHEC shall be used by the Trustees, acting through the Trustee Council, solely to plan and implement a future restoration action of benefit to ground water or compensate the public for the loss in value or use of the ground water.

VII. REIMBURSEMENT OF COSTS

23. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the following sums to each Plaintiff, in accordance with the specified procedure for payment, as complete settlement of all costs incurred, or to be incurred, by each Plaintiff and recoverable as Natural Resource Damages:

a. Assessment and Restoration Costs Incurred by NOAA and DOI/FWS.

Defendant shall pay a total of \$820,069.74 to the United States to reimburse the Natural Resource Damage costs of assessment and restoration planning incurred by NOAA and DOI/FWS for the Release. Payment shall be made by FedWire EFT to the U.S. Department of Justice in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-

08343. Payment shall be made in accordance with instructions provided to Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of South Carolina following lodging of this Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Defendant shall also provide notice of this payment according to Section XVI (Notice).

(1) Of the total amount paid by Defendant under this Subparagraph, \$95,690.14 shall be applied to reimburse Natural Resource Damage costs of assessment and restoration planning incurred by DOI/FWS.

(2) Of the total amount paid by Defendant under this Subparagraph, \$724,379.60 shall be applied to reimburse Natural Resource Damage costs of assessment and restoration planning incurred by NOAA.

b. Assessment and Restoration Costs Incurred by SCDHEC. Defendant shall pay \$144,230.39 to SCDHEC to reimburse Natural Resource Damage costs of assessment and restoration planning allegedly incurred for the Release. Payment shall be made to SCDHEC by cashier's or certified check made payable to the South Carolina Department of Health and Environmental Control. Defendant shall send the check and notice of payment, referencing "Beazer East (Koppers Co.) Charleston Superfund Site" Natural Resource Damages Settlement and this civil action case name and number to Susan Fulmer, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201. Defendant shall also provide notice of this payment according to Section XVI (Notice).

c. Assessment and Restoration Costs Incurred by SCDNR. Defendant shall pay \$35,699.87 to SCDNR to reimburse Natural Resource Damage costs of assessment and

restoration planning allegedly incurred for the Release. Payment shall be made by cashier's or certified check made payable to the SC Dept. of Natural Resources. The Defendant shall send the check and notice of payment, referencing "Beazer East (Koppers Co.) Charleston Superfund Site" and this civil action case name and number, to Shannon Bobertz, Chief Counsel, SC Department of Natural Resources, P.O. Box 167, Columbia, SC 29202. Defendant shall also provide notice of this payment according to Section XVI (Notice).

24. Notice of Payment. Upon making any payment under this Section, Defendant shall send written notice that payment has been made to the United States, NOAA, DOI, SCDHEC, and SCDNR, in accordance with Section XVI and Appendix C.

25. Interest on Late Payments. In the event any payment required by this Section is not made when due, Defendant shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment. Interest payments shall be paid in the same manner as the overdue principal amount and shall be directed to the same fund or account as the overdue principal amount. Interest is in addition to any Stipulated Penalties.

VIII. RESPONSIBILITY FOR COMPLIANCE

26. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation. The Plaintiffs do not, by their consent to this Consent Decree, warrant or aver in any manner that the Defendant's compliance with this Consent Decree will constitute or result in compliance with the requirements of any Federal, State, or local laws or regulations. Nothing in this Consent Decree shall be construed to affect or limit in any way the obligation of Defendant to comply with all Federal, State, and local laws and regulations governing any activity required by this Consent Decree.

27. Notwithstanding any action by the Plaintiffs, including, without limitation, their issuance of a Final DARP/EA, or the review and approval of any design, plan, report, and other information or action formulated by the Defendant under this Consent Decree, the Defendant is and shall remain solely responsible for compliance with all terms and requirements of this Consent Decree, including those related to the Construction Requirements and Performance Criteria applicable to the Drayton Hall Restoration Project, and the requirements of all Federal, State, and local laws and regulations applicable thereto.

IX. NO ASSUMPTION OF LIABILITY BY TRUSTEES

28. Plaintiffs do not assume any liability by entering into this Consent Decree. Neither the United States nor the State Trustees shall be held out as a party to any contract entered into, by, or on behalf of Defendant in carrying out activities pursuant to this Consent Decree. Neither the Defendant nor any such contractor shall be considered an agent of the United States or the State Trustees.

29. Defendant waives all claims against the United States and the State Trustees for damages or reimbursement or for setoff of any payments made or to be made to the United States or the State Trustees arising from or on account of any contract, agreement, or arrangement between Defendant and any person for performance of the Drayton Hall Restoration Project, including, but not limited to, claims on account of construction delays.

X. FORCE MAJEURE

30. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant’s contractors that delays or prevents the performance of any obligation under this

Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (a) as it is occurring and (b) following the potential Force Majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

31. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Defendant shall provide notice orally or by electronic transmission to howard.schnabolk@noaa.gov or 843-740-1328 (office), within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to the Plaintiffs an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure, provided, however, that if the Trustees, despite the late notice, are able to assess to

their satisfaction whether the event is a force majeure under Paragraph 30 and whether Defendant has exercised its best efforts under Paragraph 31, the Trustees may, in their unreviewable discretion, excuse in writing the Defendant's failure to submit timely notices under this Paragraph. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

32. If the Trustees agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by the Trustees for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. The Trustees will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

33. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, the Trustees will notify Defendant in writing of that decision, together with an explanation of that decision.

34. If Defendant elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 Days after receipt of the Trustees' notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 30 and 31. If Defendant carries

this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to the Trustees and the Court.

XI. DISPUTE RESOLUTION

35. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the Trustees to enforce any obligation of Defendant arising under this Decree.

36. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of good faith informal negotiations. The dispute shall be considered to have arisen when Defendant sends the Trustees a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Trustees shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

37. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Trustees a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

38. The Trustees shall serve their Statement of Position within 60 Days of receipt of Defendant's Statement of Position. The Trustees' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by them. Within 15 Days after receipt of the Statement of Position, Defendant may submit a Reply. An administrative record of the dispute shall be maintained by the Trustees, solely for the purposes of implementation of this Consent Decree, and shall contain all Statements of Position, including any supporting documentation, submitted pursuant to this Section. Where appropriate, the Trustees may allow submission of supplemental Statements of Position and/or supporting documentation. The Trustees shall consider all Statements of Position and supporting documentation, and, within 60 Days of receiving Defendant's Reply, shall issue a final administrative decision resolving the dispute, and such final decision shall be binding on Defendant unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph. If the Trustees fail to issue a final administrative decision within such 60 Day period, then Defendant may file a motion for judicial review of the dispute in accordance with the following Paragraph.

39. Defendant may seek judicial review of the dispute by filing with the Court and serving on the Trustees, a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the Trustees' final administrative decision pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

40. The Trustees shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules or upon leave of Court to do so.

41. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute governed by this Consent Decree, Defendant shall have the burden of demonstrating, based on the administrative record as developed pursuant to Paragraph 38 above or as otherwise ordered by the Court, that the decision of the Trustees is either not in accordance with the requirements of this Consent Decree or otherwise not in accordance with applicable law.

42. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides or the Trustees or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties).

XII. STIPULATED PENALTIES

43. Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraph 44 to the Plaintiffs for Defendant's failure to comply with the requirements of this Consent Decree specified below, unless excused under Section X (Force Majeure).

"Compliance" by the Defendant shall include the timely completion of the payments and activities identified in Paragraph 44 within the time schedules established by and approved

pursuant to the requirements of the Consent Decree, Section 3.1 of SOW, or any other documents approved by the Trustees pursuant to this Consent Decree.

44. The following stipulated penalties shall accrue per violation per Day for the Defendant’s failure to comply with the deadlines established for the following implementation requirements:

- a. Failure to comply with each deadline for Drayton Hall Restoration Project implementation as set forth in Table 1 of Paragraph 13 of this Consent Decree including for monitoring:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1 st through 14 th Day
\$ 500	15 th through 30 th Day
\$ 1,000	31 st Day and beyond

- b. Failure to make each separate payment required by Section VI.B and Section VII in a timely manner:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1 st through 14 th Day
\$ 500	15 th through 30 th Day
\$ 1,000	31 st Day and beyond

45. All penalties shall begin to accrue on the Day after performance is due or the Day a violation occurs and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue with respect to judicial review by this Court of any dispute under Section XI (Dispute Resolution), during the period, if any, beginning on the 31st Day after the Court’s receipt of the motion for judicial review until the date that the Court issues a final decision regarding such dispute.

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

46. Following the determination by the Plaintiffs, individually or jointly, that the Defendant has failed to comply with one of the requirements of this Consent Decree listed above, the Plaintiffs may send the Defendant a written demand for the payment of penalties that describes the noncompliance.

47. Stipulated penalties shall be paid as follows: In any collective action for stipulated penalties brought by all Trustees, fifty percent of any stipulated penalties shall be paid to the United States in accordance with payment instructions provided by the Financial Litigation Unit of the United States Attorney's Office for the District of South Carolina following lodging of the Consent Decree and shall be deposited in the United States Treasury. Twenty-five percent of any stipulated penalties under the preceding Paragraph shall be paid to SCDHEC, in accordance with the instructions set forth in Paragraph 23(b). Twenty-five percent of any stipulated penalties shall be paid to SCDNR, in accordance with the instructions set forth in Paragraph 24(c). Notwithstanding any other provision of this Section, the United States and the State Trustees, in their unreviewable discretion, may waive any portion of stipulated penalties owed to them that have accrued pursuant to this Consent Decree, in which case the remaining Trustee, or Trustees, shall collect the entirety of stipulated penalties owed, one hundred percent in the case of a single Trustee, and fifty percent each in the case of two Trustees.

48. In the event the Defendant fails to pay stipulated penalties when due, the United States and/or the State Trustees may institute a legal proceeding to collect such penalties, as well as Interest accruing on any unpaid balance, as provided by law; but any such action shall be

initiated in the United States District Court of the District of South Carolina, Charleston Division.

49. All penalties due under this Section shall be due and payable within 30 Days of the Defendant's receipt of a demand for payment from the Plaintiffs, unless the Defendant invokes dispute resolution under Section XI of this Consent Decree. In that case, Stipulated Penalties shall continue to accrue during the informal and formal dispute resolution procedures as provided in this Section and as specified in Paragraph 45, but need not be paid until the following:

- a. If the dispute is resolved by agreement, accrued penalties agreed to be owed shall be paid to the United States and the State Trustees within 30 Days of the agreement.
- b. If the dispute is appealed to this Court and the Plaintiffs prevail in whole or in part, the Defendant shall pay all accrued penalties determined by the Court to be owed to the United States and the State Trustees within 30 Days of receipt of the Court's decision or order.

50. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State Trustees to seek any other remedies or sanctions available by virtue of the Defendant's violation of this Consent Decree, provided, however, that the Trustees shall not seek civil penalties pursuant to Section 122(1) of CERCLA or any other federal or state law for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

XIII. COVENANTS NOT TO SUE BY PLAINTIFFS

51. Covenant by the United States. In consideration of the actions that will be performed and the payments that will be made by the Defendant under this Consent Decree, and except as specifically provided by Paragraph 53 (General Reservations) and Paragraph 55 (Special Reservations Regarding Natural Resource Damages), the United States covenants not to sue or take administrative action against the Defendant for Natural Resource Damages that have allegedly resulted from the Release. This covenant not to sue shall take effect upon receipt of the payments due from Defendant under Paragraphs 21, 22, and 23 of this Consent Decree. These covenants not to sue are conditioned upon the complete and satisfactory performance by the Defendant of its obligations under Section VI (Compensation for Natural Resource Injuries) and VII (Reimbursement of Costs), payment of all amounts that may become due to the United States under Section XI (Stipulated Penalties), and payment of any Interest owed to the United States due to the failure to timely pay any amount owed to the United States under this Consent Decree. These covenants not to sue extend only to the Defendant and do not extend to any other person.

52. Covenant by the State Trustees. Except as specifically provided in Section XIV (Reservation of Rights by Plaintiffs), the State Trustees covenant not to sue Defendant for Natural Resource Damages allegedly resulting from the Release. This covenant not to sue shall take effect upon receipt of the payments due from Defendant under Paragraphs 21, 22, and 23 of this Consent Decree. These covenants not to sue are conditioned upon the complete and satisfactory performance by the Defendant of its obligations under Section VI (Compensation for Natural Resource Injuries) and VII (Reimbursement of Costs), payment of all amounts that may become due to the State under Section XI (Stipulated Penalties), and payment of any Interest

owed to the State due to the failure to timely pay any amount owed to the State under this Consent Decree. These covenants not to sue extend only to the Defendant and do not extend to any other person.

XIV. RESERVATION OF RIGHTS BY PLAINTIFFS

53. General Reservations. The United States and the State Trustees reserve, and this Consent Decree is without prejudice to, all rights against the Defendant with respect to all matters not expressly included within Section XIII (Covenants Not to Sue by Plaintiffs). Notwithstanding any other provisions of this Consent Decree, the United States and the State Trustees reserve all rights against Defendant with respect to:

- a. claims based on a failure by Defendant to meet a requirement of this Consent Decree;
- b. liability under CERCLA Section 107(a)(4)(A) for costs of removal or remedial action or costs of response incurred by the United States or the State Trustees;
- c. liability for any other costs incurred or to be incurred by the Plaintiffs that are not within the definition of Natural Resource Damages;
- d. liability for damages for any injury to, destruction of, loss of, or loss of use of Natural Resources resulting from any event or releases or threatened releases of hazardous substances or oil unrelated to the Release;
- e. any and all criminal liability; and
- f. violation of any Federal or State law or regulation during the implementation of Drayton Hall Restoration Project or monitoring of such project.

54. The Plaintiffs, individually or jointly, may take any and all legal or administrative enforcement actions appropriate to enforce the terms of this Consent Decree. In the event that the Plaintiffs take legal or administrative actions to enforce this Consent Decree, and the Plaintiffs are the prevailing party, Defendant must pay all reasonable costs incurred by the United States and the State Trustees related to that action including, but not limited to, enforcement costs, attorneys' fees, and Interest accruing on any unpaid balance.

55. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States and the State Trustees reserve the right to institute proceedings against the Defendant in this action or in a new action seeking recovery of Natural Resource Damages, including costs of damages assessment, based on: (i) conditions with respect to the Koppers Site, unknown to the Trustees as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, loss of, or loss of use of Natural Resources; or (ii) information received by the Trustees after the date of lodging of this Consent Decree which indicates that the Release has resulted in injury to, destruction of, loss of, or loss of use of Natural Resources of a type unknown, or of a magnitude substantially greater than was known, by the Trustees as of the date of lodging of this Consent Decree. For purposes of this Paragraph, the information and conditions known to the Trustees shall include the information and conditions set forth in the administrative record supporting the Damage Assessment and Restoration Plan/Environmental Assessment ("DARP/EA") and/or the Trustees' and the EPA's files for the Koppers Site or the Release as of the date of the lodging of this Consent Decree.

XV. COVENANTS BY DEFENDANT

56. Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the Plaintiffs, their employees, agents, experts, or contractors, with respect to the Natural Resource Damages or this Consent Decree including, but not limited to, any claims arising out of activities related to the Drayton Hall Restoration Project, including without limitation, claims based on the Trustees' approval of the Drayton Hall Restoration Project, oversight of the Drayton Hall Restoration Project, and/or approval of plans for such activities. Except as provided in Paragraph 61, this covenant not to sue shall not apply in the event that the Plaintiffs bring a cause of action or issue an order pursuant to the reservations set forth in Paragraphs 53 and 55, but only to the extent that Defendant's claims arise from the same damages that the Plaintiffs are seeking pursuant to the applicable reservation.

XVI. EFFECT OF SETTLEMENT

57. Nothing in this Consent Decree shall be construed to create any right in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action which each Party may have with respect to the Release against any person not a party hereto.

58. The Parties agree, and by entering this Consent Decree this Court finds that Defendant is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and SC Code Ann 48-1-10 et. seq. for Natural Resource Damages, provided, however, that if the Trustees exercise their rights under the reservations in Paragraph 55,

Defendant will no longer be entitled to protection from such contribution actions or claims for Natural Resource Damages as are within the scope of the exercised reservation.

59. Defendant agrees that it will notify the United States and the State Trustees in writing no later than 60 Days before bringing a suit or claim for contribution for Natural Resource Damages. Defendant also agrees that it will notify the United States and the State Trustees in writing within 15 Days of service of a complaint or claim upon them relating to a suit or claim for contribution for Natural Resource Damages. In addition, Defendant will notify the United States and the State Trustees within 15 Days of service or receipt of any Motion for Summary Judgment and within 15 Days of receipt of any order from a court setting a case for trial for matters related to this Decree.

60. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs with respect to the Release, Defendant may contest any claims reserved by the Trustees in this Consent Decree, and the Defendant may claim any defense available to it, except that Defendant shall not assert, and may not maintain, any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or any other defenses based upon the contention that the claims raised by the Plaintiffs 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 not to sue set forth in Section XIII (Covenants Not to Sue by Plaintiffs).

61. The failure of any of the Plaintiffs to insist upon strict and prompt performance of any provision of this Consent Decree shall not operate as a waiver of any requirement of this Consent Decree or of the Trustees' right to insist on prompt compliance in the future with such

provision and shall not prevent a subsequent action by any of the Trustees to enforce such provision.

XVII. NOTICE

62. 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 set forth in Appendix C, 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 Trustees, and the Defendant, respectively.

XVIII. MODIFICATION

63. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree, shall be in writing, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

64. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

65. 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 and the State Trustees each reserve

the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Defendant consents to the entry of this Consent Decree without further notice, but only if this Consent Decree is entered in its entirety without substantive modification, addition, or deletion. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this agreement is voidable at the discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties. The Defendant hereby agrees not to oppose entry of this Consent Decree in its present form by this Court or to challenge any provision of this Consent Decree unless the United States and the State Trustees have notified Defendant in writing that they no longer support entry of the Consent Decree.

XX. EFFECTIVE DATE AND RETENTION OF JURISDICTION

66. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered, or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on this Court's docket.

67. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XXI. SIGNATORIES/SERVICE

68. Each undersigned representative of the Defendant, the United States, and the State Trustees certifies that he or she is fully authorized to enter into the terms and conditions of this

Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

69. The Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Defendant with respect to all matters arising under or relating to this Consent Decree. The Defendant hereby agrees 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. Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXII. TERMINATION

70. After the Trustees have issued a Certification of Completion pursuant to Section 4 of the SOW, and after Defendant has fulfilled its obligations under Section VI (Compensation for Natural Resource Injuries), Section VII (Reimbursement of Costs), Section XII (Stipulated Penalties), Defendant may serve upon the Trustees a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

71. Following receipt by the Trustees of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination

of this Consent Decree. If the Trustees agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

72. If the Trustees do not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XI. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 60 days after service of its Request for Termination.

73. Termination of this Consent Decree shall not affect the covenants, reservations, and effects of settlement set forth in Section XIII (Covenants Not To Sue By Plaintiffs), Section XV (Covenants by Defendant), and Section XVI (Effect of Settlement).

XXIII. APPENDICES

74. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the Drayton Hall Restoration Project Statement of Work.

“Appendix B” is the Conservation Easement.

“Appendix C” is the list of persons and addresses for notice pursuant to Section XVII.

XXIV. FINAL JUDGMENT

75. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the 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.

76. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State Trustees, and the Defendant.

SO ORDERED.

Date: _____

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Beazer East, Inc.


FOR THE UNITED STATES OF AMERICA:

SHERRI A. LYDON
UNITED STATES ATTORNEY

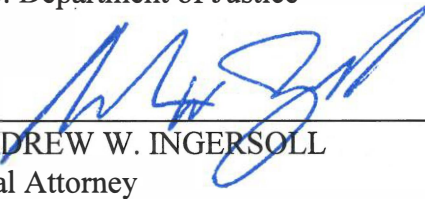
11/9/18
Date

By: s/Barbara M. Bowens
BARBARA M. BOWENS (#4004)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Telephone: (803) 929-3000

11/9/18
Date


ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

11/9/18
Date


ANDREW W. INGERSOLL
Trial Attorney
Environmental Enforcement Section
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BRIGETTE J. BEATON
U.S. Department of the Interior
Office of the Regional Solicitor
75 Ted Turner Drive, S.W., Suite 304
Atlanta, GA 30303

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Beazer East, Inc.

FOR THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL:

11-6-18
Date




DAVID E. WILSON, JR.
Acting Director
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, SC 29201

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Beazer East, Inc.

FOR THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES:

10-31-18
Date


ALVIN TAYLOR
Director
South Carolina Department of Natural
Resources
P.O. Box 167
Columbia, SC 29202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Beazer East, Inc.

FOR BEAZER EAST, INC.

Nov. 7, 2018
Date

A handwritten signature in blue ink, consisting of a large, sweeping initial 'C' followed by several vertical strokes and a final flourish.

Charles E. McChesney II
Vice President and Secretary
Beazer East, Inc.
c/o Three Rivers Management, Inc.
600 River Ave., Suite 200
Pittsburgh, PA 15212