UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA; OFFICE OF THE GOVERNOR OF THE STATE OF SOUTH CAROLINA; 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. MACALLOY CORPORATION and THE BOC GROUP, INC., Defendants.	CIVIL ACTION NO. _____ CONSENT DECREE

CONSENT DECREE FOR NATURAL RESOURCE DAMAGES

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Secretary of the United States Department of the Interior ("DOI") and the Secretary of the United States Department of Commerce ("Commerce"), filed a complaint in this action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607. The United States' complaint alleges that the Settling Defendants are liable under CERCLA for damages for injury to, destruction of, or loss of

natural resources resulting from release of hazardous substances at and from the Macalloy Site in North Charleston, South Carolina. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. § 300.600(1) and (2), DOI, through the United States Fish and Wildlife Service ("FWS"), and Commerce, acting through the National Oceanic and Atmospheric Administration ("NOAA"), have been delegated authority to act as the Federal Trustees for natural resources impacted by the release of hazardous substance at or from the Site.

B. The Office of the Governor of the State of South Carolina, 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. The State Trustees also allege that they have a claim against the Settling Federal Agencies for damages.

C. The Settling Defendants allege that they have counterclaims against the United States for contribution under 42 U.S.C. § 9613(f). By entry into this Consent Decree, the Settling Defendants do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

D. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants or any claim by the State Trustees.

E. The Trustees believe Settling Defendants' and Settling Federal Agencies' obligations under this Consent Decree constitute adequate compensation for Natural Resources Damages arising from the release of hazardous substances at and from the Macalloy Site.

F. The Parties to this Consent Decree recognize, 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 natural resource restoration actions to be performed by the Trustees; and (iv) is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby 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 Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b). The Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State Trustees, and upon the Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's

responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that 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 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. §§ 9601-9675.

b. "Commerce" means the United States Department of Commerce and any successor departments or agencies of the United States.

c. "Consent Decree" means this Consent Decree, including Appendix A.

d. "Day" means a calendar day unless expressly stated to be a working day. "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 holiday, the period shall run until the close of business of the next working day.

e. "DOI" means the United States Department of the Interior and any successor departments or agencies of the United States.

f. "Effective Date" means the effective date of this Consent Decree as provided by Section XIV of this Consent Decree (Effective Date and Retention of Jurisdiction).

g. "Federal Trustees" means the United States Department of the Interior and the United States Department of Commerce.

h. "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.

i. "Natural Resource" or "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State, and the services provided by such resources.

j. "Natural Resource Damages" means any damages recoverable by the United States or the State Trustees on behalf of the public, for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources at the Site as a result of a release of hazardous substances including, but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent Natural Resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

k. "NRDAR Fund" means DOI's Natural Resource Damage Assessment and Restoration Fund.

l. "Paragraph" means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

m. "Parties" means the United States, the State Trustees, and the Settling Defendants.

n. "Plaintiffs" means the United States and the State Trustees.

o. "Section" means a portion of this Consent Decree identified by a roman numeral.

p. "Settling Defendants" shall mean Macalloy Corporation and the BOC Group, Inc.

q. "Settling Federal Agencies" shall mean the General Services Administration and the Defense Logistics Agency.

r. "Site" means both (1) the Macalloy Superfund Site, encompassing approximately 147 acres, located at 1800 Pittsburgh Avenue, fronting on Shipyard Creek, in North Charleston, Charleston County, South Carolina; and (2) the approximately 67 acres of Shipyard Creek and marsh along Shipyard Creek adjacent to the Macalloy Superfund Site, that have been affected by the Site-related contaminants, as described in the "Draft Damage Assessment and Restoration Plan / Environmental Assessment for the Macalloy Corporation Site, Charleston, South Carolina," (dated April 27, 2005) or as otherwise known to the Trustees on the Effective Date of this Consent Decree.

s. "State" means the State of South Carolina.

t. "State Trustees" means the Office of the Governor of the State of South Carolina, SCDHEC and SCDNR.

u. "Subparagraph" means a portion of this Consent Decree identified by a lower case letter or an arabic numeral in parentheses.

v. "Trustees" means NOAA, DOI, the Office of the Governor of the State of South Carolina, SCDHEC, and SCDNR.

w. "United States" means the United States of America, including all of its departments, agencies, and instrumentalities, including the Settling Federal Agencies, and including the Federal Trustees.

V. STATEMENT OF PURPOSE

4. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of hazardous substance releases at and from the Site; (ii) to reimburse natural resource damage assessment costs incurred by the trustees; (iii) to resolve the Settling Defendants' liability for Natural Resource Damages as provided herein; and (iv) to avoid potentially costly and time-consuming litigation.

VI. PAYMENTS BY THE SETTLING DEFENDANTS

5. Within 20 days after the Effective Date, the Settling Defendants shall pay a total of $400,000 to the Plaintiffs, as follows.

a. Payment for Trustee-Sponsored Natural Resource Restoration Projects. Settling Defendants shall pay a total of $350,000 to the United States and the State Trustees for Natural Resources Damages. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-07214/1. Payment shall be made in accordance with

instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of South Carolina. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The total amount to be paid by Settling Defendants pursuant to this Subparagraph 5.a, shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects in accordance with Section VII.

b. Payment for Assessment Costs Incurred by NOAA and DOI. Settling Defendants shall pay a total of $37,680 to the United States for natural resource damage assessment costs incurred by the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-07214/1. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of South Carolina. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

(1) Of the total amount to be paid by Settling Defendants pursuant to this Subparagraph 5.b, $3,089 shall be applied toward natural resource damage assessment costs incurred by DOI.

(2) Of the total amount to be paid by Settling Defendants pursuant to this Subparagraph 5.b, $34,591 shall be applied toward natural resource damage assessment costs incurred by NOAA.

c. Payment for Assessment Costs Incurred by SCDHEC. Settling Defendants shall pay $9,225 to SCDHEC for natural resource damage assessment costs. Payment shall be made to SCDHEC by cashier's or certified check made payable to the South Carolina Department of Health and Environmental Control. Settling Defendants shall send the check and notice of payment, referencing "Macalloy Site" and this civil action case name and number to Rebecca Dotterer, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201. Settling Defendants shall also provide notice of this payment according to Section XIII. The payment made pursuant to this Subparagraph shall be applied toward natural resource damage assessment costs incurred by the SCDHEC.

d. Payment for Assessment Costs Incurred by SCDNR. Settling Defendants shall pay $3,095 to SCDNR for natural resource damage assessment costs. Payment shall be made by cashier's or certified check made payable to the SC Dept. Of Natural Resources. Settling Defendants shall send the check and notice of payment, referencing "Macalloy Site" and this civil action case name and number to Angie Williams, Internal Auditor, SCDNR P.O. Box 167, Columbia,S.C. 29202. The payment made pursuant to this Subparagraph shall be applied toward natural resource damage assessment costs incurred by the SCDNR.

6. Notice of Payment. Upon making any payment under Paragraph 5, Settling Defendants shall send written notice that payment has been made to the United States, NOAA, DOI, SCDHEC, and SCDNR, in accordance with Appendix A.

7. Non-Compliance with Payment Obligations.

a. Interest. In the event any payment required by Paragraph 5 is not made when due, the Settling Defendants shall pay Interest on the unpaid balance commencing on the

payment due date and accruing through the date of full payment.

b. Stipulated Damages. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment required by Paragraph 5 is not made when due, the Settling Defendants shall also pay stipulated damages of $5,000 per day through the date of full payment.

c. Payment of Interest and Stipulated Damages. Any Interest payments under Subparagraph 7.a 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. Fifty percent (50%) of any stipulated damages payments under Subparagraph 7.b 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, and shall be deposited in the United States Treasury. Twenty-five percent (25%) of any stipulated damages payments under Subparagraph 7.b shall be paid to SCDHEC, in accordance with the instructions set forth in Paragraph 5.b. Twenty-five percent (25%) of any stipulated damages payments under Subparagraph 7.b shall be paid to SCDNR, in accordance with the instructions set forth in Paragraph 5.c.

8. Joint Payment Obligations. The obligations of Settling Defendants to pay amounts owed under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments. However, the Settling Defendants are not obliged to pay the amounts owed by the Settling Federal Agencies.

VII. PAYMENTS BY THE SETTLING FEDERAL AGENCIES

9. As soon as reasonably practicable after the Effective Date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, shall pay $175,000 for Natural Resource Damages. Payment shall be made to the Department of the Interior, on behalf of the State Trustees and the Federal Trustees, to be deposited in the segregated sub-account within the NRDAR Fund established under Paragraph 5.a, to be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects in accordance with Section VIII.

10. In the event that the payment required by this Section is not made within 60 Days of the Effective Date of this Consent Decree, Interest on the unpaid balance shall be paid in accordance with 28 U.S.C. § 1961, commencing 60 Days after the Effective Date of this Consent Decree and accruing through the date of the payment.

11. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose, including funds appropriated for the payment of compromise settlements under 28 U.S.C. § 2414. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

12. Upon making any payment under Paragraph 9, the United States shall send written notice to Settling Defendants in accordance with Paragraph 6 that payment has been made.

VIII. TRUSTEE-SPONSORED NATURAL RESOURCE RESTORATION PROJECTS

13. Management and Application of Funds. All funds deposited in a segregated sub-account within the NRDAR Fund under Subparagraph 5.a and Paragraph 9 shall be managed by DOI for the joint benefit and use of the state and federal Trustees to pay for Trustee-sponsored natural resource restoration efforts in accordance with this Consent Decree. All such funds shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of equivalent resources, including but not limited to any administrative costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken.

14. Restoration Planning. The Trustees intend to prepare a separate Restoration Plan describing how the funds dedicated for Trustee-sponsored natural resource restoration efforts under this Section will be used. As provided by 43 C.F.R. § 11.93, the Plan will identify how funds will be used for restoration, rehabilitation, replacement, or acquisition of equivalent resources. The Plan may also identify how funds will be used to address services lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed. The Trustees shall decide on the use of the funds by unanimous vote. The Trustees shall use the funds for one or more projects that compensate for damages for injuries to biological, ecological , and groundwater resources.

15. Decisions regarding any use or expenditure of funds under this Section shall be

made by the Trustees. Settling Defendants shall not be entitled to dispute, in any other forum or proceeding, any decision relating to use of funds or restoration efforts under this Section.

IX. COVENANTS NOT TO SUE BY THE PLAINTIFFS

16. Covenants by the United States.

a. Covenant by the United States. Except as specifically provided by Paragraph 18 (General Reservations), the United States covenants not to sue or take administrative action against the Settling Defendants, including officers, directors, employees, successors, or assigns, except to the extent the alleged liability of that person or entity arose independently of the alleged liability and actions of the Settling Defendants, for Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607, or pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), or Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321(f) (4) and (5). This covenant not to sue shall take effect upon receipt of the Settling Defendants' payments pursuant to Paragraph 5.a and 5.b. of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendants of their obligations under this Consent Decree.

b. Covenant by the Federal Trustees. Except as specifically provided by Paragraph 18 (General Reservations), NOAA and DOI covenant not to take administrative action against the Settling Federal Agencies for Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607, or pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A) and Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321(f) (4) and (5). This covenant shall take effect upon receipt of the Settling Federal Agencies' payment pursuant to

Paragraph 9 of this Consent Decree. This covenant is conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree.

17. Covenants by the State Trustees.

a. Except as specifically provided by Paragraph 18 (General Reservations), the State Trustees covenant not to sue or take administrative action against the Settling Defendants, including officers, directors, employees, successors, or assigns, except to the extent the alleged liability of that person or entity arose independently of the alleged liability and actions of the Settling Defendants, for Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607, Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), or under the South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10, et seq., the Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10 et seq., or the Coastal Tidelands and Wetlands Act, S.C. Code Ann. § 48-39-10 et seq. The covenant not to sue or take administrative action as to the Settling Defendants shall take effect upon receipt of the Settling Defendants' payments pursuant to Subparagraphs 5.a, 5.c, and 5.d of this Consent Decree, and is conditioned upon the satisfactory performance by the Settling Defendants of their obligations under this Consent Decree.

b. Except as specifically provided by Paragraph 18 (General Reservations), the State Trustees covenant not to sue or take administrative action against the United States, including employees except to the extent the alleged liability of that person or entity arose independently of the alleged liability and actions of the Settling Defendants, for Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607, Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), or under the South Carolina Pollution Control Act, S.C. Code Ann.

§ 48-1-10, et seq., the Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10 et seq., or the Coastal Tidelands and Wetlands Act, S.C. Code Ann. § 48-39-10 et seq. The covenant not to sue as to the United States shall take effect upon receipt of the Settling Federal Agencies' payment pursuant to Paragraph 9 of this Consent Decree, and is conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree.

X. RESERVATION OF RIGHTS BY PLAINTIFFS

18. General Reservations. The United States and the State Trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendants and Settling Federal Agencies with respect to all matters not expressly included within Paragraph 16 (Covenants by the United States) and Paragraph 17 (Covenants by the State Trustees). Notwithstanding any other provisions of this Consent Decree, the United States and the State Trustees reserve all rights against the Settling Defendants and Settling Federal Agencies with respect to:

a. claims based on a failure by the Settling Defendants or Settling Federal Agencies to meet a requirement of this Consent Decree or any other Consent Decree addressing environmental matters at the Macalloy Site;

b. liability for any other costs incurred or to be incurred by the United States or by the State Trustees that are not within the definition of Natural Resource Damages;

c. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances outside of the Site;

d. liability arising from any disposal of hazardous substances at the Site by

the Settling Defendants after the lodging of this Consent Decree; and

e. criminal liability.

XI. COVENANTS BY THE SETTLING DEFENDANTS

19. Covenants by the Settling Defendant. The Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States and the State Trustees, or their contractors or employees, with respect to Natural Resource Damages or this Consent Decree, including but not limited to:

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

b. any direct or indirect claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A) and Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321 (4) and (5), relating to Natural Resource Damages;

c. any direct or indirect claim for reimbursement under the Oil Pollution Act; and

d. any direct or indirect claim for disbursement from the Macalloy Special Account held by EPA.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

21. Waiver of Certain Claims Against Other Persons. The Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have against all other persons for all matters relating to Natural Resource Damages, including claims for contribution; provided, however, that the Settling Defendants reserve the right to assert and pursue all claims, causes of action, and defenses relating to Natural Resource Damages against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against the Settling Defendant relating to Natural Resource Damages. Nothing in this Paragraph shall operate to waive or release any claim or action by a Settling Defendant under any contract of insurance.

22. Reservation of Rights by Settling Defendants. The Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States, the Settling Federal Agencies, and the State Trustees with respect to all matters expressly reserved by the United States and the State Trustees.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. Except as provided in Paragraph 22 (Waiver of Certain Claims Against Other Persons), 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 22 (Waiver of Certain Claims Against Other Persons), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

24. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and Settling Federal Agencies are entitled, as of the Effective Date 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 Natural Resource Damages.

25. The Settling Defendants also agree that, with respect to any suit or claim for contribution brought against a Settling Defendant for matters related to this Consent Decree, the Settling Defendant will notify the persons identified in Section XIII (Notices) in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Defendants shall notify the persons identified in Section XIII (Notices) within 5 days of service or receipt of any Motion for Summary Judgment, and within 5 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. Upon receipt of Settling Defendants' payments as specified in Paragraph 5 above, Settling Defendants' obligations to perform or pay under this Consent Decree (other than those set out in Paragraph 26) shall be deemed to have been satisfied, except that all agreements and covenants to refrain from suing or taking other actions (including but not limited to Section XI, and Paragraph 28) remain in effect.

27. In any subsequent administrative or judicial proceeding initiated by the United States or the State Trustees for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Site, the Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the

claims raised by the United States or the State Trustees 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 by the United States and the State Trustees set forth in Section IX.

XIII. NOTICES

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 set forth in Appendix A, 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 and the State Trustees, and the Settling Defendants, respectively.

XIV. EFFECTIVE DATE AND RETENTION OF JURISDICTION

29. This Consent Decree shall take effect upon entry by the Court.

30. 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.

XV. CONSENT DECREE MODIFICATIONS

31. 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 and 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,

construe or approve modifications to this Consent Decree.

32. 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.

33. Economic hardship or changed financial circumstances of a Settling Defendant shall not serve as a basis for modifications of this Consent Decree.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. 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 State Trustees reserve the right to withdraw or withhold consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice. 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 sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

35. The undersigned representatives of the Settling Defendants, the United States, and the State Trustees each certify 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.

36. The Settling 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 or State Trustees have notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

37. Each Settling Defendant shall identify, on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Each Settling 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. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

38. 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.

39. Each Party shall bear its own court costs and attorneys' fees in connection with this matter, except to the extent such costs are Natural Resource Damages that are paid under this Consent Decree.

40. 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 Settling Defendants. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED

Date:

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Macalloy et al., relating to the Macalloy Corporation Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Date

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section

7/25/06
Date

STEVEN O'ROURKE
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

8/7/06
Date

LETITIA GRISHAW
Section Chief
Environmental Defense Section

8/7/06
Date

PAUL CIRINO
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Washington, D.C.

August 10, 2006
Date

LEE BERLINSKY
Assistant United States Attorney
District of South Carolina
P.0 Box 978
Charleston, South Carolina 29402

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Macalloy et al., relating to the Macalloy Corporation Superfund Site.

FOR OFFICE OF THE GOVERNOR OF THE STATE OF SOUTH CAROLINA:

7-7-06
Date

HENRY J. WHITE
Chief Legal Counsel
Office of the Governor
P.O. Box 12267
Columbia, SC 29211
Telephone: (803) 734-5252
Facsimile: (803) 734-5167

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Macalloy et al., relating to the Macalloy Corporation Superfund Site.

FOR SCDNR:

July 14, 2006

JAMES QUINN
Assistant Chief Counsel
SC Department of Natural Resources
P. O. Box 167
Columbia, SC 29202
Telephone: (803) 734-4006
Facsimile: (803) 734-9809

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Macalloy et al., relating to the Macalloy Corporation Superfund Site.

FOR SCDHEC:

DATE:

_____

C. EARL HUNTER
Commissioner
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. Macalloy et al., relating to the Macalloy Corporation Superfund Site.

FOR DEFENDANT, MACALLOY CORPORATION

5-10-2006
Date

PAUL MIERER
VICE President,
Macalloy Corporation

5/11/2006
Date

ROBERT W. DIBBLE, Jr.
ETHAN R. WARE
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, South Carolina 29211

Ethan R. Ware is authorized to accept service of process by mail on behalf of Macalloy Corporation with respect to – and only as to – all matters arising under or relating to this Consent Decree.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Macalloy et al., relating to the Macalloy Corporation Superfund Site.

FOR DEFENDANT, THE BOC GROUP, INC.:

_____
Date

Signature: _____
Name (print): JAMES BLAKE
Title: VICE PRESIDENT
Address: The BOC Group Inc.
575 mountain AVE.
Murray Hill, NJ 07974

_____
Date

MARVIN D. INFINGER
Haynsworth Sinkler Boyd,
134 Meeting Street,
Charleston, South Carolina 29402-0340
Telephone: 843-722-3366
Fax 843.722.2266

Marvin D. Infinger is authorized to accept service of process by mail on behalf of ~~Macalloy~~ The BOC Group, Inc. Corporation with respect to – and only as to – all matters arising under or relating to this Consent Decree.

Appendix A
Addresses for Notices Pursuant to Paragraph 6 (Notices and Submissions)

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-07214/1

As to NOAA:

Sheila O'Brien
Office of General Counsel
NOAA
263 13th Ave., Suite 177
S. St. Petersburg, FL 33701
(727) 824-5382

As to DOI:

Harriet Deal
US DOI
Regional Solicitor's Office
75 Spring Street, S.W., Rm 304
Atlanta GA 30303
(404) 331-3379 x 231

As to Settling Federal Agencies:

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # 90-11-6-17435

As to SCDHEC:

Van Whitehead
Staff Attorney
SCDHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, SC 29405
843-744-5838
843-744-5847 (fax)

As to SCDNR

James Quinn
Assistant Chief Counsel
SC Department of Natural Resources
P. O. Box 167
Columbia, SC 29202
Telephone: (803) 734-4006
Facsimile: (803) 734-9809

As to Settling Defendant Macalloy Corporation:

PAUL MIERER, President
Macalloy Corporation

ETHAN R. WARE
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, South Carolina 29211

As to Settling Defendant The BOC Group, Inc.:

MARVIN D. INFINGER
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134 Meeting Street,
Charleston, South Carolina 29402-0340
Telephone: 843-722-3366
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