

# APPENDIX D

*United States and the Commonwealth of Virginia*

*v.*

*Atlantic Wood Industries, Inc., et al*

Appendix D to Consent Decree in *United States and Commonwealth of Virginia v. Atlantic Wood Industries, et al.*

Tax Map Parcel Nos.: 0387-0050 and 0387-0062

Prepared by: Office of the Virginia Attorney General

Remediation Program Site ID #: VAD990710410

**UECA ENVIRONMENTAL COVENANT**

This environmental covenant is made and entered into as of the \_\_\_ day of \_\_\_\_\_, by and between Atlantic Wood Industries, Inc., a Georgia corporation, whose address is 3904 Burtons Point Road, Portsmouth Virginia, 23704 (hereinafter referred to as the “Grantor” or “Owner”), and Atlantic Wood Industries, Inc., a Georgia corporation, whose address is 3904 Burtons Point Road, Portsmouth Virginia, 23704, (hereinafter referred to as the “Grantee” or “Holder”).

The United States Environmental Protection Agency, Region III, whose address is 1650 Arch Street, Philadelphia, PA 19103, (hereinafter referred to as “EPA” or the “Agency”) also joins in this environmental covenant.

This environmental covenant is executed pursuant to the Virginia Uniform Environmental Covenants Act, § 10.1-1238 et seq. of the Code of Virginia (“UECA”). This environmental covenant subjects the Property identified in Paragraph 1 to the activity and use limitations in this document.

1. **Property affected.** The property affected (“Property”) by this environmental covenant is located at 3904 and 3905 Burtons Point Road, Portsmouth Virginia, 23704, and is further described as follows:

The Property is located in the southeast corner of Portsmouth County, Virginia, and is generally located south of Elm Avenue and between Victory Boulevard and the Southern Branch of the Elizabeth River. See Exhibit “A” for a detailed description of the Property.

2. **Description of Contamination & Remedy.**

- a. The Administrative Record pertaining to the environmental response project reflected in this UECA environmental covenant can be found as described immediately below:

U.S. EPA, Region III  
6th floor Docket Room (6-301)  
Attn: Paul Van Reed  
1650 Arch Street  
appointment)  
Philadelphia, PA 19103

Hours:  
Monday - Friday 8AM – 4PM  
(215) 814-3157  
(please call ahead for an

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The Administrative Record for this environmental response project also can be viewed online at

<https://semspub.epa.gov/src/collections/03/AR/VAD990710410>.

For additional documentation or inquiries relating to remedy implementation, contact:

Associate Director,  
Office of Superfund Site Remediation  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103

- b. The Property is part of the Atlantic Wood Industries, Inc. Superfund Site (“Site”), which is generally located south of the South Norfolk Jordan Bridge (Virginia Highway 337) and between Victory Blvd and the Southern Branch of the Elizabeth River in Portsmouth, Virginia. Atlantic Wood Industries, Inc. and its predecessors operated a wood treating facility at the Property from approximately 1926 to 1992. Currently, Atlantic Wood Industries, Inc. owns the Property, and its wholly owned subsidiary, Atlantic Metrocast Inc. (collectively “AWI”), operates a pre-stressed concrete manufacturing facility at the Property. Prior to dredging performed as part of the Site’s cleanup, the Site included approximately 43.5 acres of industrialized waterfront land, primarily consisting of the Property, with contaminated soil and ground water, and approximately 35 acres of contaminated sediments in the river. Contaminants of concern at the Site, including the Property, include polycyclic aromatic hydrocarbons from creosote, pentachlorophenol (“PCP”), and associated dioxin; metals, such as zinc, copper, lead, antimony, cadmium, chromium, cobalt, iron, manganese, nickel, selenium, vanadium, and mercury; and calcium hydroxide.

Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth in 40 C.F.R. Part 300, Appendix B, on February 21, 1990. Early response actions conducted at the Site, including the Property, included actions undertaken by potentially responsible parties pursuant to Administrative Orders on Consent with EPA to conduct a remedial investigation/feasibility study for the Site; address creosote leaking into a storm sewer; excavate contaminated sediments in an intertidal drainage ditch at the Site; and excavate/dispose of calcium hydroxide sludge at the Site and restore wetlands.

On December 21, 2007, EPA issued a Record of Decision (“2007 ROD”), selecting a remedy to address contaminants at the Site, including the Property. Main components of the selected remedy, as described in the 2007 ROD, consist of the following: 1) a clean cover over the areas of

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contaminated soil; 2) stabilization of creosote and PCP-soaked soils on the west side of the Site; 3) monitored natural attenuation (natural restoration) of ground water; 4) installation of an off-shore sheet pile wall in the Southern Branch of the Elizabeth River (“Sheet Pile Wall”) to prevent creosote and metals migration to the river; 5) dredging of contaminated river sediments beyond the wall with consolidation of the dredged sediments either behind the sheet pile wall to form new land or on the west side of the Property in a landfill; 6) enhanced monitored natural recovery of sediments; 7) creation of wetlands to replace wetlands lost due to sediment consolidation behind the wall; and 8) institutional controls to further protect human health and the environment. Main components of the selected remedy have been or will be performed on the Site, including the Property. Certain remedy components, such as monitored natural attenuation and wetland replacement, have been or will be conducted at areas of the Site beyond the Property boundaries.

On August 6, 2012, EPA issued an Explanation of Significant Differences to document an increase in the volume of sediments to be dredged (discovered during the remedial design process); to update the delineation of the anticipated location of the off-shore sheet pile wall to accommodate this sediment volume increase; and to update remedy costs mainly associated with the additional volume of sediments to be dredged.

On September 17, 2018, EPA issued an Explanation of Significant Differences adjusting the size and location of the landfill at the Site that will contain contaminated sediment dredged from the River as part of the Site cleanup; providing for an improved cap over areas of the Property currently being used by AWI; providing for the construction of new concrete foundations on top of the landfill to replace ones being buried in the landfill and running electrical power to the new locations; and updating estimated costs of the selected remedy.

- c. The United States, the Commonwealth of Virginia, and AWI executed a Consent Decree (“Consent Decree”) in *United States and the Commonwealth of Virginia v. Atlantic Wood Industries, Inc. and Atlantic Metrocast, Inc., et al.*, Civil Action No. 2:18CV- (E.D. Va.), which was entered by the United States District Court for the Eastern District of Virginia, Norfolk Division, on DATE, which, among other things, requires AWI to perform certain Operations and Maintenance activities at the Property. A copy of the Consent Decree is available as part of the Administrative Record for this environmental response project.

3. **Activity & Use Limitations.**

- a. The Property is subject to the following activity and use limitations, as identified in Section 11.2.16 of the 2007 ROD, which shall run with the land and become binding on Grantor and any successors, assigns, tenants, agents,

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employees, and other persons under its control, until such time as this covenant may terminate as provided by law:

- i. The Property shall not be used for residential or other non-industrial purposes (such as a day care center or agricultural development) that may present an unacceptable risk to human health from contamination remaining on-site after the cleanup is complete.
- ii. The ground water underlying the Property is not to be used as a potable water source and is not to be pumped or otherwise altered in such a way as to cause a change in hydraulic conditions that could interfere with the ongoing protectiveness and effectiveness of the monitored natural attenuation remedy.
- iii. Any activities that may take place on the Property after cleanup must not interfere with any components of the remedy and must be conducted in a manner to protect the health of construction and/or industrial workers from exposure to contaminated soil, ground water, or vapors that may intrude into a building.
- iv. No disturbance of any portion of the remedy (including but not limited to the repair of underground utilities or construction of buildings or structures on the Property) is allowed unless approval is obtained in advance from the Commonwealth of Virginia Department of Environmental Quality (“VADEQ”) and EPA.
- v. Within thirty (30) days following any transfer of the Property, the then current owner of the Property shall prepare and submit to VADEQ and EPA for review and acceptance an Operation and Maintenance Plan to provide for Operation and Maintenance activities as described in paragraph 7 of the Consent Decree. Until approval of the new Operation and Maintenance Plan, the then current owner of the Property shall comply with the existing Operation & Maintenance Plan as approved by VADEQ and EPA.
- vi. No activities can be conducted on the Property that create greater loading on the cap than the cap and the underlying soils and any other component of the remedy can sustain both at the time of the activity and over a long period of time. The cap on the dredged sediment on the Property west of Burtons Point Road was designed to support operation of a rubber tired gantry crane with a maximum allowable ground pressure of 78 pounds per square inch or psi by AWI based on a certain amount of traffic loading over a 25-year period. The cap over areas without dredged sediment both on the east and west parcels was designed to support AWI’s rubber tired gantry crane with a maximum allowable ground pressure of 120 psi based on a certain amount of traffic loading over a 25-year period. The cap is unpaved and consists of compacted densely

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graded aggregates. Therefore, the cap requires regular visual inspections and maintenance in order to maintain the integrity of the cap. The four-inch cover stone was placed as a wearing surface layer over the cap and it must be maintained to ensure the life of the cap. AWI, and any subsequent Property owner, must operate and store materials in a manner as to prevent punctures and degradation to the cap. The cap over dredged sediment on the very east end of the east parcel on the Property is not currently constructed to support AWI's equipment as identified above. To use that area, AWI, and any subsequent Property owner, would have to upgrade the cap in a manner approved by EPA and VADEQ.

- vii. Any building to be occupied on the Property must be designed and constructed in such a manner as to not create an indoor air risk due to vapor intrusion.
- viii. Any loading/unloading or other activity near the bulkhead shall be conducted in such a way as to not damage the Sheet Pile Wall. The then current owner of the Property is responsible for maintaining and/or confirming that liability insurance or other financial assurance is available to repair Sheet Pile Wall damage that may result due to loading/unloading or other activity as referred to herein.
- ix. At least 30 days prior to any subsurface work occurring, the then current owner of the Property must submit a Health and Safety/Waste Management Plan in accordance with this Paragraph 3.a.ix to protect workers against exposure to contaminated soils and ground water.
  - 1) A draft Health and Safety/Waste Management Plan shall be prepared and submitted for comment to VADEQ, EPA, and the City of Portsmouth. VADEQ and EPA shall review and approve the Health and Safety/Waste Management Plan prior to any disturbance of soil or ground water below the cap.
  - 2) The Health and Safety/Waste Management Plan shall include a waste management section, which shall discuss procedures for testing any soil excavated post-remedial action that cannot be returned to the excavation to determine if it is a hazardous waste as defined by the Resource Conservation Recovery Act, 42 U.S.C. §§ 6901-6992. If so determined, the soils shall be handled and disposed of as such.

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- 3) Breach of the soil cover or gravel cap is prohibited unless undertaken in accordance with the Health and Safety/Waste Management Plan described above.
  - 4) The Health and Safety/Waste Management Plan shall include contact information identifying representatives of EPA and VADEQ to be notified by the then current owner of the Property regarding any emergency subsurface work that could result in the disturbance of the cap.
  - 5) The final Health and Safety/Waste Management Plan for subsurface work will be sent to the City of Portsmouth, local utility companies, VADEQ, and EPA for dissemination to employees who may be called upon to undertake, inspect, or monitor subsurface work at the Property.
- b. All areas of the Property shall be subject to the Activity and Use Limitations set forth in Paragraph 3.a. above.

4. **Notice of Limitations in Future Conveyances.** Each instrument hereafter conveying any interest in the Property subject to this environmental covenant shall contain a notice of the activity and use limitations set forth in this environmental covenant and shall provide the recorded location of this environmental covenant.

5. **Compliance and Use Reporting.**

- a. By the end of every January following the Agency's approval of this environmental covenant until the specified remediation standards are met and the Agency agrees in writing that reporting is no longer required and whenever else requested in writing by the Agency, the then current owner of the Property shall submit, to the Agency, VADEQ, and any Holder listed in the Acknowledgments below, written documentation stating whether or not the activity and use limitations in this environmental covenant are being observed. The documentation submitted pursuant to this Paragraph 5.a. shall be signed by a responsible official of the then current owner of the Property, certifying as to the accuracy and completeness of the documentation submitted.
- b. In addition, within one (1) month after any of the following events, the then current owner of the Property shall submit to the Agency, VADEQ, and any Holder listed in the Acknowledgments below, written documentation describing the following: noncompliance with the activity and use limitations in this environmental covenant; transfer of the Property; changes in use of the Property; or filing of applications for building permits for the Property and any proposals for any site work, if such building or proposed site work will affect the contamination on the Property subject to this environmental covenant.

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6. **Access by the Holder, the Agency, and VADEQ.** In addition to any rights already possessed by the Holder, the Agency, and VADEQ, this environmental covenant grants to the Holder, the Agency, and VADEQ, as well as their respective contractors or other representatives, a right of reasonable access to the Property for the purposes of:
  - a. Conducting and maintaining any and all response actions conducted pursuant to the 2007 ROD, the 2012 and 2018 ESDs, and any subsequent amendment and ESD thereto, and for implementation of Operation and Maintenance activities required at the Site; and other response actions, including, but not limited to, the following activities:
    - i. Monitoring response actions;
    - ii. Verifying any data or information submitted to EPA or VADEQ;
    - iii. Conducting investigations regarding contamination at or near the Site;
    - iv. Obtaining samples;
    - v. Assessing the need for, planning, or implementing additional response actions at or near the Site.
  - b. Verifying or monitoring that no action is being taken on the Property in violation of the terms of this environmental covenant or any federal or state environmental laws or regulations;
  - c. Conducting periodic reviews of any response actions, including but not limited to, reviews required by federal or state environmental laws or regulations;
  - d. Enforcing or monitoring compliance with the terms, conditions and restrictions of this environmental covenant as set forth in Paragraph 3 above.
7. **Subordination.**

Reserved.
8. **Recording & Proof & Notification.**
  - a. Within 90 days after the date of the Agency's approval of this UECA environmental covenant, the Grantor shall record, or cause to be recorded, this environmental covenant with the Clerk of the Circuit Court for the City of Portsmouth. The Grantor shall likewise record, or cause to be recorded, any amendment, assignment, or termination of this UECA environmental

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covenant with the aforesaid Clerk within 90 days of their execution. Any UECA environmental covenant, amendment, assignment, or termination recorded outside of these periods shall be invalid and of no force and effect.

- b. The Grantor shall send a file-stamped copy of this environmental covenant, and of any amendment, assignment, or termination, to the Holder, VADEQ, and the Agency within 60 days of recording. Within that time period, the Grantor also shall send a file-stamped copy to the chief administrative officer of each locality in which the Property is located, any persons who are in possession of the Property who are not the Grantors, any signatories to this covenant not previously mentioned, and any other parties to whom notice is required pursuant to the Uniform Environmental Covenants Act.
9. **Termination or Amendment.** This environmental covenant is perpetual and runs with the land unless terminated or amended (including assignment) in accordance with UECA. The then current owner of the Property shall provide EPA, VADEQ, and any Holder written notice of the pendency of any proceeding that could lead to a foreclosure, as referred to in Section 10.1-1245(A)(4) of the Code of Virginia, within seven calendar days of the owner's receiving notice of the pendency of such proceeding.
  10. **Enforcement of environmental covenant.** This environmental covenant shall be enforced in accordance with § 10.1-1247 of the Code of Virginia.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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**ACKNOWLEDGMENTS:**

**GRANTOR**

ATLANTIC WOOD INDUSTRIES, INC.

Date: \_\_\_\_\_

By:

\_\_\_\_\_ [SEAL]

William Crossman, President

COMMONWEALTH OF VIRGINIA

CITY OF PORTSMOUTH, to wit:

On this \_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned officer, personally appeared William Crossman, President of Atlantic Wood Industries, Inc., a Georgia corporation, who acknowledged himself to be the person whose name is subscribed to this environmental covenant, and acknowledged that he freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: \_\_\_\_\_

Notary Registration# \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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**HOLDER**

ATLANTIC WOOD INDUSTRIES, INC.

Date: \_\_\_\_\_

By:

\_\_\_\_\_ [SEAL]

William Crossman, President

COMMONWEALTH OF VIRGINIA  
CITY OF PORTSMOUTH, to wit:

On this \_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned officer, personally appeared William Crossman, President of Atlantic Wood Industries, Inc., a Georgia corporation, who acknowledged himself to be the person whose name is subscribed to this environmental covenant, and acknowledged that he freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: \_\_\_\_\_

Notary Registration# \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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**AGENCY**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

APPROVED by the United States Environmental Protection Agency as required by § 10.1-1238 of the Code of Virginia.

Date: \_\_\_\_\_

By:

\_\_\_\_\_

Karen Melvin  
Director, Hazardous Sites Cleanup

Division  
Protection Agency

United States Environmental  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

On this \_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned officer, personally appeared Karen Melvin who acknowledged herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that she freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_

Notary Public

**SEEN AND RECEIVED** by the Commonwealth of Virginia Department of Environmental Quality

Date: \_\_\_\_\_

By:

\_\_\_\_\_

Justin L. Williams

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Land Protection and Revitalization  
Division Director/Interim Enforcement  
Division Director  
Virginia Department of Environmental  
Quality  
1111 E. Main St. Suite 1400  
Richmond, VA 23219