

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	
and the COMMONWEALTH OF	)	CIVIL ACTION NO. 2:19CV-109
VIRGINIA,	)	
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	
	)	
ATLANTIC WOOD INDUSTRIES, INC.,	)	
ATLANTIC METROCAST, INC.,	)	
	)	
Defendants	)	
	)	
and	)	

The COMMONWEALTH OF VIRGINIA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 2:19CV109
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
DEPARTMENT OF THE NAVY,	)	
	)	
Defendant.	)	

**NOTICE OF LODGING OF PROPOSED CONSENT DECREE**

The United States respectfully give notice of lodging of a proposed Consent Decree in the above captioned cases. This proposed Consent Decree is subject to a 30-day period for public

comment, after notice of its lodging is published in the federal register. **Accordingly, no action is required by the Court at this time.**

The United States on behalf of EPA has filed a complaint in the Eastern District of Virginia asserting claims under Section 107(a)(1) and (2) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a)(1) and (2), against Atlantic Wood Industries (“AWI”) as former owner and operator and current owner of the AWI Superfund Site, located in Portsmouth, Virginia; and against its subsidiary Atlantic Metrocast Inc. (“AMI”) as a current operator of the Site. The Complaint also includes a claim against AWI and AMI under CERCLA Section 107(a)(4)(C) for natural resources damages. The Commonwealth of Virginia also is anticipated to file an uncontested motion to intervene in the case to assert claims against the United States on behalf of the Department of Defense and the Navy and against AWI and AMI under CERCLA and Virginia law.

The proposed Consent Decree resolves the claims in the federal complaint and in Virginia’s complaint in intervention. Under the proposed decree, AWI will pay \$250,000 with interest to Plaintiffs, with \$75,000 to the United States on behalf of EPA, and \$175,000 to Virginia, in ten installment payments over nine years from entry. It also agrees to retain \$15 million in CERCLA liability and a lien on its real property against that liability, which liability and lien will be reduced to fifty percent of the appraised value of the property after nine years from entry of the Consent Decree, when EPA expects the cleanup to be complete. AWI further concedes title to Virginia to new land that was created along its waterfront as part of the remedial action, and Virginia and EPA agree to a division of rental income or sales proceeds in connection with that new land. AWI agrees as part of the settlement to an environmental covenant which will impose institutional controls on its use of the property and which AWI/AMI will record so

that it will run with the land. Finally, AWI agrees to perform proper operation and maintenance on its property, both in the Consent Decree and in a detailed appendix.

The United States on behalf of the Navy and the Department of Defense (“DOD”) resolves its potential liability to AWI in the proposed Consent Decree, and pays its equitable share of response costs at the Site through a payment of \$55,325,966 to EPA from the Judgment Fund. The United States will also pay \$8.5 million to Virginia from the Judgment Fund for its share of Virginia’s past costs and of the costs of Virginia’s future operation and maintenance of the Site. The Navy and Virginia have agreed that if EPA requires future groundwater treatment, then the Navy will pay 50% of Virginia’s response costs under a “pay go” arrangement where Virginia pays the treatment costs up front and invoices 50% of the costs to the Navy on a regular basis.

The proposed Consent Decree also resolves the claims against the Navy and DOD for natural resource damages of the National Oceanographic and Atmospheric Administration (“NOAA”), the Department of the Interior (“DOI”), and the Commonwealth of Virginia by payment from the Judgment Fund of (1) \$ 1.5 million to Virginia to fund oyster restoration in the Southern or Eastern Elizabeth River; and (2) \$91,081 to NOAA and DOI for their past costs.

AWI further agrees in the proposed Consent Decree to dismiss with prejudice its petition for review in *Atlantic Wood Industries, Inc. v. EPA* (D.C. Cir.) contending that EPA’s record of decision impermissibly amends the NPL listing for the Site by expanding the Site boundaries to include sediments in the Elizabeth River.

The United States will provide public notice and an opportunity for public comment, pursuant to Department of Justice policy, see 28 C.F.R. § 50.7. If, after review and

evaluation of any comments received, the United States continues to believe that the proposed Consent Decree is fair, reasonable, and in the public interest, it will move the Court to enter the Proposed Consent Decree. **No action is required by the Court at this time.**

Respectfully submitted,

ATTORNEYS FOR THE UNITED STATES

Jeffrey Bossert Clark  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
Washington, DC 20530

By: *Pro hac vice pending*  
NANCY FLICKINGER  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
Tel: (202) 514-5258  
Facsimile: (202) 616-6583  
E-mail: [Nancy.Flickinger@usdoj.gov](mailto:Nancy.Flickinger@usdoj.gov)

G. ZACHARY TERWILLIGER  
United States Attorney  
Eastern District of Virginia

By: \_\_\_\_\_/S/  
Virginia VanValkenburg  
Assistant United States Attorney  
Virginia Bar No. 33258  
United States Attorney's Office  
Eastern District of Virginia, Norfolk Division  
101 West Main Street, Suite 8000  
Norfolk, VA 23510  
Telephone: (757) 441-6331  
Facsimile: (757) 441-6689  
E-mail: Virginia.Vanvalkenburg@usdoj.gov

OF COUNSEL:

JOAN JOHNSON  
Mail Code 3RC41  
Office of Regional Counsel  
United States Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA. 19103

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of March, 2019, I will electronically file the foregoing Notice of Lodging of a Proposed Consent Decree with the Clerk of the Court using the CM/ECF system, which will then send a notification of filing to the following:

For AWI:

James K. Austin, Esq.  
2 East Bryan Street, 10<sup>th</sup> Floor  
Savannah, Georgia 31401  
[jaustin@epa-law.com](mailto:jaustin@epa-law.com)

Andrea W. Wortzel  
Troutman Sanders  
Troutman Sanders Building  
1001 Haxall Point  
15<sup>th</sup> Floor  
Richmond, VA. 23219  
[Andrea.wortzel@troutman.com](mailto:Andrea.wortzel@troutman.com)

For the Commonwealth of Virginia:

Paul Kugelman, Jr.  
Senior Assistant Attorney General  
Office of the Attorney General  
202 North 9<sup>th</sup> Street  
Richmond, VA 23219  
[PKugelman@oag.state.va.us](mailto:PKugelman@oag.state.va.us)

\_\_\_\_\_/s/\_\_\_\_\_  
Virginia VanValkenburg  
Assistant United States Attorney  
Virginia Bar No. 33258  
United States Attorney's Office  
Eastern District of Virginia, Norfolk Division  
101 West Main Street, Suite 8000  
Norfolk, VA 23510  
Telephone: (757) 441-6331  
Facsimile: (757) 441-6689  
E-mail: [Virginia.Vanvalkenburg@usdoj.gov](mailto:Virginia.Vanvalkenburg@usdoj.gov)