

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, and)
NEW JERSEY DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
)
Plaintiffs,)
)
v.)
)
WYETH HOLDINGS LLC,)
)
Defendant.)

Civil Action No. 2:23-cv-22922

NATURAL RESOURCES RESTORATION CONSENT DECREE
RESOLVING FLOODPLAIN, RIPARIAN, UPLAND, AND WETLAND CLAIMS

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the United States Department of Commerce (“Commerce”), acting by and through the National Oceanic and Atmospheric Administration (“NOAA”) and the United States Department of the Interior (“DOI”) acting by and through the United States Fish and Wildlife Service (“USFWS”), filed a complaint in this action against Wyeth Holdings LLC (“Settling Defendant”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607.

B. The United States in its complaint alleges that Settling Defendant is liable under Section 107 of CERCLA, 42 U.S.C. § 9607, for damages for, injury to, destruction of, or loss of Natural Resources in connection with the American Cyanamid Superfund Site (“Site”), as defined in Section IV of this Consent Decree, and the reasonable costs of assessment of Natural Resource Damages (“NRD”).

C. Pursuant to 42 U.S.C. §§ 9607(f)(2) and 9615, 40 C.F.R. § 300.600 (herein referred to as the NCP); Executive Order 12580, 52 Fed. Reg. 2933 (January 23, 1987), as amended by Executive Order 12777, 56 Fed. Reg. 54757 (October 19, 1991), DOI and NOAA have been delegated authority to act on behalf of the public as the federal trustees for Natural Resources impacted by the release of hazardous substances at or from the Site.

D. New Jersey Department of Environmental Protection (“NJDEP”), filed a separate complaint alleging that Settling Defendant is liable under Section 107 of CERCLA, 42 U.S.C. § 9607, and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through -23.24 (“Spill Act”) for reimbursement of costs and damages for injury to, destruction of, or loss of Natural Resources in connection with the Site, as defined in Section IV of this Consent Decree, and the reasonable costs of assessment in the Spill Act, N.J.S.A. 58:10-23.11 through -23.24 and CERCLA, 42 U.S.C. § 9601(16). The State of New Jersey, acting by and through NJDEP, is a natural resource Trustee pursuant to 40 C.F.R. § 300.600 and N.J.S.A. 58:10-23.11a.

E. NOAA, DOI, and NJDEP (the “Trustees”) have engaged in natural resource injury studies and restoration planning, for which the Trustees incurred costs of assessment, to identify and quantify injuries to their shared trust resources. These injured resources may include, but are not limited to, birds, mammals, fish, surface water, sediments, and other wildlife, plants, and their supporting habitats, and associated services losses.

F. NJDEP intends to file in this Court a motion to consolidate its action in this matter, to which the United States and the Settling Defendant will not object.

G. This is the second Consent Decree resolving claims by the Trustees against Settling Defendant relating to the Site. On February 1, 2017, the United States District Court for the District of New Jersey (the “Court”) entered a Consent Decree resolving Settling Defendant's liability for In-River Natural Resource Damages, as defined in that Consent Decree. (hereinafter “2017 In-River NRD Consent Decree”). *See United States of America, and New Jersey Department of Environmental Protection v. Wyeth Holdings, LLC*, 3:16-cv-07219-AET-LHG

(ECF No. 9). By the terms of that Consent Decree, the Trustees reserved and retained their right to assert claims for NRD resulting from potential impacts to other Natural Resources in connection with the release of hazardous substances at the Site. Such other claims for NRD, including claims for Floodplain, Riparian, Upland, and Wetland NRD, as defined below in Section IV (Definitions), are resolved in this Consent Decree.

H. Investigations at the Site by the United States Environmental Protection Agency (“EPA”) and NJDEP concluded that waste storage and disposal impoundments at the Site contain or contained hazardous substances, including, but not limited to, volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”), and/or metals. Investigations also found that Site soils contain hazardous substances, including VOCs, SVOCs, polychlorinated biphenyls, and metals, and that groundwater underlying the Site contains metals and VOCs, such as benzene, chlorobenzene, ethylbenzene and xylene.

I. The United States, on behalf of EPA, and Settling Defendant have entered into two remedial Consent Decrees relating to the Site. The first addressed Operable Unit 4 and encompassed all anticipated response actions at the Site, except the remediation of Operable Unit 8 relating to impoundments 1 and 2. That Consent Decree was entered by the Court on December 8, 2015. *United States v. Wyeth Holdings LLC*, 3:15-cv-07153-AET, (ECF No 8). (hereinafter, “2015 Remedial Consent Decree”). The United States in that Consent Decree reserved all rights against Settling Defendant for damages to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment. The second remedial Consent Decree between the United States and Settlement Defendant addressed Operable Unit 8 and was entered by the Court on September 16, 2021. *United States v. Wyeth Holdings LLC*, 3:21-cv-17075-AET-LHG (ECF No. 10) (hereinafter, “2021 Remedial Consent Decree”). The United States in that Consent Decree reserved claims for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments, except for liability related to natural resource damages resolved in the 2017 In-River NRD Consent Decree.

J. NJDEP and Settling Defendant entered into an Amended and Restated Administrative Consent Order, which became effective on December 23, 2015 (hereinafter, “2015 ARACO”). The 2015 ARACO replaced, nullified, and superseded prior administrative consent orders regarding the Site, and set forth the remaining remedial obligations of the Settling Defendant to NJDEP with respect to the Site. The 2015 ARACO, by its terms, did not affect or waive any claim of NJDEP against any party for damages for injuries to, destruction of, or loss of Natural Resources. In 2020, NJDEP and Settling Defendant entered into a natural resource damages settlement for alleged injuries to groundwater arising from discharges at or from the Site. The settlement agreement was signed and made effective on September 3, 2020 (the “2020 Groundwater NRD Settlement”).

K. The Trustees analyzed EPA’s investigation data and other available data to assess potential injuries to Natural Resources and their services related to release of hazardous substances at or near the Site, including releases of hazardous substances from the Site impacting terrestrial areas including floodplain, riparian, upland, and wetland areas that were beyond the scope of the 2017 In-River NRD Consent Decree. The Trustees outlined their assessment of

injuries related to hazardous substance releases and proposed restoration projects in a draft Restoration Plan and Environmental Assessment, which was presented for public comment. The public comment period ended on June 22, 2023. After responding to the comments, the Restoration Plan and Environmental Assessment was finalized. The Trustees and Settling Defendant then agreed, *inter alia*, to the restoration projects outlined in the Restoration Plan, and funding commitments, to be performed by the Settling Defendant. The requirements of the work to be performed by the Settling Defendant to resolve its liability for Floodplain, Riparian, Upland, and Wetland NRD are set forth in the Statement of Work (SOW) attached as an Appendix, which is made enforceable under this Consent Decree.

L. Settling Defendant does not admit any liability to the United States or NJDEP arising out of the transactions or occurrences alleged in the complaints, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site has caused damages to, destruction of, or loss of Natural Resources.

M The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the restoration of natural resources injured at or in connection with the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree 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, 1345, and 1367 and 42 U.S.C. §§ 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b) and (c) because the Settling Defendant did business in and CERCLA releases occurred in this Judicial District. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant 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 is binding upon the United States, the State, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of the 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.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing the Settling Defendant with respect to the Work, and shall condition all contracts entered into hereunder for performance of the Work, as defined below, on compliance with the terms of this Consent

Decree. Settling Defendant or its contractor(s) shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, 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 its Appendix, the following definitions shall apply solely for purposes of this Consent Decree:

“Bird and Vernal Pool Biological Monitoring Costs” shall mean DOI’s costs in the amount of \$131,243 for conducting bird and vernal pool biological monitoring in the Project Area as described in the SOW.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this Consent Decree and its Appendix attached here to (listed in Section XX). In the event of conflict between this Consent Decree and its Appendix, this Consent Decree shall control.

“Construction and Monitoring Oversight Costs” shall mean costs for: DOI in the amount of \$103,170; NOAA in the amount of \$50,000; and NJDEP in the amount of \$50,000. These costs are to be prefunded in accordance with Section VIII of this Consent Decree. They include direct and indirect costs overseeing and monitoring implementation of the Restoration Work, including overseeing Wetland Construction and monitoring and maintenance for Years 1 to 5 as set forth in the SOW, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs. Construction and Monitoring Oversight Costs shall not include: Bird and Vernal Pool Biological Monitoring Costs; Long-Term Stewardship Costs; and Long-Term Stewardship Oversight Costs.

“Costs” shall mean Past Costs, Construction and Monitoring Oversight Costs, Bird and Vernal Pool Biological Monitoring Costs, Long-Term Stewardship Costs, and Long-Term Stewardship Oversight Costs as defined herein and set forth in Section VIII Payments by Settling Defendant.

“Day” or “days” shall mean a calendar day unless expressly stated to be a working day. The term “working day” shall mean a day other than a Saturday, Sunday, or federal or State 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.

“DOI” shall mean the United States Department of the Interior, acting through the Fish and Wildlife Service, and its successor departments, agencies, or instrumentalities.

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

“Duke Farms Forested Floodplain Restoration Project” or “Forested Floodplain Restoration Project” means the project set forth in the SOW that requires establishing approximately 109 acres of intermittently flooded, palustrine forested and scrub-shrub native plants in a surface water slope setting, interspersed with ephemeral vernal pools, totaling approximately three acres, for a total of 112 acres of habitat enhancement of several former agricultural fields at Duke Farms, Hillsborough Township, Somerset County, New Jersey.

“Duke Farms Foundation” shall mean the non-profit corporation, organized pursuant to the laws of the State of New York, that owns the property in Hillsborough Township, Somerset County, New Jersey where the Restoration Work will take place, and maintains offices at 1112 Dukes Parkway West, Hillsborough, New Jersey 08844.

“Effective Date” shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

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

“Federal Natural Resource Trustees” shall mean the federal agencies designated pursuant to CERCLA and 40 C.F.R. § 300.600 as trustees for Natural Resources actually or potentially injured, destroyed or lost as a result of releases of hazardous substances at or from the Site, specifically, the DOI, acting by and through the USFWS, and the United States Department of Commerce, acting by and through NOAA.

“Floodplain, Riparian, Upland, and Wetland NRD” shall mean injury to, destruction of, or loss of Natural Resources occurring on, in, or to any and all floodplains, upland, riparian, or wetland habitats at or in relation to the American Cyanamid Superfund Site, which includes areas that are intermittently wet and further includes, but is not limited to, injury to, destruction of, or loss of any organisms that use such habitat including species such as amphibians and birds, and the prey species that support them.

“In-River NRD” shall mean injury to, destruction of, or loss of Natural Resources occurring wholly within the permanently and intermittently flowing water and its underlying sediment of those portions of the Raritan River, Cuckels Brook, and related tributaries that are adjacent to or downstream of the American Cyanamid Superfund Site. These Natural Resources include, but are not limited to, surface water, sediment, fish, benthic invertebrates, periphyton, and aquatic plants. In-River NRD shall not include “Floodplain, Riparian, Upland and Wetland NRD” defined above. The phrase “intermittently flowing water” does not include flood waters.

“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.

“Long-Term Stewardship Costs” means the Trustees’ costs of monitoring, maintaining, and implementing the Restoration Work, and related Trustee oversight costs, for years 6 to 15 of the monitoring and maintenance period as described in the SOW. The amount of the Long-Term Stewardship Costs shall be based on the Trustee Council’s evaluation of the success of the Forested Floodplain Restoration Project, after consideration of Settling Defendant’s Final Monitoring and Maintenance report as set forth in the SOW. Once the Trustee Council has determined the performance metrics achieved by the project, the Long-Term Stewardship Payment amount shall be the corresponding amount set forth in the Long-Term Stewardship Payment Schedule in Attachment B to the SOW. The Trustee Council’s determination of the performance metrics achieved by the project shall be subject to dispute resolution as set forth in Section X.

“Long-Term Stewardship Oversight Costs” means the Trustees’ costs of overseeing Long-Term Stewardship activities for years 6 to 15 of the monitoring and maintenance period as described in the SOW. The amount of the Long-Term Stewardship Oversight Costs shall be \$80,500 if the Long-Term Stewardship Costs are under \$500,000 and \$144,790 if the Long-Term Stewardship Costs are equal to or greater than \$500,000.

“Natural Resource” or “Natural Resources” is defined at CERCLA § 101(16), 42 U.S.C. § 9601(16). As regards to the State, “Natural Resource” or “Natural Resources” is defined in N.J.S.A. 58:10-23.11b Spill Compensation and Control Act.

“Natural Resource Damages,” or NRD, for the purposes of this Consent Decree, means any damages pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607 for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources resulting from the release or threatened release or disposal or presence of hazardous substances at, from, or to the Site, including, but not limited to: (i) the costs of assessing such injury, destruction, loss, loss of use, or impairment; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; and (iii) the costs of identifying and planning such restoration, rehabilitation, replacement or acquisition activities; and as to the State all claims arising from discharges at the Site that occurred prior to the Effective Date of this Consent Decree, and that are recoverable by NJDEP as natural resource damages for injuries to natural resources under the Spill Act, the costs of assessing injury to natural resources, NJDEP’s Office of Natural Resource Restoration’s oversight costs determined pursuant to N.J.A.C. 7:26C-4.7, attorney’s fees, consultants and experts’ fees, other litigation costs, and interest; and compensation for the lost value of, injury to, or destruction of natural resources. But as regards to the State shall not include compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages;

“NJDEP” shall mean the New Jersey Department of Environmental Protection and any successor departments, agencies, or instrumentalities.

“NOAA” shall mean the National Oceanic and Atmospheric Administration of the United States Department of Commerce and any successor departments, agencies, or instrumentalities.

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

“Parties” shall mean the United States, NJDEP, and Settling Defendant.

“Past Costs” shall mean all unreimbursed costs that the Trustees incurred related to the Floodplain, Riparian, Upland, and Wetland NRD or the Restoration Work through: March 31, 2023, for DOI; March 31, 2023, for NOAA; and March 31, 2023, for NJDEP. Such Past Costs include, but are not limited to, direct and indirect costs, related to Restoration Work, assessment costs, enforcement, attorneys’ and consultants’ fees and other litigation costs. Past Costs further includes Interest on all such costs that has accrued from the Effective Date to the date of payment.

“Plaintiffs” shall mean the United States, NJDEP, and the Administrator of the New Jersey Spill Compensation Fund.

“Performance Standards” shall mean the performance standards set forth in the Statement of Work for the Restoration Work described in the Appendix to this Consent Decree.

“Project Area” shall mean the area identified in Appendix Statement of Work Section 1.1.

“Restoration Account” shall mean a separate account that DOI has established within the NRDAR Fund, identified as NRDA project number 00830. Expenditures from this Restoration Account shall be subject to approval of the Trustee Council.

“Restoration Work” shall mean the Forested Floodplain Restoration Project and related activities set forth in the Statement of Work which is incorporated in the Appendix to this Consent Decree.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean Wyeth Holdings LLC.

“Site” shall mean the American Cyanamid Superfund Site, encompassing approximately 575 acres, located primarily in Bridgewater Township with a portion of the Site in Bound Brook Borough, Somerset County, New Jersey, and its environs, which include the nearby Raritan River, Cuckels Brook, and related tributaries, and wherever else hazardous substance and releases at or from the Site have come to be located.

“Spill Act” shall mean the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

“State” shall mean the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund.

“Statement of Work or “SOW” shall mean the statement of work incorporated in the Appendix to this Consent Decree.

“Supervising Contractor” shall mean the principal contractors retained by Settling Defendant to supervise and direct the implementation of the Restoration Work under this Consent Decree.

“Trustee Council” shall mean a council consisting of one representative of DOI, NOAA, and NJDEP that shall address and oversee all matters related to the Restoration Work under this Consent Decree, as per the terms of a Memorandum of Agreement (“MOA”) among the Trustees.

“Trustees” or “Natural Resource Trustees” shall mean: the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration; the United States Department of the Interior, acting through the United States Fish and Wildlife Service; and the New Jersey Department of Environmental Protection.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including the Department of Commerce and Department of Interior.

“Work” shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree, including the work set forth in the SOW, except the activities required under Section XVII (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are: (i) to perform the Restoration Work; (ii) to reimburse natural resource damage assessment costs and costs related to the Restoration Work incurred by the Trustees, as provided in 42 U.S.C. § 9607(a); (iii) to resolve Settling Defendant’s liability for Floodplain, Riparian, Upland, and Wetland NRD as provided herein; and (iv) to avoid potentially costly and time-consuming litigation.

6. Commitments by Settling Defendant. Settling Defendant shall perform or fund the Restoration Work in accordance with this Consent Decree, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Defendant and approved by the Trustee Council pursuant to this Consent Decree. Settling Defendant shall pay the United States and NJDEP costs as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The activities conducted pursuant to this Consent Decree shall be deemed consistent with the NCP.

8. Permits. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF RESTORATION WORK

9. Settling Defendant's Restoration Requirements. Settling Defendant shall fund and perform, or cause to be performed, the Restoration Work set forth in the SOW incorporated in the Appendix to this Consent Decree. All required timelines in the SOW shall be met, unless the Parties agree in writing to an alternate timeframe Settling Defendant shall allow for and cooperate with monitoring and oversight of all Restoration Work by the Trustees, through the Trustee Council, established under Section VII (Trustee Coordination and Oversight).

10. Project Coordinator. No later than thirty (30) days after the Entry of this Consent Decree, Settling Defendant shall notify the Trustee Council, in writing, of the name, address, telephone number, and e-mail address of its designated Project Coordinator and Alternative Project Coordinator. The persons so designated shall be responsible for coordinating the Restoration Work and shall have technical expertise sufficient to adequately manage and supervise all aspects of the Restoration Work. The Settling Defendant may change its Project Coordinator by providing written notice to the Trustee Council at least thirty (30) days prior to the change.

11. Selection of Supervising Contractors for Restoration Work.

a. All aspects of the Restoration Work shall be under the direction and supervision of at least one Supervising Contractor, as designated by Settling Defendant. Settling Defendant has selected and the Trustees have issued an authorization to proceed regarding hiring of the following entity as Supervising Contractor(s): Stantec Consulting Company, Inc. If at any time hereafter, Settling Defendant proposes to change the Supervising Contractor(s), Settling Defendant shall give such notice to the Trustee Council and must obtain an authorization to proceed from the Trustee Council before the new Supervising Contractor(s) perform, direct, or supervise any Restoration Work under this Consent Decree.

b. If the Trustee Council disapproves a replacement Supervising Contractor, the Trustee Council will notify Settling Defendant in writing. Settling Defendant shall submit to the Trustee Council a list of contractors, including the qualifications of each contractor, that would be acceptable to Settling Defendant within 30 days after receipt of the Trustee Council's disapproval of the contractor previously proposed. The Trustee Council will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify the Trustee Council of the name of the contractor selected within 21 days after the Trustee Council's authorization to proceed.

c. If the Trustee Council fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendant from meeting one or more deadlines in a plan approved by the Trustee Council pursuant to this Consent Decree, Settling Defendant may seek relief under Section IX (Force Majeure).

12. Agreement Regarding Access

a. Settling Defendant shall use best efforts to secure from an agreement, or amend an existing agreement, with Duke Farms Foundation (hereinafter the “Duke Farms Agreement”) that is enforceable by Settling Defendant and by Plaintiffs and requires Duke Farms Foundation to provide Plaintiffs and Settling Defendant, and their respective representatives, contractors, and subcontractors, access to the Project Area as described in the SOW to implement the Restoration Work including investigations, habitat construction and enhancement activities, monitoring, and maintenance. The habitat enhancement activities addressed in the agreement must include the design and installation of interpretive signage, the content of which will be a collaboration between Settling Defendant, Duke Farms Foundation, and the Trustees, as set forth in the SOW. In the event that Duke Farms conveys the Project Area or the Project Area otherwise comes to be owned by a different entity, Settling Defendant shall use best efforts to secure such an agreement with the new owner of the Project Area.

b. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Settling Defendant would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access.

c. Settling Defendant shall provide the Trustees a copy of the Duke Farms Agreement referenced in this Section within 30 days of entry of the Consent Decree.

VII. TRUSTEE COORDINATION AND OVERSIGHT

13. Trustee Council. The Trustees shall address and oversee all matters related to the Restoration Work by consensus through the Trustee Council established by the Memorandum of Agreement.

14. The United States, NJDEP or the Settling Defendant, individually or collectively, may take any legal, administrative, or judicial actions appropriate to enforce the terms of this Consent Decree. The United States, NJDEP, the Trustee Council, and each of their respective representatives, shall be given access at all reasonable times to the locations being used by Settling Defendant to implement the Restoration Work, as well as all non-privileged documents relating to the Restoration Work, for the purpose of overseeing and/or monitoring the implementation of the Restoration Work.

VIII. PAYMENTS BY SETTLING DEFENDANT

15. Payment Summary Table. Settling Defendant shall make payments as summarized in this following table and set forth in this Section.

Cost	Payee	Amount	Deadline
Past Costs	DOI	\$189,059.14	60 Days of Effective Date
	NOAA	\$ 126,110.21	
	NJDEP	\$28,775.00	
Construction and Monitoring Oversight Costs	DOI	\$103,170.00	60 Days of Effective Date
	NOAA	\$50,000.00	
	NJDEP	\$50,000.00	
Bird and Vernal Pool Biological Monitoring Costs	DOI	\$131,243.00	60 Days of Effective Date
Long-term Stewardship Costs	Restoration Account	To be determined in accordance with the Appendix, Attachment B.	Within 30 Days of receipt of written notice of payment amount based on Trustee Council's review of the Final Monitoring and Maintenance Report
Long-term Stewardship Oversight Costs	Restoration Account	\$80,500 if the Long-Term Stewardship Costs are under \$500,000 and \$144,790 if the Long-Term Stewardship Cost are equal to or greater than \$500,000	Within 30 Days of receipt of written notice of payment amount based on Trustee Council's review of the Final Monitoring and Maintenance Report

16. Payments by Settling Defendant for Past Costs.

a. United States Past Costs: Within 60 days after the Effective Date, Settling Defendant shall pay \$316,739.16, plus interest accruing from the Effective Date, to the United States to reimburse Past Costs incurred by the United States. Of this total amount:

- (1) \$189,059.14, plus interest, shall be applied to Past Costs incurred by DOI.
- (2) \$126,110.21 plus interest, shall be applied to Past Costs incurred by NOAA.

b. Instructions for Past Costs Payments to the United States: Past Costs Payments to the United States shall be made by Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, referencing DOJ Case Number 90-11-3-07250/4. Payments shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the District of New Jersey. Such instructions shall be provided to the Settling Defendant within two (2) days of the Effective Date. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The Financial Litigation Unit shall provide the payment instructions to:

Wyeth Holdings LLC
20 Polhemus Lane
Bridgewater, NJ 08807
ATTN: Russell Downey
russell.g.downey@pfizer.com

on behalf of Settling Defendant. Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change in accordance with Section XVIII (Notices and Submissions).

c. NJDEP Past Costs: Within 60 days after the Effective Date, Settling Defendant shall pay \$28,775 plus interest accruing from the Effective Date, to NJDEP to reimburse Past Costs incurred by the State.

d. Instructions for Past Costs Payments to the NJDEP: Past Costs Payments to the NJDEP shall be made by a check payable to the "Treasurer, State of New Jersey" and remit it, with the applicable invoice furnished by the NJDEP, to the address stated on the invoice with a copy of the payment and invoice to:

David Bean, Chief
Department of Environmental Protection
Office of Natural Resource Restoration
Mail Code 501-03
PO Box 420
Trenton, New Jersey 08625-0420

17. Payments by Settling Defendant for Construction and Monitoring Oversight Costs, Bird and Vernal Pool Biological Monitoring Costs, and Stipulated Penalties. Settling Defendant shall pay Construction and Monitoring Oversight Costs to DOI in the amount of \$103,170, to NOAA in the amount of \$50,000, and to NJDEP in the amount of \$50,000. In addition, Settling Defendant shall pay DOI \$131,243 for Bird and Vernal Pool Biological Monitoring Costs. Payments, plus interest (if required pursuant to Paragraph 19), shall be made within 60 days of the Effective Date.

a. Instructions for Payments to the United States of: Construction and Monitoring Oversight Costs; Bird and Vernal Pool Biological Monitoring Costs; and Stipulated Penalties.

(1) Payment to DOI: Settling Defendant shall pay DOI Construction and Monitoring Oversight Costs and Bird and Vernal Pool Biological Monitoring Costs electronically according to instructions to be provided to Settling Defendant. Notification of payment shall be emailed to:

Department of the Interior
Natural Resource Damage Assessment and
Restoration Program
Attn: Bruce Nessler, Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, D.C. 20240
bruce_a_nessler@ios.doi.gov

and

Mark Barash, Esq.
U.S. Department of the Interior
Office of the Regional Solicitor
One Gateway Center
Suite 612
Newtown, MA 02458-2881
mark.barash@sol.doi.gov

(2) Payment to NOAA: Settling Defendant shall pay Construction and Monitoring Oversight Costs to NOAA electronically according to instructions to be provided to Settling Defendant. Notification of payment shall be emailed to:

NOAA/U.S. Department of Commerce
NOAA Office of Response and Restoration
Attn: Donna Roberts, DARF Manager
1315 East-West Highway
Silver Spring, MD 20910-3281
Email: donna.roberts@noaa.gov

and

Kate Barfield
National Oceanic and Atmospheric Administration
Office of General Counsel Natural Resources
1315 East-West Highway
SSMC3# Room 15107
Silver Spring, MD 20910-3282
kate.barfield@noaa.gov

(3) Payment of Stipulated Penalties: Settling Defendant shall pay stipulated penalties electronically according to instructions to be provided to Settling Defendant. Notification of payment shall be made to:

NOAA/U.S. Department of Commerce
NOAA Office of Response and Restoration
Attn: Donna Roberts, DARF Manager
1315 East-West Highway
Silver Spring, MD 20910-3281
Email: donna.roberts@noaa.gov

and

Kate Barfield
National Oceanic and Atmospheric Administration
Office of General Counsel Natural Resources
1315 East-West Highway
SSMC3# Room 15107
Silver Spring, MD 20910-3282
kate.barfield@noaa.gov

b. Instructions for Payments of Construction and Monitoring Oversight Costs and Stipulated Penalties to NJDEP. All payments for Construction and Monitoring Oversight Costs and Stipulated Penalties to NJDEP shall be made by a cashier's or certified check payable to the "Treasurer, State of New Jersey" and remit it, with the applicable invoice furnished by the NJDEP, to the address stated on the invoice with a copy of the payment and invoice to:

David Bean, Chief
Department of Environmental Protection
Office of Natural Resource Restoration
Mail Code 501-03
P.O. Box 420
Trenton, New Jersey 08625-0420

18. Payment of Long-Term Stewardship Costs and Long-Term Stewardship Oversight Costs.

a. Payment Amount. After review and approval of Settling Defendant's Final Monitoring and Maintenance report as set forth in the SOW, the Trustee Council shall evaluate the success of the Forested Floodplain Restoration Project based on the performance metrics set forth in the Long-Term Stewardship Payment Schedule in Attachment B to the SOW. Based on this Schedule, the Trustee Council shall determine, subject to dispute resolution as set forth in Section X, the required payment amount for each criteria. After the Trustee Council has given written notice to the Settling Defendant of the Long-Term Stewardship Payment amount and applicable Long-Term Stewardship Oversight Payment amount, the Settling Defendant shall within 60 days submit such payments.

b. Instructions for Payments of Long-Term Stewardship Costs and Long-Term Stewardship Oversight Costs. All payments for Long-Term Stewardship Costs and Long-Term Stewardship Oversight Costs shall be deposited in the Restoration Account for the joint use and benefit of the Trustees as determined by the Trustee Council. Settling Defendant shall make payments required by this Paragraph 18 to the Restoration Account in accordance with

instructions provided by DOI. A copy of the paperwork documenting the payment and any accompanying correspondence shall be sent by Settling Defendant to the persons listed in Section XVIII (Notices) of this Consent Decree for notices to the Trustees, as well as to:

Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
Mail Stop 3548
1849 C Street, N.W.
Washington, D.C. 20240

Notices shall reference the DOJ Case Number 90-11-3-07250/4, indicate that the payment relates to the “American Cyanamid, Project 00830”, and identify Wyeth Holdings, LLC as the paying responsible party.

19. Interest. In the event that any payment for Costs required under this Section is not made by the date required, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Construction and Monitoring Oversight Costs and Bird and Vernal Pool Biological Monitoring Costs shall begin to accrue 60 days after the Effective Date. The Interest on the Long-Term Stewardship Payment and Long-Term Stewardship Oversight Payment shall begin to accrue 30 days after the Trustee Council has given written notice to the Settlement Defendant of the payment amount. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant’s failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraphs 31 or 32.

IX. FORCE MAJEURE

20. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant’s contractors that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant’s best efforts to fulfill the obligation. The requirement that Settling Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (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 to the greatest extent possible. Force majeure does not include financial inability to complete the Work.

21. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendant intends or may intend to assert a claim of force majeure, Settling Defendant shall notify the Trustee Council’s representative specified in Paragraph 65 orally or, in his or her absence, the Trustee Council’s alternative representative, within seventy-two (72) hours of when Settling Defendant first knew that the event would likely cause a delay. Within five (5) business days thereafter, Settling Defendant shall provide in writing to the Trustee Council 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; Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice documentation supporting its claim that the delay was attributable to a force majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event during the period of time of such failure to comply, provided, however, that if the Trustee Council, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 20 and whether Settling Defendant has exercised its best efforts under Paragraph 20, the Trustee Council may, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely notices under this Paragraph.

22. If the Trustee Council agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the Trustee Council 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 shall not, of itself, extend the time for performance of any other obligation. If the Trustee Council does not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Trustee Council will notify Settling Defendant in writing of its decision. If the Trustee Council agrees that the delay is attributable to a force majeure, the Trustee Council will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

23. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of the Trustee Council's notice. In any such proceeding, Settling 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, 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 Settling Defendant complied with the requirements of Paragraphs 24 and 25. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to the Trustee Council and the Court.

X. DISPUTE RESOLUTION

24. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the NJDEP to enforce obligations of Settling Defendant that has not been disputed in accordance with this Section.

25. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties and the Trustee Council a written Notice of Dispute.

26. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustee Council shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States, NJDEP, and Trustee Council a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 27 (Record Review) or Paragraph 28.

b. Within 30 days, unless extended by agreement of the parties, after receipt of Settling Defendant's Statement of Position, the Trustee Council will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustee Council. The Trustee Council's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 27 (Record Review) or Paragraph 28. Within 30 days after receipt of the Trustee Council's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between the Trustee Council and Settling Defendant as to whether dispute resolution should proceed under Paragraph 27 (Record Review) or 28, the parties to the dispute shall follow the procedures set forth in the paragraph determined by the Trustee Council to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 27 and 28.

27. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any Restoration Work and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any Restoration Work includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by the Trustee Council under this Consent Decree, and the adequacy of the performance of Restoration Work taken pursuant to this Consent Decree.

a. An administrative record of the dispute shall be maintained by the Trustee Council and shall, at a minimum, contain all statements of position, including supporting

documentation, submitted pursuant to this Section. Where appropriate, the Trustee Council may allow submission of supplemental statements of position by the parties to the dispute.

b. The Trustee Council will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 27.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 27.c and 27.d.

c. Any administrative decision made by Trustee Council pursuant to Paragraph 27.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within ten working days after receipt of the Trustee Council's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and NJDEP may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Trustee Council is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the Trustee Council's decision shall be on the administrative record compiled pursuant to Paragraph 27.a.

28. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any Restoration Work nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 26, the Trustee Council will issue a final decision resolving the dispute. The Trustee Council's decision shall be binding on Settling Defendant unless, within ten working days after receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States and NJDEP may file a response to Settling Defendant's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

29. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless the Trustee Council or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 38. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XI. STIPULATED PENALTIES

30. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 31 and 32 for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section IX (Force Majeure).

31. Stipulated Penalty Amounts - Payment of Costs. The following stipulated penalties shall accrue per violation per day for the failure by Settling Defendant to pay Costs, within the specified time schedules established by and approved under this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$400.00	1st through 14th day
\$800.00	15th through 30th day
\$1,650.00	31st day and beyond

32. Stipulated Penalty Amounts – Compliance Milestones. The following stipulated penalties shall accrue per violation per day for failure to comply with the deadlines for Tasks 2, 3, 4, 6, 7, 8, 11, 13, 14, and 16 set forth in the Deliverable and Implementation Task Schedule in Section 3.2 of the SOW:

Penalty Per Violation Per Day	Period of Noncompliance
\$300.00	1st through 14th day
\$600.00	15th through 30th day
\$1,400.00	31st day and beyond

33. All penalties shall begin to accrue on the day after the complete 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: (a) with respect to a decision by the Trustee Council under Paragraph 27.b or 28.a of Section X (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to the Trustee Council's Statement of Position is received until the date that the Trustee Council issues a final decision regarding such dispute; or (b) with respect to judicial review by this Court of any dispute under Section X (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

34. Following the determination by the United States or NJDEP, individually or jointly, that the Settling Defendant has failed to comply with one of the requirements of this Consent Decree listed above, the United States and/or NJDEP may give the Settling Defendant written notification of the same and describe the noncompliance. The United States and/or NJDEP may send the Settling Defendant a written demand for the payment of penalties. Penalties shall accrue and are due as provided in this Section regardless of whether the United States and/or NJDEP, as applicable, has notified the Settling Defendant of a violation.

35. Stipulated penalties shall be paid as follows: Stipulated penalties for failure to timely pay Costs (except payments to the Restoration Account) shall be paid to the government that did not timely receive payment. For failure to timely pay Long-Term Stewardship Costs and Long-Term Stewardship Oversight Costs to the Restoration Account and for all other stipulated penalties, fifty percent (50%) 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 New Jersey, and shall be deposited in the United States Treasury; and fifty percent (50%) shall be paid to the NJDEP, in accordance with the instructions set forth in Paragraph 17.

36. In the event the Settling Defendant fails to pay stipulated penalties when due, the United States and/or NJDEP may institute a legal proceeding to collect such penalties, as well as Interest accruing on any unpaid balance, as provided by law.

37. All penalties due under this Section shall be due and payable within thirty (30) days of the Settling Defendant's receipt of a demand for payment from the United States and/or NJDEP, unless the Settling Defendant invokes dispute resolution under Section X of this Consent Decree.

38. In that case, stipulated penalties shall continue to accrue as provided in this Section, 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 NJDEP within thirty (30) days of the agreement;

b. If the dispute is appealed to this Court and the United States and/or NJDEP prevail in whole or in part, the Settling Defendant shall pay all accrued penalties determined by the Court to be owed to the United States and NJDEP within thirty (30) days of receipt of the Court's decision or order, except as provided for in Paragraph 38c; or

c. If this Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by this Court to be owed to the United States and/or NJDEP into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States and/or NJDEP or to Settling Defendant to the extent that they prevail.

39. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 38 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 37 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

40. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or NJDEP to seek any other remedies or sanctions available by virtue of the Settling Defendant's violation of this Consent Decree.

41. Notwithstanding any other provision of this Section, the United States and/or NJDEP, in their respective unreviewable discretions, may waive any portion of stipulated penalties owed to it that have accrued pursuant to this Consent Decree.

XII. COVENANTS BY THE UNITED STATES AND THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

42. Covenant for Settling Defendant by United States. Except as specifically provided in Section XIII (Reservation of Rights by Plaintiffs), the United States covenants not to sue or take administrative action against Settling Defendant for Natural Resource Damages pursuant to Section 107(a) of CERCLA for (a) the Payment of Costs; and (b) the Floodplain, Riparian, Upland, and Wetland NRD resulting from releases of hazardous substances at, from or to the American Cyanamid Superfund Site. These covenants not to sue shall take effect upon the Effective Date. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including the performance of the Restoration Work, entry into an amended Duke Farms Agreement acceptable to the Trustee Council, payment 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 under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and its successors and do not extend to any other person. These covenants also do not affect the covenants provided in the 2015 Remedial Consent Decree, 2017 In-River NRD Consent Decree, and 2021 Remedial Consent Decree.

43. Covenants for Settling Defendant by NJDEP. In consideration of the actions that have been and will be performed and the payments that will be made by Settling Defendant under this Consent Decree, and except as specifically provided in Section XIII (Reservation of Rights by Plaintiffs), NJDEP covenants not to sue or take administrative action against Settling Defendant for Natural Resource Damages pursuant to Section 107(a) of CERCLA and the Spill Act for (a) the Payment of Costs; and (b) Floodplain, Riparian, Upland, and Wetland NRD resulting from releases of hazardous substances at, from or to the American Cyanamid Superfund Site. This covenant not to sue shall take effect upon the Effective Date. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including the performance of the Restoration Work, entry into an amended Duke Farms Agreement acceptable to the Trustee Council, the payment of Costs, payment of all amounts that may become due to NJDEP under Section XI (Stipulated Penalties), and payment of any Interest owed to NJDEP under this Consent Decree. These covenants not to sue extend only to the Settling Defendant, its successors and assigns, and do not extend to any other person. These covenants do not affect the covenants provided in the 2015 ARACO, 2017 In-River NRD Consent Decree, and the 2020 Groundwater NRD Settlement.

XIII. RESERVATION OF RIGHTS BY PLAINTIFFS

44. General Reservations of Rights by the United States and NJDEP. The United States and NJDEP reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the United States' and NJDEP's respective covenants. These reservations do not affect the reservations provided in the 2015 Remedial Consent Decree, 2021 Remedial Consent Decree, 2015 ARACO and the 2017 In-River NRD Consent Decree (the "Prior Settlements"), provided however, for the avoidance of doubt, any reservation set forth in the Prior Settlements, for which a covenant is now provided in this Consent Decree, is superseded by the present covenant and shall no longer be reserved.

45. Notwithstanding any other provision of this Consent Decree, the United States and NJDEP reserve all rights against Settling Defendant with respect to all matters other than those specifically expressed in Paragraphs 42 and 43; for the avoidance of doubt, this reservation of rights specifically includes:

- a. liability for failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from (1) the past, present, or future disposal, release, or threat of release of hazardous substances from outside the Site; or (2) the disposal, release, or threat of release of hazardous substances from the Site first occurring after the signature of this Consent Decree by Settling Defendant;
- c. criminal liability;
- d. liability for violations of federal or state law that occur during or after implementation of the Restoration Work;
- e. liability to reimburse response costs or to implement response actions under CERCLA, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. sec. 6901, *et. seq.*, or the Spill Act, N.J.S.A. 58:10-23.11 through 23.24 in connection with the Site, subject to the covenants not to sue and reservations of rights applicable to the United States in the 2015 Consent Decree and the 2015 ARACO; and
- f. liability for costs that the United States or NJDEP incurs related to the Site but that are not within the definition of Natural Resource Damages.

46. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the Trustees each reserve the right to institute proceedings against Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, if conditions or information relating to the Site, not known to the Trustees at the time of lodging of this Decree, are discovered that, together with any other relevant information, indicate that there is injury to, destruction of, or loss 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 Decree. Information and conditions known to the Trustees with respect to the Sites as of the

date of lodging of this Decree shall include only the information and conditions set forth in the NOAA, DOI, or NJDEP files for the Site as of the date of lodging of this Decree.

XIV. COVENANTS BY SETTLING DEFENDANT

47. Covenants by Settling Defendant. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to Natural Resource Damages or this Consent Decree including, but not limited to, any claim against the United States or the State, including any department, agency, or instrumentality of the United States and State, under CERCLA Sections 107 or 113 or the Spill Act relating to Natural Resource Damages.

48. Except as provided in Paragraph 58 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action on behalf of their respective Trustees or issues an order pursuant to any of the reservations in Section XIII (Reservation of Rights by Plaintiffs), other than in Paragraphs 45.a (claims for failure to meet a requirement of the Consent Decree), 42.c (criminal liability), and 42.d (violations of federal/state law during or after implementation of the Restoration Work), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

49. Settling Defendant's Reservations:

a. With Respect to Claims Against the United States. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States or the State, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on the Trustees' selection of the Forested Floodplain Restoration Project, or the oversight or approval of the Settling Defendant's deliverables or activities.

b. With Respect to Claims Against the State. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the State, subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 through -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 through 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his or her office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3;

nor shall any such claim concern the Site, including the Trustees' selection of the Forested Floodplain Restoration Project or the oversight or approval of the Settling Defendant's deliverables or activities. The foregoing applies only to claims that the Settling Defendant may bring pursuant to any statute other than the Spill Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act.

50. Nothing in this Consent Decree shall be deemed to constitute 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).

51. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k. or N.J.A.C. 7:1J, or the Sanitary Landfill Fund within the meaning of N.J.S.A. 13:1E-107 or N.J.A.C. 7:1I.

XV. EFFECT OF SETTLEMENT; CONTRIBUTION

52. 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. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that 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. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3) or NJDEP pursuant to the Spill Act, to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) or the Spill Act.

53. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and the Spill Act, and that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, and the Spill Act, N.J.S.A. 58:10-23.11f.a.(2)(a), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States and NJDEP in writing no later than 60 days prior to the initiation of such suit or claim.

54. When entered, this Consent Decree will constitute a judicially approved settlement within the meaning of the Spill Act, specifically, N.J.S.A. 58:10-23.11f.a.(2)(b), for the purpose of providing protection to the Settling Defendant from contribution actions. The Parties agree, and by entering this Consent Decree this Court finds, Settling Defendant is entitled, upon fully satisfying its obligations under this Consent Decree, to protection from contribution actions or claims under the Spill Act for matters addressed in this Consent Decree.

55. In order for the Settling Defendant to obtain protection under the Spill Act, N.J.S.A. 58:10-23.11.f.b., from contribution claims concerning the matters addressed in this Consent Decree, NJDEP published notice of this Consent Decree in the New Jersey Register and on

NJDEP's website, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

- a. the caption of this case;
- b. the name and location of the American Cyanamid Superfund Site;
- c. the name of the Settling Defendant;
- d. a summary of the terms of this Consent Decree; and
- e. there are 60 days to submit comments for this Consent Decree.

56. NJDEP, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Consent Decree to all other potentially responsible parties of whom NJDEP had notice as of the date NJDEP published notice of the proposed settlement in this matter in the New Jersey Register in accordance with Paragraph 55 above.

57. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States and NJDEP within 10 days after service of the complaint on Settling Defendant. In addition, Settling Defendant shall notify the United States and NJDEP within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial. However, the failure to provide such notice within the prescribed time periods shall not affect Settling Defendant's right to contribution protection.

58. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States and/or the NJDEP for injunctive relief or recovery of response costs, cleanup and removal costs, or Natural Resource Damages reserved in Paragraphs 44, 45, and 46, or other appropriate relief relating to the Site, Settling Defendant 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 and/or the NJDEP 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 XII (Covenants by the United States and NJDEP).

XVI. ACCESS TO INFORMATION

59. Settling Defendant shall provide to the United States and NJDEP, including the Trustee Council, upon request, copies of all non-privileged records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Restoration Work. Settling Defendant shall also make available to the United States and NJDEP, including the Trustee Council, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Restoration Work.

60. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the Records submitted to the United States and NJDEP under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by the United States and/or NJDEP will be afforded the protection by the United States and/or NJDEP, as applicable, specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the United States or NJDEP, or if the United States and/or NJDEP has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendant asserts such a privilege in lieu of providing Records, it shall provide the United States and NJDEP with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States and NJDEP in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that they claim to be privileged until the United States and NJDEP have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor.

c. No Records created or generated that are required to be submitted to the United States and NJDEP, including the Trustee Council, pursuant to the requirements of this Consent Decree shall be withheld from the United States or NJDEP on the grounds that they are privileged or confidential.

61. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any or any other purely factual information related to the Work or performance of the Work. Nothing in this Paragraph prevents Settling Defendant from making a claim of confidentiality or privilege with respect to any analysis, assessment or review of such data or factual information.

XVII. RETENTION OF RECORDS

62. Retention of Records

a. Until 10 years after Settling Defendant's receipt of the Five-Year Monitoring and Maintenance Completion Certificate, pursuant to the SOW, Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA or the Spill Act with respect to the Site, provided, however, that Settling

Defendant who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA or the Spill Act with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Restoration Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated that are required to be submitted to the Trustee Council during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

b. Settling Defendant's obligations with respect to retaining Records do not apply to any electronic backup tapes or files that are created, deleted, or overwritten in compliance with Settling Defendant's standard document retention and disposition practices.

63. At the conclusion of this record retention period, Settling Defendant shall notify the Trustees at least 90 days prior to the destruction of any such Records, and, upon request by a Trustee, Settling Defendant shall deliver any such Records to that Trustee. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide the Trustees with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the Trustees in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

64. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since January 1, 2009 and that it has fully complied with any and all EPA and NJDEP requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927 and the Spill Act.

XVIII. NOTICES AND SUBMISSIONS

65. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another or to the Trustee Council, it shall be directed, as applicable, to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise

provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree, with respect to the United States, the State, and Settling Defendant, respectively. Notices required to be sent only to DOI, NOAA, NJDEP or the Trustee Council, do not need to be sent to the U.S. Department of Justice and New Jersey Attorney General's Office.

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 # 90-11-3-07250/4

As to DOI

Mark Barash
United States Department of the Interior
Office of the Solicitor
One Gateway Center
Suite 612
Newton, MA 02458
mark.barash@sol.doi.gov

As to NOAA:

Reyhan Mehran
Assessment and Restoration Division
Office of Response & Restoration
National Ocean Service
New York, NY 10007-1866
Reyhan.mehran@noaa.gov

As to NJDEP:

Peter Revilla, Project Manager
Department of Environmental Protection
Office of Natural Resource Restoration
Mail Code 501-3
P.O. Box 420
Trenton, New Jersey 08625-0420
peter.revilla@dep.nj.gov

and

Section Chief
Environmental Enforcement & Environmental Justice
Section Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex

25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093

As to the Trustee Council

Jillian Stark, Project Manager
American Cyanamid Site Trustee Council
U.S. Fish and Wildlife Service
New Jersey Ecological Services Field Office
4 E. Jimmie Leeds Road, Suite 4
Galloway, NJ 08205
Jillian.r.stark@fws.gov

As to Settling Defendant:

Russell Downey
Wyeth Holdings LLC
20 Polhemus Lane
Bridgewater, NJ 08807
ATTN: Russell Downey
russell.g.downey@pfizer.com

and

Sally Fisk
Wyeth Holdings LLC c/o Pfizer Inc.,
66 Hudson Boulevard East
New York, New York 10001
sally.fisk@pfizer.com

XIX. RETENTION OF JURISDICTION

66. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section X (Dispute Resolution).

XX. APPENDIX

67. An Appendix entitled Statement of Work Duke Farms Forested Floodplain Restoration Project is attached to and incorporated into this Consent Decree:

XXI. MODIFICATION

68. Material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the Parties, and shall be effective upon approval of the Court. Nothing in this Consent

Decree shall prohibit non-material modifications to the Consent Decree, including the SOW, based upon mutual agreement of the Parties. A modification to the SOW shall be considered material if it fundamentally alters a basic feature of the Restoration Work.

69. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

70. This Consent Decree shall be lodged with the Court for a period of not less than 60 days for public notice and comment. The United States and NJDEP reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

71. If for any reason the Court should decline to approve this Consent Decree in the form presented, 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.

XXIII. SIGNATORIES/SERVICE

72. Each undersigned representative of the Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, or his designee, the Attorney General of New Jersey and the Assistant Commissioner for Community Investment and Economic Revitalization for NJDEP, 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.

73. Provided this Consent Decree is not in any way modified or otherwise altered following Settling Defendant's execution, Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States and NJDEP have notified Settling Defendant in writing that they no longer support entry of the Consent Decree.

74. Settling 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 that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant 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. Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIV. FINAL JUDGMENT

75. This Consent Decree and its Appendix constitute the final, complete, and exclusive agreement and understanding among the Parties regarding 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 entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, NJDEP, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, _____.

United States District Judge

Signature Page for Natural Resources Consent Decree Resolving Floodplain, Riparian, Upland, and Wetland Claims related to the American Cyanamid Superfund Site

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: 11/21/2023

DAVID GORDON Digitally signed by DAVID GORDON
Date: 2023.11.21 12:48:50 -05'00'

DAVID L. GORDON
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
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Washington, D.C. 20044 7611
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202-532-5456

OF COUNSEL
Mark D. Barash, Esq.
United States Department of the Interior

Date: 11/21/2023

KELLY.CHAUNCEY.T Digitally signed by
KELLY.CHAUNCEY.THOMAS.1404
285188
Date: 2023.11.21 11:08:51 -05'00'
HOMAS.1404285188

CHAUNCEY KELLY
Section Chief
Office of General Counsel
Natural Resources Section
National Oceanic & Atmospheric Administration
United States Department of Commerce
1315 East-West Highway, SSMC3, Suite 15107
Silver Spring, MD 20910

OF COUNSEL
Kate Barfield, Esq.
United States National Oceanic and Atmospheric Administration

Signature Page for Natural Resource Restoration Consent Decree Resolving Floodplain, Riparian, Upland, and Wetland Claims related to the American Cyanamid Superfund Site

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

Date: October 24, 2023

By: 

David Haymes, Administrator
New Jersey Spill Compensation Fund

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

Date: October 24, 2023

By: 

Shawn LaTourette, Commissioner
New Jersey Department of Environmental Protection

Signature Page for Natural Resource Restoration Consent Decree Resolving Floodplain,
Riparian, Upland, and Wetland Claims related to the American Cyanamid Superfund Site

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

Date: 12/5/2023

By: 

Matthew D. Knoblauch
Deputy Attorney General

Signature Page for Natural Resource Restoration Consent Decree Resolving Floodplain, Riparian, Upland, and Wetland Claims related to the American Cyanamid Superfund Site

FOR WYETH HOLDINGS LLC

October 2, 2023

Date

Signature:

DocuSigned by:
Douglas Lankler
CBB0575C57FA43C

Print Name: Douglas M. Lankler

Title: Vice President

Address: Wyeth Holdings LLC c/o Pfizer Inc.
66 Hudson Boulevard East
New York, New York 10001

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): C T Corporation System

Address: 1536 Main Street
Readfield, ME 04355

APPENDIX

TO

**NATURAL RESOURCES RESTORATION CONSENT DECREE
RESOLVING FLOODPLAIN, RIPARIAN, UPLAND, AND WETLAND CLAIMS**

Among the United States, State of New Jersey, and Wyeth Holdings LLC

**Related to the American Cyanamid Superfund Site, Bridgewater Township,
Somerset County, State of New Jersey**

STATEMENT OF WORK

DUKE FARMS FORESTED FLOODPLAIN RESTORATION PROJECT

Hillsborough Township, Somerset County, State of New Jersey

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1. INTRODUCTION

- 1.1 Purpose of SOW.** This Statement of Work (“SOW”) sets forth the procedures and requirements for implementing the Work to be performed by Wyeth Holdings LLC (hereinafter “Settling Defendant”) as part of the settlement of alleged natural resource damage liability in accordance with the Consent Decree entered between the United States of America, State of New Jersey, and Wyeth Holdings LLC. The Work consists of a Duke Farms Forested Floodplain Restoration Project (the “Project”) that requires establishing approximately 109 acres of intermittently flooded, palustrine forested and scrub-shrub native plants in a surface water slope setting, interspersed with ephemeral vernal pools, totaling approximately three acres, for a total of 112 acres of habitat enhancement of several former agricultural fields at Duke Farms, Hillsborough Township, Somerset County, New Jersey. The subject fields are grouped into two separate geographic areas: Lowlands East located east of River Road in the northeast quadrant of Duke Farms and Lowlands West located west and northwest of River Road in the northwest quadrant of Duke Farms (hereinafter “Project Area” as a whole or “Lowlands East” or “Lowlands West” individually) (Figure 1).

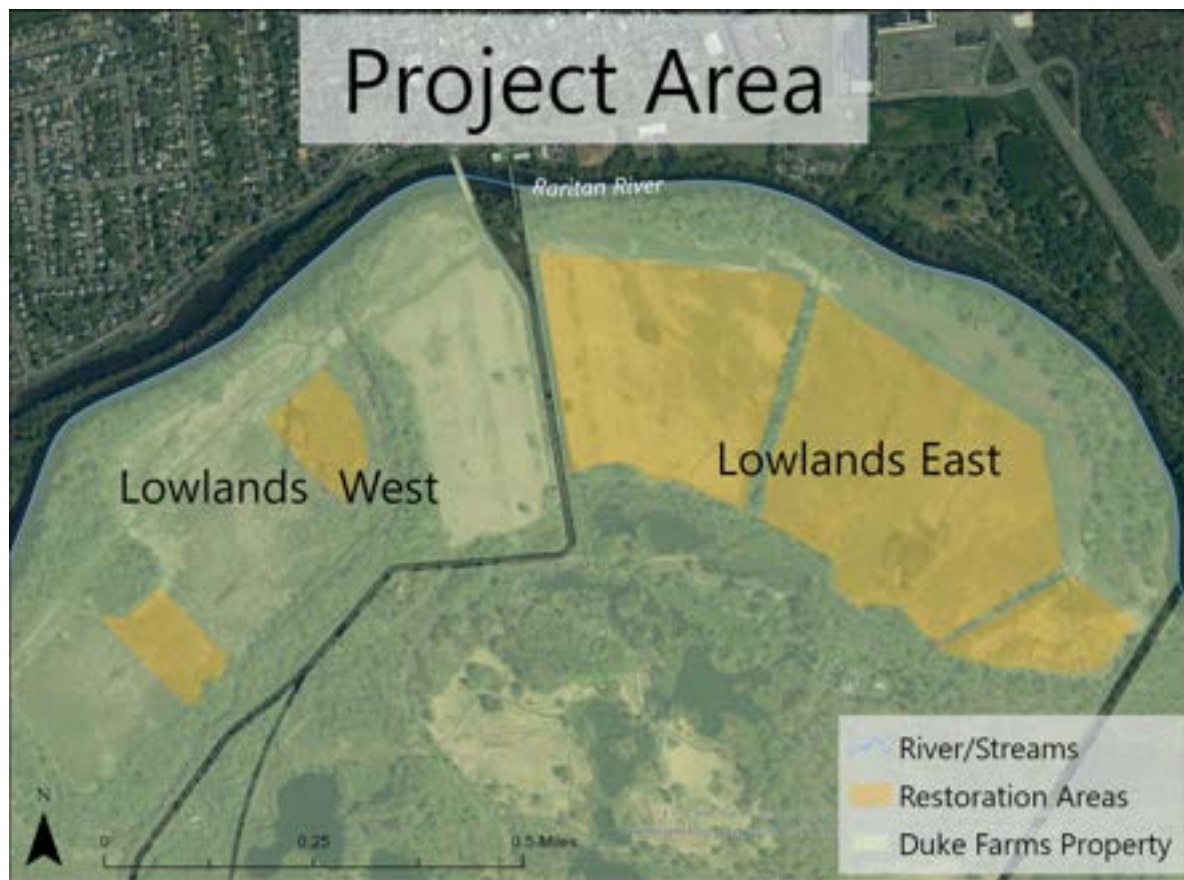


Figure 1. Map of the "Project Area" depicting the fields targeted for restoration (in orange) within "Lowlands East" and "Lowlands West."

- 1.2 Structure of SOW.** This SOW consists of the sequential project components including: the submission of plans, reports and other deliverables; construction, monitoring, implementation, and maintenance requirements; performance standards; a schedule for deliverables and tasks, and process for review and approval; Attachment A (Plant Species List), and Attachment B (Long-Term Stewardship Costs Payment and Long-Term Stewardship Oversight Costs Tables).

2. COMPONENTS OF FORESTED FLOODPLAIN RESTORATION PROJECT

Settling Defendant shall implement each of the following components in accordance with the schedule set forth in Section 3 below:

2.1 Agreement with Duke Farms Foundation

- (a) **Submission of Duke Farms Agreement.** Settling Defendant shall submit to the Trustee Council for review and approval in accordance with Section 3 below an agreement with the Duke Farms Foundation (“DFF”), a non-profit corporation organized pursuant to the laws of the State of New York, with offices at 1112 Dukes Parkway West, Hillsborough, New Jersey 08844 (hereinafter “Duke Farms Agreement”). The Duke Farms Agreement must grant Settling Defendant the right to perform habitat enhancement activities in the Project Area and outline Settling Defendant’s and DFF’s respective responsibilities for Project activities.
- (b) **Submission of Proposed Interpretive Signage.** Settling Defendant shall submit to the Trustee Council a draft version of the interpretive sign content for inspection and review. DFF will have final approval of signage content and installation locations, provided however that the Trustee Council shall have review and approval rights under Section 3 below for all references to matters involving the Trustees in connection with the Consent Decree, the American Cyanamid Superfund Site Floodplain, Riparian, and Wetlands Restoration Plan/Environmental Assessment and associated restoration actions, and the identification of the Trustees via images, logos and text.

2.2 Invasive Species Treatment Plan and Planting Plan

- (a) **Invasive Species Treatment Plan.** Settling Defendant shall develop an Invasive Species Treatment Plan that addresses proactive invasive species control efforts, including the physical removal of woody invasive species shrubs and trees (*e.g.*, multiflora rose, Japanese barberry, honey locust, Callery pear) and the mowing and herbicide treatment of patches of undesirable or invasive herbaceous species (*e.g.*, Japanese stiltgrass, carpetgrass, reed canary grass, mugwort). The Invasive Species Treatment Plan shall specify:
- (1) Implementation of the Invasive Species Treatment Plan may take place over multiple seasons and conclude when the threat of invasive species has been reduced as much as is feasible, as determined by Trustee Council.

- (2) Downed trees and shrubs that result from clearing will be left within the Project Area to act as cover for wildlife (provided there are no seed materials present), unless Settling Defendant determines it is necessary to clear some portion of downed trees to prevent damage to plantings that may result due to shifting of trees during flooding events. Excess material may be used by DFF outside of the Project Area.
- (3) Where bare soils are exposed, or establishment of native plant cover will reduce reinvasion by undesirable species, a native floodplain seed mix and/or a cover crop will be established.

(b) Planting Plan

- (1) Settling Defendant shall develop a Planting Plan that will outline the design approach for habitat enhancement, along with earthwork modifications to retain surface waters within the Project Area (if necessary) and anticipated soil testing/amendments. A zoned landscape plan will be developed illustrating the footprint of the proposed planting cells and the locations and total acreage of (i) vernal pools, (ii) dedicated shrub plots, and (iii) tree plantings, including proposed planting zones, tree and shrub species, quantities, and sizes. The Planting Plan shall specify:
 - (i) All trees and shrubs will be 3-gallon container in size, except five percent of the planted trees will be a larger caliper size but no larger than a 7-gallon container size, 0.75-in. caliper. Larger native desirable trees that are growing naturally in the Project Area (excluding *Fraxinus* [ash] species) can count towards this five percent.
 - (ii) The composition of trees and shrubs will be approximately 80% and 20%, respectively.
 - (iii) Trees will be planted on approximate 10-ft centers in a square pattern and the shrubs will be planted on approximate 8-ft centers in a square pattern in dedicated plots.
 - (iv) All trees and shrubs will be fitted with weed mats upon installation.
 - (v) Species will include those listed in Attachment A Table 1 and Table 2, unless substitutions listed in Table 3 are required due to plant availability. Settling Defendant may propose to the Trustee Council in the Planting Plan or after submission of the Planting Plan variations or modifications to these established lists in accordance with the review and approval process set forth in Section 3.3 below.

- (vi) Subject to substitutions allowed pursuant to Table 3 of Attachment A to this SOW, individual plants from a single species of tree will not comprise less than 2% nor more than 10% of the total number of individual trees, and individual plants from a single species of shrub will not comprise less than 2% nor more than 10% of the total number of individual shrubs.
- (vii) Standard details for vernal pool creation, planting, and typical cross-sections will be included. Description of the vernal pools in the Planting Plan shall reflect that:
 - Location of vernal pools will be selected based on existing hydrology and the presence of appropriate soils (compactible or possessing a naturally-occurring low permeability, having a relatively impermeable underlying layer, and/or a high water table). A soils investigation will be conducted prior to site selection to assess these characteristics.
 - Pools will be graded so that the subsurface is irregular, with depths ranging from 3 inches to 24 inches, with 2/3 of the area ranging from 6 inches to 18 inches. Side slopes will be 10:1 or flatter.
 - Woody debris of variable sizes (some thin twigs and branches for salamander and frog egg-laying habitat and some large logs to provide cover) will be added to the pools. Large logs shall be anchored to prevent movement and scour.
- (viii) Technical details on landscape improvements associated with the habitat construction, including access pathways, staging areas, and specifications on an 8-foot-tall (minimum height) perimeter fence surrounding the enhanced areas to protect the native plantings from deer browse that will be maintained by Settling Defendant (via funding to DFF or a third party) for 10 calendar years after the Five-Year Monitoring and Maintenance Completion Certificate has been issued to Settling Defendant by the Trustee Council. Technical details shall also be included for the eventual deconstruction of the fence.
- (ix) An outline of adaptive management approaches to accomplish an 85% plant survival and an 85% beneficial cover by the end of the fifth year after commencement of implementation of the Planting Plan.

- (2) Settling Defendant shall support DFF in obtaining Planting Plan approval from the Natural Resources Conservation Service (“NRCS”) because the Project Area is enrolled in the Federal Wetland Reserve Program (“WRP”) and is encumbered by and subject to the existing conservation easement granted and held by NRCS (hereinafter “Conservation Easement”). Nothing herein shall alter NRCS’s standard approval practices and procedures, but solely for the purposes of this SOW, NRCS’s written acceptance of proposed Modifications to the Duke Farms Foundation WRP Conservation Plan will be sufficient.

- (c) **Construction Plans Related to Invasive Species Treatment Plan and Planting Plan.** Settling Defendant shall develop Construction Plans that include details suitable for bidding both the Invasive Species Treatment Plan and the Planting Plan to prepare and implement the Project.

2.3 NJDEP Permitting Requirements. Settling Defendant shall:

- (a) Prepare and submit to the NJDEP Division of Land Resource Protection (hereinafter “NJDEP Land Resource”) Flood Hazard Area General Permit 4 (“GP4”) and Freshwater Wetlands General Permit 16 (“GP16”) applications. The information required for the GP4 and GP16 permit applications has been pre-determined by NJDEP and will be submitted by Settling Defendant to NJDEP Land Resource in electronic form. This submission will include property boundaries, property maps, proposed regulated activities, topography, soil erosion and sediment control, flood hazard area/floodway information, photographs, compliance statement, a Letter of Interpretation documentation, an Office of Natural Lands Management Natural Heritage Database data request response, and applicable additional requirements. Settling Defendant will also submit to NJDEP Land Resource a Property Owner Certification form, signed by DFF, and a Public Notice form (along with documentation that the public notice was provided in accordance with N.J.A.C. 7:13-19). Pertinent information in the Planting Plan shall either be included as an attachment to the permit applications or incorporated into the permit applications.
- (b) Provide to the municipal clerk in the Township of Hillsborough, Somerset County, copies of the entire GP4 and GP16 permit applications, as submitted to NJDEP Land Resource.
- (c) Provide to the following recipients a brief description of the Project, a copy of the Project Area plan, and the form notice letter described at N.J.A.C. 7:13-19.3(d)1iii:
 - (1) The construction official of the Township of Hillsborough;
 - (2) The environmental commission, or other government agency with similar responsibilities, of the Township of Hillsborough;

- (3) The planning board of the Township of Hillsborough;
 - (4) The planning board of the County of Somerset;
 - (5) The local Soil Conservation District, along with any additional information necessary to comply with the New Jersey Soil Erosion and Sediment Control Program; and
 - (6) All owners of real property, including easement holders, located within 200 feet of the property boundary of the Project Area.
- (d) Verify to NJDEP Land Resource via affidavit that the public has been noticed of the proposed project in the form of a legal notice in an official newspaper of the Township of Hillsborough, or if there is no official newspaper, a newspaper of general circulation in the Township of Hillsborough.
 - (e) Prior to submission of the GP4 and GP16 permit applications to NJDEP Land Resource, Settling Defendant shall submit to the Trustee Council the proposed permit applications. The Trustee Council shall have review and approval rights under Section 3 below solely with respect to construction plans and details.

2.4 Forested Floodplain Restoration Construction Implementation. Settling Defendant shall:

- (a) **Implement the Invasive Species Treatment Plan.** Implementation of the pre-construction aspects of the Invasive Species Treatment Plan in Lowlands East and Lowlands West shall be done following the receipt of (1) approval from the Trustee Council of the Invasive Species Treatment Plan, (2) approvals from DFF/NRCS, and (3) the issuance of any applicable NJDEP Land Resource permits. Additional aspects of the Invasive Species Treatment Plan may be implemented in separate phases over successive years to account for access limitations, weather conditions, and subcontractor availability.
- (b) **Implement the Planting Plan.** Implementation of the Planting Plan in Lowlands East and Lowlands West shall be done following the receipt of (1) approval from the Trustee Council of the Planting Plan, (2) the issuance of applicable NJDEP Land Resource permits, and (3) after the initial pre-construction phases of the Invasive Species Treatment Plan have been completed. The Planting Plan may be implemented in separate phases over successive years to account for the limited availability of plants and subcontractors to perform the work.

2.5 Project Construction Completion Report. Settling Defendant shall submit by the end of the calendar year during which field construction was completed in accordance with the Planting Plan a Construction Completion Report to the Trustee Council and NJDEP Land Resource. The Construction Completion Report shall be developed in accordance with NJDEP Land Resource regulations, guidance, and permits, as applicable. If NJDEP

Land Resource issues a Construction Completion Report approval letter, Settling Defendant shall submit a copy to the Trustee Council.

2.6 Forested Floodplain Restoration Project Monitoring and Maintenance Plan. Settling Defendant shall develop a Monitoring and Maintenance Plan according to the conditions outlined in the Invasive Species Treatment Plan, Planting Plan, and NJDEP Land Resource GP-4/GP-16 permits. The Monitoring and Maintenance Plan shall set forth two monitoring and maintenance periods: (1) a 5-year monitoring and maintenance period, commencing in the calendar year following the submittal of the Construction Completion Report for the Trustee Council's review and approval, during which Settling Defendant shall be responsible for implementation of all monitoring and maintenance activities; and (2) a year 6 to 15 maintenance period for which Settling Defendant shall implement or fund certain identified maintenance activities, as defined in Section 2.6(d). The Monitoring and Maintenance Plan shall include:

- (a) A description of the methodology for measuring fulfillment of the project objectives based on the performance metrics described in Section 4 below.
- (b) Sixty (60) vegetation monitoring plots (1.4 % of total acreage), randomly placed within fields, with the number of plots within each field weighted by acreage, and the split between tree and shrub plots weighted by percent composition (approximately 80% and 20%, respectively) of each class. Thirty (30) of these plots will be permanent and will have the same location every year, while thirty (30) will be randomized every year to ensure full representation of the planting area.
- (c) Metrics to be monitored, include at minimum:
 - (1) Tree/shrub survivability;
 - (2) Stem density;
 - (3) Invasive species percent cover;
 - (4) Native vegetation percent cover; and
 - (5) Tree height.
- (d) To evaluate the hydrology of and invasive species cover in and immediately adjacent to (within 15 feet of pool edge) the vernal pools, Settling Defendant shall refer to data collected by U.S. Fish and Wildlife Service (the Service) during the annual Vernal Pool Biological Monitoring. This data shall be shared by the Service by the end of the calendar year during which the monitoring took place.
- (e) Maintenance activities for Years 6 to 15 for which Settling Defendant is responsible are: (1) fence monitoring, maintenance, and repair, as indicated, and (2) removal of excessive accumulated debris from flooding.

2.7 Forested Floodplain Restoration Project Monitoring and Maintenance Implementation.

- (a) **Years 1 to 5 Monitoring and Maintenance Implementation.** Settling Defendant shall implement the Monitoring and Maintenance Plan requirements for years 1 to 5.
- (b) **Year 6-15 Maintenance Implementation.** Settling Defendant shall implement (as specified in Section 2.6(e) related to fencing and flooding debris) and fund the maintenance requirements set forth in the Monitoring and Maintenance Plan for years 6 to 15. The actions specified in Section 2.6(e) may be directly performed by the Settling Defendant or its contractors, or through other arrangements as may be agreed between the Settling Defendant and DFF. Nothing herein requires Settling Defendant to implement monitoring and stewardship activities for years 6 to 15, which is planned to be undertaken by the Trustee Council using funding provided by Settling Defendant's Long-Term Stewardship Costs Payments.

2.8 Monitoring and Maintenance Reports

- (a) **Annual Monitoring and Maintenance Reports for Each Monitoring Year 1 to 4.** Settling Defendant shall provide the Trustee Council for each calendar year, by January 31st of the next calendar year, an Annual Monitoring and Maintenance Report that will for subject year: (1) summarize monitoring efforts; (2) summarize and provide full detail of monitoring data; (3) evaluate compliance with performance metrics; (4) propose contingency measures (if needed); (5) detail maintenance activities that were performed at the site; and (6) describe any other findings that Settling Defendant determines pertinent to the Trustees' understanding of Defendant's implementation of the work set forth in this SOW.
- (b) **Final Monitoring and Maintenance Report.** Settling Defendant shall provide to the Trustee Council no later than January 31st of the next calendar year after the fifth and final year of monitoring to be undertaken by Settlement Defendant a Final Monitoring and Maintenance Report. This report will summarize all monitoring and maintenance activities, evaluate the effectiveness of any contingency measures implemented, and describe any other findings that occurred during the Five-Year Monitoring and Maintenance Period that Settling Defendant has determined are material to achieving the objectives of the Project. The Final Monitoring and Maintenance Report will also describe compliance with performance metrics and identify which tier each metric falls within the Long-term Stewardship Payment Schedule as set forth in Attachment B. Settling Defendant shall attach to the Final Monitoring Report the applicable NJDEP Land Resource approval letter or any other applicable NJDEP approval that may be valid at that time, as confirmation that the work was performed in accordance with the Planting Plan and GP-4/GP-16 permits.

3. DELIVERABLES, APPROVALS, AND IMPLEMENTATION

3.1 Applicability. All deliverables and implementation tasks required under this SOW must be submitted or completed by Settling Defendant by the deadlines or within the time durations listed in the Deliverable and Implementation Task Schedule set forth below.

3.2 Deliverable and Implementation Task Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
1	Submit to Trustee Council the Duke Farms Agreements		Within 30 days of entry of Consent Decree
2	Submit to Trustee Council the Invasive Species Treatment Plan		Within the later of (1) 180 days of entry of the Consent Decree, or (2) 10 days after DFF and NRCS's approval of the Invasive Species Plan.
3	Submit to Trustee Council the Planting Plan		Within the later of (1) 180 days of entry of the Consent Decree, or (2) 10 days after DFF and NRCS's approval of the Planting Plan.
4	Submit to Trustee Council any Proposed Modifications to Species Tables in Attachment A		Within 30 days of Settling Defendant's determination that a modification is necessary
5	Submit to Trustee Council draft NJDEP Land Resource Permit Applications		Within 30 days of the Trustee Council's approval of the Invasive Species Treatment Plan and Planting Plan
6	Submit to NJDEP and Trustee Council the Land Resource Permit Application		Within 30 days of Trustee Council's approval of draft NJDEP Land Resource Permit Applications.
7	Implementation (and related Notice to the Trustee Council of commencement of implementation) of the Forested Floodplain Construction Related to the Invasive Species Treatment Plan		Commencement within 6 months of the NJDEP Land Resource approval of applicable permits. Completion may take multiple years but must be completed before submittal of the Final Monitoring and Maintenance Report.
8	Implementation (and related Notice to the Trustee Council of commencement of implementation) of the Forested Floodplain Construction Related to the Planting Plan		Commencement within 6 months of the later of (1) the Trustee Council's approval of the Planting Plan, and (2) NJDEP Land Resource approval of applicable permits. Completion may take multiple years, but must be completed before submittal of the Final Monitoring and Maintenance Report.
9	Submit to Trustee Council Project Construction Completion Report		Within 60 days of completing the implementation of the Project Construction.

10	Submit to Trustee Council NJDEP Land Resource Construction Completion Report approval letter		Within 14 days of Settling Defendant's receipt of NJDEP Land Resource's Construction Completion Report approval letter.
11	Submit to Trustee Council Forested Floodplain Restoration Project Monitoring and Maintenance Plan		Within 90 days of completion of the Project Construction.
12	Submit to Trustee Counsel Proposed Interpretive Signage		Within 180 days of entry of completion of the Project Construction or within 30 days of final draft signage content approved by DFF.
13	Submit to Trustee Council Annual Monitoring and Maintenance Reports for Each Monitoring Year 1 to 4		On or before January 31 of the year following the subject year.
14	Submit to Trustee Council Final Monitoring and Maintenance Report for Monitoring Years 1 to 5		On or before January 31 of the year following the fifth monitoring year.
15	Implementation of Forested Floodplain Restoration Project Monitoring and Maintenance		During the Five-Year Monitoring and Maintenance Period. Additional identified maintenance obligations will be implemented or funded for years 6 to 15.
16	Implement any required contingency measures to meet performance standards in Monitoring and Maintenance Period 1 to 4		On or before the end of the Five-Year Monitoring and Maintenance Period.

3.3 Approval of Deliverables

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted to the Trustee Council under the SOW, the Trustee Council shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) The Trustee Council also may modify the initial submission to cure deficiencies in the submission if: (i) the Trustee Council determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the previous submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 3.3(a)(1)(i) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 3.3(a)(1)(ii), Settling Defendant shall, within 30 days or such longer time as specified by the Trustee Council in such notice, correct the

deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, the Trustee Council may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (5) any combination of the foregoing.

- (c) **Implementation.** Upon approval, approval upon conditions, or modification by the Trustee Council under ¶ 3.3(a) (Initial Submissions) or ¶ 3.3(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Consent Decree; and (2) Settling Defendant shall take any action required of it, by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 3.3(a) or ¶ 3.3(b) does not relieve Settling Defendant of any liability for stipulated penalties under Section XI (Stipulated Penalties) of the Consent Decree.

4. PERFORMANCE STANDARDS, CONTINGENCY MEASURES, AND LONG-TERM STEWARDSHIP

- 4.1 Requirement to Meet Performance Standards and, if necessary, Implement Contingency Measures.** Settling Defendant shall meet the Performance Standards set forth in the following subparagraph for restoration activities for the monitoring years 1 to 4. If necessary to meet Performance Standards, Settling Defendant shall take Contingency Measures listed below, or implement additional or alternative Contingency Measures submitted to the Trustees for review and written approval. Contingency measures must be performed over entire restoration site (not limited to specific monitoring plots). Implementation of these contingency measures shall be completed by the end of monitoring year 5.

4.2 Description of Performance Standards, Criteria, and Contingency Measures.

Performance Standard	Criteria	Contingency Measures
Survival of planted trees/shrubs	At least 85%	Replace plants with appropriate species (or when not possible, wetland indicator status) and class (<i>i.e.</i> , tree vs. shrub) to achieve at least 85% survival.
Coverage by invasive plant species	Less than 10%	Perform mechanical and/or chemical treatment to control invasive species to achieve less than 10% cover.
Cover by native vegetation	At least 85% by the end of year 5.	None, except implement Long-Term Stewardship Payment after year five.
Planted trees height	Must reach 8 feet on average by the end of year 5.	None, except implement Long-Term Stewardship Payment after year five.

Performance Standard	Criteria	Contingency Measures
Deer fence	Must be maintained and remain effective at keeping deer out of restoration areas for a minimum of 15 years.	Maintain and repair any fence damages from storms, flooding, debris, etc. on a regular basis. Large amounts of woody debris resulting from fence failure shall be removed from the interior and damage to planted trees and shrubs from flooding be repaired/replaced. If breaches in fence allow deer in, take appropriate measures to remove them.
Vernal pool hydrology	Each of the pools monitored (by the Service) must: (1) maintain ponded water for at least 60 continuous days during the inundation period (March 1-June 30), with exception: if rainfall during this inundation period is below the values set forth in the Vernal Pool Hydrology Criteria Reference Table (see below) for two months or more during this time, the criteria will be waived for this period; and (2) have at least one drying event (during which there is minimal or no standing water in the pool) by the end of October, with exception: if rainfall during the drying period (July-October) exceeds the values set forth in the Vernal Pool Hydrology Criteria Reference Table (see below) for two or more months during this time, the criteria will be waived for this period. Monthly rainfall will be determined using rainfall data collected by the weather station at Duke Farms (Hillsborough-Duke #3572), a part of the Rutgers NJ Weather Network. The above waivers shall apply only to Settling Defendant's obligation to implement contingency measures and not to payment obligations as specified in Section 4.3.	Perform appropriate modifications to pool soils, slope, and/or topography to achieve vernal pool hydrology.
Coverage by invasive species in and immediately adjacent to (within 15 feet of pool edge) the vernal pools.	Less than 10%.	Perform mechanical and/or chemical treatment to control invasive species.

Vernal Pool Hydrology Criteria Reference Table

Month	Rainfall threshold (inches) ¹
Inundation Period	
March	3.0
April	3.1
May	3.4
June	3.6

If rainfall is below the rainfall threshold values above for two months or more during the inundation period, performance criteria will be waived for this period.

Drying Period	
July	6.8
August	6.1
September	4.7
October	5.4

If rainfall exceeds the rainfall threshold values above for two months or more during the drying period, performance criteria will be waived for this period.

- 4.3 Long-Term Stewardship Payments.** At the end of monitoring year 5, Settling Defendant shall submit within the Final Monitoring and Maintenance Report for Monitoring Years 1 to 5 an evaluation of the Project's success based on the criteria set forth in the Tiered Long-Term Stewardship Payment Schedule set forth in Attachment B. The Trustee Council will thereafter make determinations of the amounts of the Long-Term Stewardship Costs payment and the Long-Term Stewardship Oversight Costs payment pursuant to Attachment B and the Consent Decree. The Trustee Council shall provide written notification of these amounts, and Settling Defendant shall thereafter make the applicable payments in accordance with Paragraph 18 of the Consent Decree.

5. PROJECT COMPLETION CERTIFICATES

- 5.1** Upon the Trustee Council's determination that the Settling Defendant completed the Forested Floodplain Restoration Project requirements under this SOW, and submitted to the Trustee Council an NJDEP Land Resource's construction complete approval letter, the Trustee Council shall issue to the Settling Defendant a "Project Construction Completion Certificate."
- 5.2** Following Settling Defendant's submission of the Five-Year Monitoring and Maintenance Report to the Trustees, the Trustees shall evaluate whether Settling Defendant has completed all monitoring and maintenance requirements and has satisfactorily implemented any contingency measures applicable to monitoring years 1 to 4. If such requirements have been completed, the Trustees shall provide Settling Defendant a "Five-Year Monitoring and Maintenance Completion Certificate."

¹ Rainfall threshold values were determined by applying a 25% decrease (for inundation period months) or 25% increase (for drying period months) to average monthly rainfall data in Hillsborough Township, NJ for the period 2006-2020, acquired from NOAA's U.S. Climate Normals website at <https://www.ncei.noaa.gov/access/us-climate-normals/>.

- 5.3** Following the issuance by the Trustees of the “Project Construction Completion Certificate” and “Five-Year Monitoring and Maintenance Completion Certificate,” Settling Defendant shall have no work obligations set forth in this SOW other than to implement the Year 6-15 requirements relating to fencing maintenance and debris removal as set forth in Section 2.6(e).

ATTACHMENT A**PLANT SPECIES LIST****TABLE 1: PROPOSED TREE SPECIES FOR FORESTED FLOODPLAIN RESTORATION**

Common Name (Trees)	<i>Species Name</i>	Indicator Status
Red maple	<i>Acer rubrum</i>	FAC
Box elder	<i>Acer negundo</i>	FAC
Silver maple	<i>Acer saccharinum</i>	FAC
River birch	<i>Betula nigra</i>	FACW
Gray birch	<i>Betula populifolia</i>	FAC
Common hackberry	<i>Celtis occidentalis</i>	FACU
Common persimmon	<i>Diospyros virginiana</i>	FAC
Sweet gum	<i>Liquidambar styraciflua</i>	FAC
Black gum	<i>Nyssa sylvatica</i>	FAC
American sycamore	<i>Platanus occidentalis</i>	FACW
Swamp white oak	<i>Quercus bicolor</i>	FACW
Pin oak	<i>Quercus palustris</i>	FACW
Willow oak	<i>Quercus phellos</i>	FACW
Black willow	<i>Salix nigra</i>	OBL
Sassafras	<i>Sassafras albidum</i>	FACU
American linden/basswood	<i>Tilia americana</i>	FACU

Note: The species listed in Table 1 can comply with the minimum 2% planting requirement if they are supplemented by similar indicator status plants from Table 3.

All Tree Species (#3 container); Selected Species (#7 container)

TABLE 2: PROPOSED SHRUB SPECIES FOR FORESTED FLOODPLAIN RESTORATION

Common Name (Shrubs)	Species Name	Indicator Status
Canadian serviceberry	<i>Amelanchier canadensis</i>	FAC
Black chokeberry	<i>Aronia melanocarpa</i> aka <i>Photinia melanocarpa</i>	FAC
Sweet pepperbush	<i>Clethra alnifolia</i>	FAC
Red Osier dogwood	<i>Cornus alba (sericea)</i>	FACW
Silky dogwood	<i>Cornus amomum</i>	FAC
Gray dogwood	<i>Cornus racemosa</i>	FAC
Inkberry holly	<i>Ilex glabra</i>	FAC
Winterberry	<i>Ilex verticillata</i>	FACW
Spicebush	<i>Lindera benzoin</i>	FAC
Sweetbay magnolia	<i>Magnolia virginiana</i>	FACW
Northern bayberry	<i>Morella pensylvanica</i>	FAC
Virginia rose	<i>Rosa virginiana</i>	FAC
Pussy willow	<i>Salix discolor</i>	FACW
Elderberry	<i>Sambucus nigra</i>	FAC
Meadowsweet	<i>Spiraea alba</i>	FACW
Steeplebush	<i>Spiraea tomentosa</i>	FACW
Arrowwood viburnum	<i>Viburnum dentatum</i>	FAC
Buttonbush*	<i>Cephalanthus occidentalis</i>	FACW

Note: The species listed in Table 2 can comply with the minimum 2% planting requirement if they are supplemented by similar indicator status plants from Table 3.

Shrub Species (#1 to #3 container)

* Only to be planted along the perimeter of vernal pools and exempt from the minimum 2% planting requirement.

TABLE 3: PROPOSED TREE AND SHRUB SUBSTITUTIONS FOR FORESTED FLOODPLAIN RESTORATION

Common Name (Trees)	Species Name	Indicator Status
Sweet birch	<i>Betula lenta</i>	FACU
American hornbeam	<i>Carpinus caroliniana</i>	FAC
Pignut hickory	<i>Carya glabra</i>	FACU
Shagbark hickory	<i>Carya ovata</i>	FACU
Tulip tree/Yellow poplar	<i>Liriodendron tulipifera</i>	FACU
White oak	<i>Quercus alba</i>	FACU
Common Name (Shrubs)	Species Name	Indicator Status
Speckled alder	<i>Alnus incana</i>	FACU
Smooth alder	<i>Alnus serrulata</i>	OBL**
Shadbush (common serviceberry)	<i>Amelanchier arborea</i>	FAC
Red chokeberry	<i>Aronia arbutifolia aka Photinia pyrifolia</i>	FACW
Witch hazel	<i>Hamamelis virginiana</i>	FACU
Virginia Sweetspire	<i>Itea virginica</i>	OBL**
Swamp azalea	<i>Rhododendron viscosum</i>	FACW
Winged sumac	<i>Rhus copallinum</i>	FACU
Swamp Rose	<i>Rosa palustris</i>	OBL**
Allegheny blackberry	<i>Rubus allegheniensis</i>	FACU
Bladdernut	<i>Staphylea trifolia</i>	FAC
High bush blueberry	<i>Vaccinium corymbosum</i>	FACW
Nannyberry	<i>Viburnum lentago</i>	FAC
Blackhaw	<i>Viburnum prunifolium</i>	FACU

Note: The species listed in Table 3 are exempt from the minimum 2% planting requirement if they are being used to supplement similar indicator plants from Table 1 and Table 2.

**Only to be planted in areas with appropriate wetland hydrology

ATTACHMENT B**LONG-TERM STEWARDSHIP COSTS PAYMENT AND
LONG-TERM STEWARDSHIP OVERSIGHT COSTS TABLES****I. Long-Term Stewardship Costs Payment Tables**

This table sets forth the performance evaluation criteria that the Trustee Council shall employ to determine the success of the Forested Floodplain Restoration Project after review and approval of Settling Defendant's Final Monitoring and Maintenance Report. Based on the values of these performance criteria, the Trustee Council shall determine the amount of the Long-Term Stewardship Cost Payment, which shall be the total of the applicable amounts in accordance with the following four tables (1) Tree Stewardship Payment, (2) Invasive Cover Stewardship Payment, (3) Native Cover Stewardship Payment, and (4) Vernal Pool Stewardship Payment.

TREE STEWARDSHIP PAYMENT						
Tree Height	Height at Year 5	Tree Height Multiplier	Tree Survival at Year 5			
			<64%	65-74%	75-84%	>85%
	>8 ft	1	\$ 1,140,678.54	\$ 575,636.16	\$ 250,268.83	\$ 93,695.85
	6.5-7.9 ft	1.5	\$ 1,711,017.80	\$ 863,454.23	\$ 375,403.25	\$ 140,543.77
	5.0-6.4 ft	2	\$ 2,281,357.07	\$ 1,151,272.31	\$ 500,537.67	\$ 187,391.70
	<4.9 ft	2.5	\$ 2,851,696.34	\$ 1,439,090.39	\$ 625,672.08	\$ 234,239.62

INVASIVE COVER STEWARDSHIP PAYMENT			
Invasive Species Cover at Year 5			
>31%	21-30%	11-20%	<10%
\$ 262,152.80	\$ 176,976.80	\$ 122,158.40	\$ 95,732.00

NATIVE COVER STEWARDSHIP PAYMENT			
Native Cover at Year 5			
<64%	65-74%	75-84%	>85%
\$ 72,333.65	\$ 52,295.87	\$ 43,753.00	\$ 40,215.95

VERNAL POOL STEWARDSHIP PAYMENT			
Percent of pools with vernal pool hydrology at Year 5			
<25%	26-50%	51-75%	76-100%
\$ 22,794.00	\$ 16,867.56	\$ 8,265.10	\$ 3,419.10

II. Long-Term Stewardship Oversight Costs Payment Table

This table sets forth the methodology for the Trustee Council to determine the amount of the Long-Term Stewardship Oversight Costs Payment, which shall be based on the total amount of the Long-Term Stewardship Costs Payment determined in accordance with the above performance metrics. Specifically, when the total Long-term Stewardship Costs Payment is \$233,062 to \$499,999.99, the Long-Term Stewardship Oversight Costs Payment shall be \$80,500, and when the Long-term Stewardship Costs Payment is \$500,000 to \$3,208,977, the Long-Term Stewardship Oversight Costs Payment shall be \$144,790. For the purpose of determining the Long-Term Stewardship Oversight Costs Payments, any interest or stipulated penalties related to the Long-Term Stewardship Oversight Costs Payment shall not be included.

TRUSTEE OVERSIGHT PAYMENT		
Long-Term Stewardship Costs Payment	\$233,062 - \$499,999.99	\$500,000.00 - \$3,208,977
Long-Term Stewardship Oversight Costs Payment	\$80,500	\$144,790