

Former Coal Tar Processing Facility Site
Natural Resource Damage Assessment and Restoration
Administrative Settlement Agreement
Between
The National Oceanic and Atmospheric Administration
and
Beazer East, Inc.

I. Purpose

This Settlement Agreement is made and entered into by and between the National Oceanic and Atmospheric Administration (hereinafter NOAA) and Beazer East, Inc. (Beazer East) for the purpose of fully and finally resolving all natural resource damage claims pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607 et seq., arising from the release or threatened release of hazardous substances and/or oil at or from the Former Coal Tar Processing Facility Site and certain contiguous sites as set forth below in Everett, Massachusetts up to the effective date of this agreement.

II. Authorities

NOAA enters into this Settlement Agreement in accordance with the legal authorities provided under CERCLA, the National Contingency Plan, 40 C.F.R. 300.615, and the Federal Claims Collection Act, as amended, 31 U.S.C. 3711.

III. Statement of Facts

- A. The Former Coal Tar Processing Facility Site ("FCTPF Site") is located in Everett, Massachusetts approximately one half mile north of the confluence of the Mystic River and the Island End River.
- B. The FCTPF Site encompasses approximately 10 acres of land fronting on the Island End River. The FCTPF Site is contiguous with two other disposal sites that also have frontage on, or are located near, the Island End River. These two other sites are known as the "8 Commercial Street Site" and the "Former Island End River Oxbow Site," have respectively been assigned Release Tracking Numbers 3-17950 and 3-18459 by the Massachusetts Department of Environmental Protection, and are referred to collectively in this agreement as the "Related Sites." The FCTPF Site and the Related Sites are referred to collectively as the "Sites".
- C. Over a period of approximately 70 years (from the late 1890's to approximately 1960), Beazer East, Inc., Honeywell International, Inc., and Keyspan Energy, Inc. (collectively, "the Settling Companies"), and/or their predecessors in interest,

owned and/or operated a coal tar processing facility and processed, stored, and distributed coal tar and related products at and from the Sites.

- D. In 1984 the United States Coast Guard responded to a complaint of an oil sheen on the Island End River. Subsequently, the Commonwealth of Massachusetts investigated the FCTPF Site and issued Notices of Responsibility to various entities, including the Settling Companies. In 1989, the Commonwealth classified the FCTPF Site as a Priority Site under 310 CMR 40.544. In 1999 and 2000, the Commonwealth issued Notices of Responsibility for the Related Sites.
- E. The Commonwealth, the United States Environmental Protection Agency (USEPA), and NOAA have conducted further investigations into contamination at or near the Sites. Concentrations of PAHs in sediment at, and adjacent to, the Sites exceed NOAA's Effects-Range Medium screening concentrations. PAH concentrations in sediment decrease as distance from the Sites increases. The federal and state agencies also gathered evidence of alleged decreases in fish abundance and diversity and stressed benthic communities.
- F. NOAA is a designated natural resource trustee for the natural resources actually or potentially impacted by the Sites.
- G. Contamination from the Sites allegedly has adversely impacted NOAA trust resources, including alewife, winter flounder, striped bass, and benthic species.
- H. The Settling Companies cooperatively undertook remedial actions at the site under the direction and supervision of the Commonwealth of Massachusetts. In 2006-2007, the Settling Companies constructed a Release Abatement Measure (RAM) intended to remove and isolate the most heavily impacted sediments in the Island End River, and to cut off the potential for future migration of coal tar-related contaminants from upland portions of the Sites to the river. The RAM was constructed pursuant to an individual permit issued by the United States Army Corps of Engineers under Section 404 of the federal Clean Water Act. As mitigation for the impact to the aquatic environment resulting from RAM, the Settling Companies will be restoring 4.38 acres of salt marsh in the north parcel of Oak Island in Revere, Massachusetts (such restoration, the "Permit Restoration").
- I. NOAA, in consultation with the Commonwealth of Massachusetts, has been developing a proposal to restore up to approximately 4 acres of wetlands in the North parcel of Oak Island, which 4 acres would be in addition to the 4.38 acres to be addressed through the Permit Restoration (such additional restoration, the "Natural Resource Damage Restoration").
- J. The Settling Companies worked cooperatively with NOAA and the Commonwealth to assess the natural resource injuries resulting from the Sites and to identify restoration alternatives. NOAA, the Commonwealth of Massachusetts,

and the Settling Companies recognized the efficiency of scale that would be realized by planning, designing, and obtaining required permits for the Permit Restoration and the Natural Resource Damage Restoration as a single project.

- K. The Settling Companies are voluntarily expanding the scope of their planning, project design, and permitting efforts for the Permit Restoration in a good faith effort to partner with NOAA and the Commonwealth to accomplish the Natural Resource Damage Restoration.
- L. NOAA and Beazer East agree that resolving potential natural resource damages liability for the Sites via a cooperative settlement is in the public interest.
- M. Beazer East, by entering into this Settlement Agreement, does not admit any liability for alleged natural resource damages at or related to the Sites.

IV. Statement of Obligations of Beazer East

Beazer East hereby agrees to pay \$100,000 towards NOAA's assessment and restoration costs at the Sites.

To satisfy the foregoing payment obligation, Beazer East shall send a check in the amount of \$100,000, made payable to "NOAA/U.S. Department of Commerce" and referencing the "Former Coal Tar Processing Facility/Island End River Site", to:

Gwendolyn McCarthy
NOAA Office of General Counsel
U.S. Department of Commerce
One Blackburn Drive
Gloucester, MA 01930

V. Covenant Not to Sue

In consideration and upon receipt of the \$100,000 payment referenced in Section IV. above, NOAA hereby agrees and covenants not to sue or to take enforcement or administrative action against Beazer East for any and all civil judicial or administrative claims for natural resource damages pursuant to CERCLA (or other applicable law) in connection with natural resources that may have been injured, destroyed, or lost due to the release or threatened release of hazardous substances or oil at or from the Sites. This covenant not to sue extends only to Beazer East and its parents, subsidiaries, affiliates successors, assigns, officers, directors, agents and employees.

VI. Certifications

Beazer East certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to NOAA all information requested by NOAA that is currently in its

possession, or the possession of it's officers, employees, contractors and agents, relating to the Sites.

VII. Reservation of Rights

Nothing in this Settlement Agreement is intended to be, nor shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, for:

1. natural resource damages against Beazer East in the event that Beazer East fails to fully comply with the terms of this settlement agreement and/or fails to pay the sum of \$100,000 for assessment and restoration costs to NOAA as agreed above;
2. natural resource damages resulting from future releases, discharges, or spills that occur after the effective date of this settlement agreement;
3. any and all criminal liability; and,
4. any matter not expressly included in the release from liability for natural resource damages set forth in this Settlement Agreement.

VIII. Points of Contact

For NOAA:

Gwendolyn McCarthy
NOAA Office of General Counsel
One Blackburn Drive
Gloucester, MA 01930

For Beazer East:

Jill M. Blundon
Beazer East, Inc. c/o Three Rivers Management, Inc.
One Oxford Center, suite 3000
Pittsburgh, PA 15219

IX. Parties Bound

This Settlement Agreement shall inure to the benefit of and be binding on NOAA and Beazer East, and their parents, subsidiaries, affiliates, successors, assigns, officers, directors, agents and employees. Any change in ownership, control, or corporate status of Beazer East,

including but not limited to, any transfer of assets or real or personal property, shall in no way alter Beazer East's rights and responsibilities under this Settlement Agreement.

This Settlement Agreement constitutes the final complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Settlement Agreement.

X. Effective Date

This Settlement Agreement shall be effective upon the date of the last signature to the Settlement Agreement. This Settlement Agreement may be executed in one or more counterparts. All counterpart signature pages shall be considered part of the original document. Each party signing below covenants that he or she is duly authorized to bind the party for whom he or she is signing.

IN WITNESS THEREOF, this Settlement Agreement is executed by NOAA and Beazer East as of the dates written below.

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Between
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For NOAA:

Katherine A. Pease

12/23/08

for Craig R. O'Connor
Special Counselor for Natural Resources

Date

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For Beazer East, Inc:

Joe M. Alender

7/16/08 3:30 PM

8-11-08