

fill material, into waters of the United States and waters of the State, without authorization, on property comprising the Pikewood National Golf Club, located at 3055 Kingwood Pike, Morgantown, West Virginia, as further depicted in Appendix B to this Consent Decree;

WHEREAS, the Complaint seeks: (1) to enjoin the discharge of pollutants into waters of the United States and waters of the State at or from the Impacted Areas (defined below) except in compliance with CWA Section 301(a), 33 U.S.C. § 1311(a), and Section 8 of the West Virginia WPCA, § 22-11-8; (2) to require Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the impacts caused by their allegedly unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d) and W. Va. Code § 22-11-22;

WHEREAS, Defendants deny any liability for the claims set forth in the Complaint;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' civil claims under the CWA set forth in the Complaint regarding the Impacted Areas, and the State's claims under the West Virginia WPCA set forth in the Complaint regarding the Impacted Areas;

WHEREAS, Plaintiffs and Defendants (the "Parties") agree that settlement of this case is in the public interest, that settlement of this matter will avoid the costs and uncertainties of litigation, and that entry of this Consent Decree is the most appropriate means of resolving the claims against Defendants in this case; and

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the claims against Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and the West Virginia WPCA.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d).

2. Venue is proper in the Northern District of West Virginia pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1395(a), because Defendants conduct business in this District, the subject Impacted Areas are located in this District, and the causes of action alleged herein arose primarily in this District.

3. For the purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344, and Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22.

II. APPLICABILITY

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

4. The obligations of this Consent Decree shall apply to and be binding upon Defendants, their officers, agents, employees and servants, and their successors and assigns, and Plaintiffs and their respective officers, agents, and employees, whether or not such person or entity has notice of this Consent Decree.

5. In any action to enforce this Consent Decree against one or more Defendants, Defendants shall not raise as a defense the failure of any of their officers, directors, agents, employees, successors or assigns or any person, firm or corporation (including, but not limited to, contractors of Defendants) acting in concert or participation with Defendants, to take any actions necessary to comply with the provisions hereof, nor shall any Defendant alter its corporate structure or enter into any agreement with third parties for the purpose of directly or indirectly circumventing the requirements of this Consent Decree. Defendants shall provide a copy of this Consent Decree to (a) all of its officers, non-seasonal employees, and agents (other than administrative support staff) whose duties might reasonably include performing work to comply with the following sections of this Decree: “Restoration, Mitigation and Preservation,” (located in Section V (Specific Provisions)), Section VI (Notices and Other Submissions), and Section VII (Retention of Records and Right of Entry), (b) any contracted person or entity retained to perform construction work that affects the obligations contained in this Consent Decree, to the extent that such person or entity has decision-making authority over the work performed, and (c) any environmental consultant or engineer retained to perform work that affects the obligations contained in the Consent Decree. When providing copies of the Consent Decree as required by this Paragraph, Defendants shall include a written statement advising all above-referenced

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

officers, employees, agents, and contracted entities that they must comply with the relevant obligations contained in this Consent Decree. Defendants shall post a copy of this Consent Decree in a conspicuous location at the maintenance building at Pikewood National Golf Course to enable viewing by any individuals performing work that affects the obligations contained in this Consent Decree.

6. The transfer of ownership or other interest in the areas of restoration/mitigation or in any stream or wetland mitigation project to be completed or funded by Defendants in accordance with Paragraph 25 of this Consent Decree (except any mitigation funded through payment to a mitigation banking system or in lieu fee (“ILF”) program) shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. For the duration of the Consent Decree, at least fifteen (15) days prior to the transfer of ownership or other interest in the areas of restoration/mitigation or in any stream or wetland mitigation project to be completed or funded by Defendants in accordance with Paragraph 25 of this Consent Decree (except any mitigation funded through payment to a mitigation banking system or ILF Program), Defendants shall provide written notice and a true copy of this Consent Decree to its successors in interest to such areas of restoration/mitigation or such ownership or other interest and shall contemporaneously notify the United States Department of Justice, EPA, the United States Army Corps of Engineers (“the Corps”), and the State at the addresses specified in Section XI, below, that such notice has been given. As a condition to any such transfer, Defendants shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. DEFINITIONS

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

Terms used in this Consent Decree that are defined in the CWA, the West Virginia WPCA or in regulations promulgated pursuant to the CWA or the West Virginia WPCA shall have the meanings assigned to them in the statute or such regulations, unless otherwise provided in this Consent Decree. Whenever the term set forth below is used in this Consent Decree, the definition in the following subparagraph shall apply:

“Impacted Areas” means the tributary and wetland impacts as identified in the Defendants’ Summary of Pre-Development Aquatic Resource Extent and Construction Impact Assessment, as approved by EPA on July 27, 2015 (*see* Appendix B).

IV. SCOPE AND EFFECT OF CONSENT DECREE

7. This Consent Decree shall constitute a complete and final settlement of all civil claims and administrative claims for injunctive relief and civil penalties for the matters alleged in the Complaint against Defendants under CWA Section 301 and under Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22, concerning the Impacted Areas.

8. It is the express purpose of the Parties in entering into this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251, and Section 2 of the West Virginia WPCA, W. Va. Code § 22-11-2. All obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendants to achieve and maintain compliance with, and to further the purposes of, the CWA and the West Virginia WPCA.

9. Defendants’ obligations under this Consent Decree shall be joint and several.

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

10. Defendants and their agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States at or from the Impacted Areas, unless such discharge complies with the provisions of the CWA and its implementing regulations.

11. The parties acknowledge that Nationwide Permit 32, found at 77 Fed. Reg. 10,184 (Feb. 21, 2012), authorizes any fill that was placed as of the date of lodging of this Decree, to remain in place, subject to the conditions provided in Nationwide Permit 32, West Virginia's Standard Conditions for CWA Section 401 certification of Nationwide Permit 32, and this Consent Decree. The parties further acknowledge that Nationwide Permit 32 authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed in the approved restoration and/or mitigation plans for the Impacted Areas, which will be prepared in accordance with Appendix A (Restoration and Mitigation Work Plan). Any such discharge of dredged or fill material necessary for work required pursuant to this Consent Decree shall be subject to the conditions of Nationwide Permit 32, West Virginia's Standard Conditions for CWA Section 401 certification of Nationwide Permit 32, and this Consent Decree.

12. The parties acknowledge that the State of West Virginia's General National Pollutant Discharge Elimination System/Water Pollution Control Permit No. WV0115924 ("General Permit"), effective January 4, 2013, provides that "any establishment with discharges composed entirely of stormwater associated with construction activities disturbing one acre or greater of land area," shall be regulated and granted coverage under the terms of the General Permit, to "allow stormwater discharges into the surface waters of the State of West Virginia."

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

For any such applicable stormwater discharges associated with the work required to be performed pursuant to this Consent Decree, the Defendants agree to be bound by and comply with the terms of the aforementioned General Permit and any subsequent versions of such permit.

13. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Except as provided in Paragraph 11, nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

14. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

15. This Consent Decree in no way affects the rights of the United States or the State as against any person not a party to this Consent Decree. This Consent Decree shall not be construed to create rights in, or to grant any cause of action to, any party that is not a party to this Consent Decree.

16. The United States and the State reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

17. Nothing in this Consent Decree shall constitute an admission of fact or law by any party.

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

18. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to Defendants, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding should have been brought in the instant case, except with respect to claims that have been specifically resolved as specified in Paragraph 7 of this Consent Decree.

19. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein.

V. SPECIFIC PROVISIONS

CIVIL PENALTIES

20. Defendants, Greer Industries, Inc., Deckers Creek Limestone Co., and Pikewood, Inc., within 30 days of entry of this Consent Decree, shall pay a civil penalty to the United States in the amount of \$900,000. Defendants shall also, within three hundred sixty-five (365) days of entry of this Consent Decree, pay a civil penalty to the State in the amount of \$900,000.

21. Defendants shall make the above-referenced payment to the United States by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account, referencing U.S.A.O. file number 2016v00307, EPA Region III and the DOJ case number 90-5-1-1-19059. Payment shall be made in accordance with instructions provided to the

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of West Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

22. At the time of making the payment to the United States as set forth in Paragraph 20, above, Defendants shall send, by mail or electronically, a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for the civil penalty owed pursuant to this Consent Decree in United States of America, et al. v. Greer Industries, Inc., et al., and referencing the DOJ case number 90-5-1-1-19059, to the Department of Justice and EPA at the addresses set forth in Section XI of this Decree. Defendants shall also send a copy of the EFT form, transaction record, and transmittal letter by electronic mail to acctsreceivable.CINWD@epa.gov, and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

23. Defendants shall make the payment to the State, as required by Paragraph 20, above, by certified or cashier's check, or by other method acceptable to the State, to the WVDEP for deposit in the WVDEP's Water Quality Management Fund. If paying by certified or cashier's check, the payment shall be mailed to:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

24. Defendants shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal, state, or local income tax.

RESTORATION, MITIGATION AND PRESERVATION

25. Defendants shall perform restoration and mitigation projects under the terms and conditions stated in Appendix A (Restoration and Mitigation Work Plan) appended hereto, and incorporated herein by reference. The restoration and mitigation projects must: (a) be designed to restore the Impacted Areas, to the extent practicable, to approximate pre-disturbance original conditions consistent with the definition of restoration found in 40 C.F.R. § 230.92; (b) include a schedule for implementation; (c) include compensation for impacts to streams and wetlands using the West Virginia Stream and Wetland Valuation Metric (“WVSWVM”) to determine the appropriate amount of mitigation needed (if any) to offset permanent and temporal losses to aquatic resources; (d) ensure that restored areas are stabilized so as to avoid landslides or slips; (e) utilize only native West Virginia species for planting; (f) incorporate quantitative performance measures; (g) establish a calculation of surplus credits, if any; and (h) include a post-restoration monitoring plan for a period of five years. The performance measures set forth in the On-Site Restoration and Mitigation Plan submitted pursuant to Appendix A and approved by EPA shall be met before post-restoration monitoring may be discontinued. At the end of five years, if the performance measures set forth in Appendix A to this Consent Decree have been met, no further monitoring is required and the areas of restoration/mitigation are released from further review; provided, however, that if Defendants have not secured permanent preservation for the areas of

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

restoration/mitigation, then Defendants shall maintain post-restoration monitoring for a total of ten years.

26. Upon completion of the restoration and mitigation projects set forth in the On-Site Restoration and Mitigation Plan and the Off-Site Mitigation Plan submitted pursuant to Appendix A and approved by EPA, Defendants shall not disturb soils, vegetation, and/or water resources in any manner whatsoever at any area of restoration/mitigation, except as identified in the approved restoration and/or mitigation plans, the Deed Restrictions, or otherwise approved by EPA.

27. To ensure that all reasonable steps are taken to prevent disturbance at areas of restoration/mitigation, the Defendants shall, within 90 days after completion of construction of the restoration/mitigation areas, or as otherwise agreed to by the Parties, make and record deed restrictions (“Deed Restrictions”) for all areas of restoration/mitigation set forth in any restoration and/or mitigation plans that are approved under this Consent Decree. The Deed Restrictions shall be made and recorded with the deed recording office for the county where the applicable parcel or parcels are located. The Deed Restrictions shall be substantially similar to the sample attached as Appendix C, and shall provide that each deed, title, or other instrument conveying an interest in the subject parcel shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree. Upon recording of the Deed Restrictions, the Defendants shall give notice to the United States, EPA, and the Corps at the addresses in Section XI.

28. If, during the duration of the Consent Decree, the Deed Restrictions described in Paragraph 27 are found to be defective or unlawful, the United States may: (1) require the

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

Defendants or their successors or assigns, to obtain the granting of a deed restriction for the subject parcel that applies with applicable law; or (2) require additional compensatory mitigation to off-set the loss of permanent protection of a specific restoration/mitigation area in accordance with EPA and Corps regulations.

VI. NOTICES AND OTHER SUBMISSIONS

29. Within five days of each March 30 and September 30 of each year for the first two years following entry of this Consent Decree, the Defendants shall provide the United States with a written status report detailing Defendants' progress toward completing all tasks required by this Consent Decree. From the third year following entry of the Consent Decree until the Consent Decree is terminated, the Defendants shall provide a written status report detailing Defendants' progress toward completing all tasks required by this Consent Decree annually within five days of September 30 of each year. The status report shall be sent, either by regular mail or electronically, to the addresses specified in Section XI of this Consent Decree.

30. If a required task has been completed, the notice shall specify the date when it was completed. If the required task was completed after the scheduled time for such completion required by the Consent Decree, the notice shall explain the reasons for such delay.

31. For each document listed in Paragraph 32, the Defendants shall, by signature of a senior management official or of a duly authorized representative of any Defendant, certify as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

32. Defendants shall certify the following documents as set forth in Paragraph 31:
- a. Restoration and/or mitigation plans
 - b. Semiannual and annual status reports
 - c. Restoration/mitigation completion reports
 - d. Request for termination
 - e. Force majeure submissions
 - f. Stipulated penalty submissions
 - g. Notice of recording of deed restrictions

VII. RETENTION OF RECORDS AND RIGHT OF ENTRY

33. During the term of this Consent Decree, and until five years after the termination of this Consent Decree, Defendants shall preserve and retain the following records, documents, and information now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in this Consent Decree (including all Appendices), regardless of any corporate retention policy to the contrary.

- a. Draft and final restoration and/or mitigation plans submitted to EPA and supporting documentation
- b. Status reports submitted pursuant to Paragraph 29
- c. All permits and supporting documentation

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

- d. Correspondence between Defendants and any/all of the Plaintiffs
- e. Records regarding payment of the civil penalty and stipulated penalties (if any)
- f. Completion reports following restoration/mitigation
- g. Recording deed restrictions
- h. Documents regarding the transfer of any Impacted Areas or restoration/mitigation areas (except any mitigation funded through payment to a mitigation banking system or an ILF program)
- i. Motions for dispute resolution
- j. Force majeure notifications and subsequent correspondence between Defendants and any/all Plaintiffs
- k. Restoration/mitigation monitoring records
- l. Requests for termination and subsequent filings

Defendants shall also instruct their contractors and agents to preserve all non-identical copies of documents, records, and information identified in this Paragraph 33 relating to the performance of the tasks in this Consent Decree (including Appendices) for a period through five years following the termination of this Consent Decree.

34. At the conclusion of the document retention period, Defendants shall notify the United States and the State at least 90 days prior to the destruction of any records or documents identified in Paragraph 33, and, upon request by the United States or the State, Defendants shall deliver any non-privileged, non-identical records or documents in Defendants' possession, custody or control to EPA or the State, as applicable. If Plaintiffs do not submit a written request

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

for delivery of such documents or records within the 90-day period, then the records or documents may be destroyed. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If any Defendant asserts such a privilege, it shall provide the United States or the State, as applicable, with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no final report or correspondence created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that it is privileged.

35. Inspections.

a. Until termination of this Consent Decree, the United States, WVDEP, and their authorized representatives and contractors shall have authority at all reasonable times to enter the Impacted Areas and areas of restoration/mitigation to:

- (i) Monitor the activities required by this Consent Decree;
- (ii) Verify any data or information submitted to the United States or WVDEP;
- (iii) Obtain samples;
- (iv) Inspect and evaluate restoration, mitigation and/or preservation

activities conducted pursuant to this Consent Decree; and

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

(v) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

b. This Paragraph 35 of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States or WVDEP to conduct inspections, to require monitoring and to obtain information from the Defendants as authorized by law.

VIII. DISPUTE RESOLUTION

36. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section VIII shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. If Defendants are aware, or reasonably should have been aware, of a dispute with respect to the meaning or requirements of this Consent Decree prior to an action by the United States and/or the State to enforce any obligation of this Consent Decree against Defendants, but Defendants fail to seek resolution of such dispute under this Section VIII prior to such action by the United State and/or the State, then Defendants shall be precluded from raising the disputed issue as a defense to such action by the United States or the State.

37. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the Parties to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and/or the State, on the one hand, and Defendants, on the other, cannot be resolved by informal negotiations, then the written position advanced by the United States following consultation with the State shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Defendants file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States, in consultation with the State, shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the following standards of review shall apply:

- a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 37 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.
- b. Other Disputes. Except as otherwise provided in this Consent Decree, in

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

any other dispute brought under Paragraph 37, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

38. If the United States or the State believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, the United States or the State may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. Defendants shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the standard of review terms set forth above in Paragraphs 37.a and 37.b, as appropriate, shall apply.

39. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree, except as provided in Section X, below, regarding payment of stipulated penalties.

IX. FORCE MAJEURE

40. Defendants shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event, or unless an alternate time frame is agreed to by the Parties. A Force Majeure event is defined as any event or series of related events arising from causes beyond the control of Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of any of the areas of restoration/mitigation, or failure to obtain federal, state, or local permits, unless Defendants have timely applied for such federal, state or local permits and have provided all information required by the federal, state, or local authority in connection with such permit(s).

41. If Defendants believe that a Force Majeure event has affected or will affect their ability to perform any action required under this Consent Decree, Defendants shall notify the United States and the State in writing, by mail or electronically, within ten (10) calendar days after the Force Majeure event begins at the addresses listed in Section XI. Such notice shall include a discussion of the following:

- a. what action has been affected;
- b. the specific cause(s) of the delay;
- c. the length or estimated duration of the delay; and
- d. any measures taken or planned by Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to the United States and the State any additional information that Defendants deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

and complete notification to the United States and the State shall constitute a waiver of any claim of Force Majeure as to the event in question.

42. If the United States, after a reasonable opportunity for consultation with the State, determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event or by another timeframe agreed upon in writing by the Parties. Defendants shall coordinate with the United States and the State to determine when to begin or resume the operations that had been affected by any Force Majeure event.

43. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, Defendants or the United States (in consultation with the State) may seek a resolution of the dispute under the procedures in Section VIII of this Consent Decree.

44. Defendants shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendants and any entity controlled by Defendants, including their contractors and consultants; (2) that Defendants or any entity controlled by Defendants could not have avoided or prevented noncompliance by due diligence; and (3) the number of days of noncompliance that were caused by such circumstances.

X. STIPULATED PENALTIES

45. After entry of this Consent Decree, if any Defendant fails to timely fulfill any requirement of the Consent Decree (including those in the appendices) and such failure is not excused under the Force Majeure provisions or by agreement of the Parties, then that Defendant

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

shall be liable for a stipulated penalty to the United States and the State for each violation of each requirement of this Consent Decree as follows:

- a. For Day 1 up to and including Day 30 of non-compliance \$1,000.00 per day
- b. For Day 31 up to and including 60 of non-compliance \$2,000.00 per day
- c. For Day 61 and beyond of non-compliance \$3,000.00 per day

A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree or otherwise agreed to by the Parties. Stipulated penalties under this Section X shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

46. A Defendant shall pay any stipulated penalty within forty-five (45) days of the date the Defendant receives a demand by either the United States or the State. The Plaintiff making the demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff by electronic or first-class mail. The Defendant shall pay 50 percent of the total stipulated penalty amount to the United States and 50 percent to the State.

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

47. The United States or the State may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties that would otherwise be due to it under this Consent Decree.

48. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VIII and/or the Force Majeure provisions in Section IX shall be resolved upon motion to this Court as provided in Paragraphs 37 and 38 (Dispute Resolution).

49. The filing of a motion requesting that the Court resolve a dispute shall stay a Defendant's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that a Defendant does not prevail on the disputed issue, stipulated penalties shall be paid by the Defendant as provided in this Section.

50. To the extent a Defendant demonstrates to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Section IX, above) or otherwise prevails on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

51. In the event that a stipulated penalty payment is applicable and not made on time, the Defendant shall be liable for interest on such penalties in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

compounded annually. Nothing in this Paragraph shall be construed to limit the right of the United States or the State to seek any remedy otherwise provided by law for a Defendant's failure to pay any stipulated penalties.

52. Any payment of a stipulated penalty shall be paid to the United States by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account, referencing U.S.A.O. file number 2016v00307, EPA Region III and the DOJ case number 90-5-1-1-19059. Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of West Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, at the time of making the payment as set forth in this Paragraph, Defendant shall send, by mail or electronically, a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for stipulated penalties owed pursuant to this Consent Decree in United States of America, et al. v. Greer Industries, Inc., et al., and referencing the DOJ case number 90-5-1-1-19059, to the Department of Justice and EPA at the addresses set forth in Section XI of this Decree. Defendants shall also send a copy of the EFT form, transaction record, and transmittal letter by electronic mail to acctsreceivable.CINWD@epa.gov, and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

53. Any payment of a stipulated penalty to the State shall be made by certified or cashier's check to the WVDEP for deposit in the WVDEP's Water Quality Management Fund, or by other method acceptable to the State. The payment shall be mailed to:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

54. Subject to Paragraph 7 of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for a Defendant's violation of this Consent Decree or applicable law.

XI. ADDRESSES

55. All notices and communications required under this Consent Decree shall be made by mail or electronically to the parties through each of the following persons and addresses:

a. TO EPA:

- (1) Pamela J. Lazos
Senior Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region III
MC 3RC20
1650 Arch St.
Philadelphia, PA 19103-2029
lazos.pamela@epa.gov
- (2) Jeffrey D. Lapp
Associate Director, Office of Environmental Programs

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

Environmental Assessment and Innovation Division
United States Environmental Protection Agency
Region III
MC 3EA40
1650 Arch St.
Philadelphia, PA 19103-2029
lapp.jeffrey@epa.gov

b. TO THE UNITED STATES DEPARTMENT OF JUSTICE:

Austin Saylor
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
austin.saylor@usdoj.gov

c. TO THE CORPS:

Dana M. Adipietro
Assistant District Counsel
U.S. Army Corps of Engineers
William S. Moorhead Federal Bldg.
1000 Liberty Ave., Fl. 22
Pittsburgh, PA 15222
dana.m.adipietro@usace.army.mil

Scott A. Hans
Chief
Regulatory Branch
U.S. Army Corps of Engineers
William S. Moorhead Federal Bldg.
1000 Liberty Ave., Fl. 20
Pittsburgh, PA 15222
scott.a.hans@usace.army.mil

d. TO THE STATE/WVDEP:

Jeremy W. Bandy

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304
jeremy.w.bandy@wv.gov

e. TO DEFENDANTS:

J. Robert Gwynne
Executive Vice President
Greer Industries, Inc.
P.O. Box 1900
Morgantown, WV 26507-1900
gwynne@greerindustries.com

XII. COSTS OF SUIT

56. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action, except that the United States and/or the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce this Consent Decree or to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIII. PUBLIC COMMENT

57. The Parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States and the State is subject to the requirements of 28 C.F.R. § 50.7, and the W. Va. Code R. § 47-10-16.2.c, which provide for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree,

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

XIV. CONTINUING JURISDICTION OF THE COURT

58. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XV. MODIFICATION

59. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any material modification of this Consent Decree shall be in writing, and shall not take effect unless signed by the United States, the State, and Defendants and approved by the Court; provided, however, that schedules for the completion of tasks required by Paragraph 25 and Appendix A, revisions to plans submitted and approved pursuant to Appendix A, and the timeframes for transfer and/or recording of Deed Restrictions pursuant to Paragraphs 27–28 may be modified by written agreement of the United States and the Defendants.

XVI. TERMINATION

60. Except for Paragraph 10, this Consent Decree may be terminated by either of the following:

a. Defendants, the United States, and the State may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

b. After Defendants have fulfilled all of the obligations in Section V of this Consent Decree, except for the requirement in Section V for post-restoration monitoring, and have paid any accrued stipulated penalties as required by this Consent Decree, Defendants may serve a Request for Termination on the United States (including EPA) and the State. The Request for Termination shall state that Defendants have satisfied all requirements of this Consent Decree, except for the requirement in Section V for post-restoration monitoring. The Request for Termination shall also include supporting documentation sufficient to demonstrate that Defendants have satisfied the foregoing criteria. Following service of Defendant's Request for Termination, the Parties may confer informally concerning the Request.

(i) If the United States and the State agree that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation to terminate the Consent Decree.

(ii) If the United States or the State does not agree that the Consent Decree may be terminated, then Defendants may submit a motion to the Court asking for termination of the Consent Decree without invoking Dispute Resolution under Section VIII of this Consent Decree; provided, however, that Defendants shall not submit such motion until 90 days after service of its Request for Termination on the United States and the State, and Defendant shall bear the burden of proving by a preponderance of the evidence that Defendant's position is in accordance with the terms and conditions of this Consent Decree and the requirements of the CWA (and the West Virginia WPCA, as applicable).

XVII. SIGNATORIES/SERVICE

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

61. Each of the Defendants' signatories 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 the Party he or she represents to this document.

62. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XVIII. APPENDICES

63. The following appendices are attached to and part of this Consent Decree: Appendix A (Restoration and Mitigation Work Plan); Appendix B (Map of Impacted Areas); Appendix C (Model Deed Restriction).

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 201_.

United States District Judge

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

[This page intentionally left blank]

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

ON BEHALF OF THE UNITED STATES:

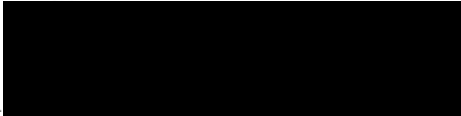
JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division



Dated: January 5, 2017

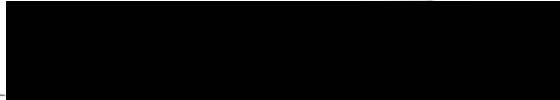
AUSTIN D. SAYLOR
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-1880

U.S. ENVIRONMENTAL PROTECTION AGENCY



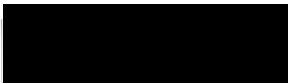
Dated: 1/3/17

Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency



Dated: 12/23/16

Susan Shinkman
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency



Dated: 12/22/2016


Mark Pollins
Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency




Dated: 12/21/2016

Jeffrey Speir
Attorney-Adviser
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

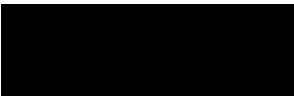
U.S. ENVIRONMENTAL PROTECTION AGENCY


Shawn M. Garvin *for SMG*
Regional Administrator
U.S. Environmental Protection Agency
Region III

Dated: 1/3/2017


Mary B. Coe
Regional Counsel
U.S. Environmental Protection Agency
Region III

Dated: 12/23/16


Pamela J. Lazos
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III

Dated: 12/23/15

ON BEHALF OF THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

[REDACTED]

Dated: 12-27-16

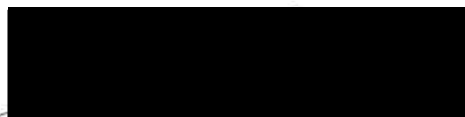
Scott Mandriola
Director
Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street Southeast
Charleston WV 25304
(304) 926-0499

[REDACTED]

Dated: 12/28/16

Scott Driver
Associate Attorney
West Virginia Department of Environmental Protection
601 57th Street Southeast
Charleston WV 25304
(304) 926-0499

ON BEHALF OF DEFENDANTS:



J. Robert Gwynne
Executive Vice President
Greer Industries, Inc.
P.O. Box 1900
Morgantown, WV 26507-1900
(304) 594-3395

Appendix A: Restoration and Mitigation Work Plan

This Work Plan sets forth the procedures applicable to the restoration/mitigation work to be undertaken at the Pikewood National Golf Club by Greer Industries, Inc., Deckers Creek Limestone Co., and Pikewood, Inc. (collectively “Defendants”) pursuant to the Consent Decree among the United States of America, the State of West Virginia (by and through the West Virginia Department of Environmental Protection), and Defendants. This Work Plan is incorporated into the Consent Decree.

On July 27, 2015, the U.S. Environmental Protection Agency (“EPA”) approved the extent of impacts to aquatic resources set forth in Defendants’ Summary of Pre-Development Aquatic Resources Extent and Construction Impact Assessment (“Impacted Areas”).

I. Restoration Plans and Mitigation Plans

a. Within 120 days of the filing of the Consent Decree, or as otherwise agreed to by the parties, Defendants shall submit an On-Site Restoration and Mitigation Plan (Plan) to EPA for approval. After review of the Plan, EPA will: a) approve the Plan, in whole or in part; b) approve the Plan upon specified conditions; c) disapprove the Plan, in whole or in part; or d) any combination of the above. EPA may disapprove the Plan, in whole or in part, based on EPA’s determination that the Plan is not in accordance with the objectives of the Consent Decree and the CWA (and the West Virginia WPCA, as applicable).

b. If EPA disapproves all or part of the Plan, Defendants shall, within 60 days of receipt of EPA’s disapproval, or as otherwise agreed to by the parties, address the reasons for disapproval and resubmit the Plan for approval. If a Plan submitted pursuant to this provision is disapproved in whole or in part three times or more, EPA, in consultation with the Corps and the State, may itself correct the deficiencies in the Plan and require restoration in accordance with the plan developed by EPA, subject to Defendants’ right to invoke Dispute Resolution pursuant to the Consent Decree.

c. In the event that the physical, chemical, and biological functions of the Impacted Areas cannot be fully restored, Defendants shall notify EPA and develop and submit to EPA an Off-Site Mitigation Plan (Off-Site Plan) within 90 days of approval of the Plan or as otherwise agreed to by the parties. The Off-Site Plan must use WWSWVM to determine the appropriate amount of mitigation needed to compensate for all unrestored impacted resources. Defendant may satisfy any such additional mitigation obligations by (i) purchasing additional mitigation credits from mitigation banks authorized to sell offsite mitigation credits, (ii) proposing a mitigation project to be completed or funded by Defendants that includes long-term protection for mitigation areas via a deed restriction, (iii) otherwise undertaking compensatory mitigation in a manner consistent with 40 C.F.R. §§ 230.91-230.98 (2013), or (iv) making in-lieu-fee payments. The Off-Site Plan must provide long-term protection for mitigation areas via a deed restriction or other appropriate instrument.

d. After review of Defendants' Off-Site Plan, EPA will: a) approve the Off-Site Plan, in whole or in part; b) approve the Off-Site Plan upon specified conditions; c) disapprove the Off-Site Plan, in whole or in part, or d) any combination of the above. EPA may disapprove the Off-Site Plan, in whole or in part, based on EPA's determination that the impacted aquatic resources can be fully restored. If EPA disapproves all or part of the Off-Site Plan, Defendants shall, within 60 days of receipt of EPA's disapproval, or as otherwise agreed to by the parties, address the reasons for disapproval and resubmit the Off-Site Plan for approval. If the Off-Site Plan submitted pursuant to this provision is disapproved in whole or in part three times or more, EPA, in consultation with the Corps and the State, may itself correct the deficiencies in the Off-Site Plan and require mitigation in accordance with a plan developed by EPA, subject to Defendants' right to invoke Dispute Resolution pursuant to Section VIII of the Consent Decree. Defendants shall perform the actions required by the Plan and Off-Site Plan within the time limits set forth herein. EPA recognizes that delineation and restoration activities may be delayed for a number of reasons, including, but not limited to, unanticipated seasonal and weather conditions, seasonal restrictions for site operation and/or restoration/mitigation design, and delayed Federal, state and/or local permitting and/or approvals.

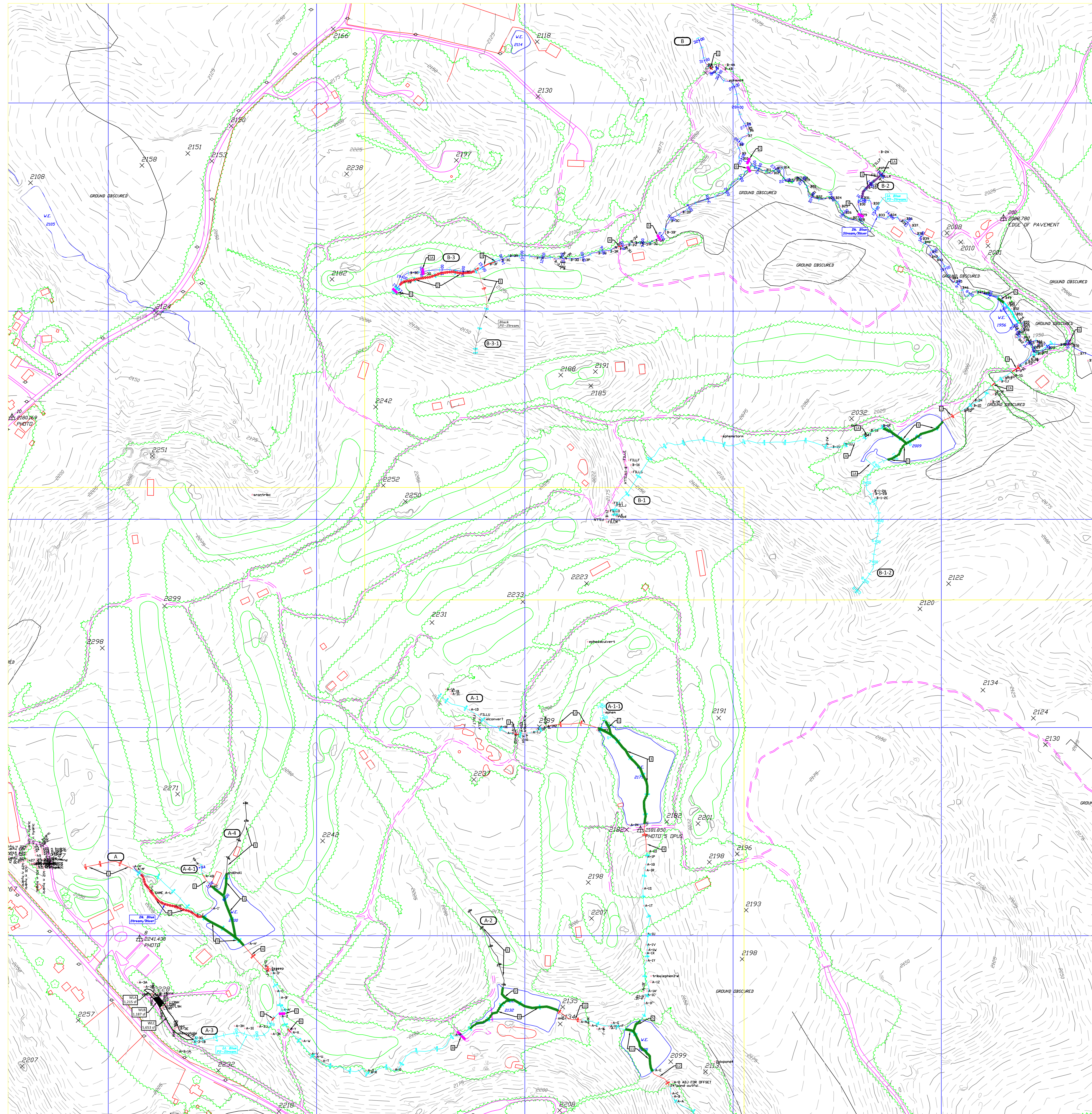
II. Restoration and Mitigation

Upon approval of the Plan (either with or without conditions or modifications by EPA), and, if necessary, the Off-Site Plan, the Plan(s) shall be incorporated into this Appendix A, and Defendant shall implement the Plan(s) as approved or modified by EPA. Restoration and mitigation work shall be executed in accordance with the approved schedule(s) and NWP 32.

Appendix B: Map of Impacted Areas

United States of America, et al. v. Greer Industries, Inc., et al. (N.D. W. Va.)

73282_PIKEWOOD_MAP-(as received) 2013.dwg
1" = 200'



LEGEND	
Enclosure - Red Stationing	
Relocation - Red Cross Hatch	
Inundated - Dark Green Stationing	
Filled - Black Stationing	
Bridges Above OHWM - Magenta Outline	
Bridges Within OHWM - Solid Magenta	
Riprapped Reach - Purple Cross-Hatch	
Diverted Reach - Dotted Blue Stationing	
Impounded - Dark Green Shading	

Appendix C: Model Deed Restriction

Prepared by: [AUTHOR]

DEED RESTRICTION

THIS DECLARATION OF DEED RESTRICTIONS FOR CONSERVATION (“Declaration”) made this _____ day of _____, 201_, by [*Name of Landowner*] (“Grantor”), having an address at _____;

WITNESSETH:

WHEREAS, [GRANTOR] is the owner of certain real property located in the [PROPERTY TITLE] (hereinafter “the Property”), and the Property is also described in a deed of record in the office of the Clerk of the County Commission, [COUNTY] at Deed Book [BOOK], Page [PAGE]; and

WHEREAS, Grantor, having the authority to do so, intends to record this Declaration in order to restrict subsequent disturbance and/or development of certain portions of the surface of the Property described on Exhibit A attached hereto (the “Conserved Areas”) in perpetuity;

WHEREAS, the Conserved Areas possess open space and natural values (collectively, “Conservation Values”) of great importance to Grantor, the people of [COUNTY], and the people of the State of West Virginia, and all current and future generations of mankind; and

WHEREAS, preservation of the Conserved Areas is consistent with a central objective of a Consent Decree in the matter of United States of America, et al. v. Greer Industries, Inc., et al., Civil Action No. _____ (N.D. W. Va.), Grantor agrees that the U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers, and their successor agencies (collectively “Third Parties”), are third-party beneficiaries under this Declaration, except that nothing herein creates a property interest in the Federal Government with regard to the Conserved Areas;

NOW THEREFORE, Grantor hereby agrees that the Conserved Areas shall be subject in perpetuity to the following conveyances, covenants and restrictions:

1. This Declaration shall be a burden upon and shall run with the Conserved Areas, shall apply to the surface only, and shall bind Grantor, its successors and assigns, in perpetuity. Grantor shall record this Declaration in the Land Records of the county or counties where the Property is located within sixty (60) days of the effective date of this Declaration. Grantor shall provide the Third Parties with proof of recordation and give notice of this Declaration to current record title holders of easements in the Conserved Areas within thirty (30) days of recording by the County Clerk.

2. The following activities are prohibited in the Conserved Areas, except as necessary for the control of alien invasive or noxious plant or animal species, as set forth in Paragraph 3, or as necessary to accomplish restoration and/or mitigation described in Paragraph 10:
 - a. Removal, excavation, dredging, or disturbance of the surface;
 - b. Dumping of, storage of, or filling with soil, rock, biological material, trash, ashes, garbage, waste, or other materials;
 - c. Draining, impounding, or impairing the flow or circulation, or reducing the reach of waters, including wetlands; or any other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended;
 - d. Installation of structures;
 - e. Placement of pavement or other impervious materials;
 - f. Alteration of the existing pattern of vegetation through removal, destruction, or planting of vegetation;
 - g. Except to the extent necessary to return the Conserved Areas to uses consistent with their uses prior to disturbance of the Conserved Areas, conversion of, or expansion into, any portion of the Conserved Areas for use of agricultural, horticultural, aquacultural, silvicultural, livestock production, or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agricultural to silvicultural);
 - h. The use of fertilizers, herbicides or pesticides;
 - i. Removal, clearing, pruning, or mowing of live vegetation, including trees, unless Grantor demonstrates that such removal will result in habitat enhancement or to prevent a safety hazard, and Grantor has received written approval of the West Virginia Department of Environmental Protection;
 - j. The use of the Conserved Areas to provide required open space for the development or subdivision of another property or to determine any other permissible residential, commercial or agricultural uses of another property; or any legal or de facto division, subdivision or portioning of the Conserved Areas;
 - k. Any other use of or activity in the Conserved Areas that is inconsistent with the purpose of this Declaration.
3. The following activities in the Conserved Area are not subject to the restrictions of Paragraph 2:

- a. The pruning of areas at the golf course that are designated as Limited Conserved Areas on Exhibit A to maintain a maximum vegetation height of three feet;
 - b. The diversion of water in excess of low flow conditions to stormwater/offline ponds; and
 - c. Other activities as designated in the EPA-approved On Site-Restoration and Mitigation Plan.
4. It is the purpose of the Declaration to assure that the Conserved Areas will be maintained as such and to prevent any unauthorized disturbance and/or development to the Conserved Areas.
5. Notwithstanding any provisions to the contrary, this Declaration is subject to and subordinate to any existing and duly recorded rights with respect to the Conserved Areas. All structures, infrastructure, as well as all pre-existing easements or other duly recorded rights in the Conserved Areas identifiable through a title search extending to documents placed on record within twenty (20) years prior to the date of this Declaration, shall be indicated on Exhibit A, which is attached to this instrument and includes a copy of the most recent property deed for the Property and a legal description sufficient to identify the boundaries of the Conserved Areas. Grantor certifies that to Grantor's actual knowledge, there are no previously granted easements existing in the Conserved Areas that interfere or conflict with the purpose of this Declaration.
6. All mortgages and deeds of trust granted or entered into after the date hereof affecting the Conserved Areas will be subordinate to this Declaration.
7. The Conserved Areas are subject to the Consent Decree ("CD"). Each deed, title or other instrument conveying an interest in the Conserved Areas shall contain a notice stating that the Property is subject to the CD and shall reference the recorded location of the CD and any restrictions applicable to the Property under the CD.
8. The Third Parties shall have the right to:
 - a. enter upon the Conserved Areas for the purpose of inspecting the Conserved Areas to determine compliance with the purposes and terms of this Declaration, or for any other purpose authorized by this Declaration or by the CD. When practicable, such entry shall be upon prior reasonable notice to the property owner. This right of entry is in addition to and does not limit any right of entry otherwise granted by Federal or State law;
 - b. take any and all action within the Conserved Areas necessary to address a situation that poses an immediate risk to health, life, property or the environment; and
 - c. take any and all action within the Conserved Areas required by Federal or State law or approved by the Third Parties.

9. Grantor grants to Third Parties a discretionary right to enforce this Declaration. In the event of a breach of this Declaration by Grantor or another party, Third Parties shall notify Grantor of the breach. If Grantor fails to take corrective action within 60 days of such notice, Third Parties may undertake actions to effect such corrective action, including bringing a judicial action against any person(s) or entity(ies) violating or attempting to violate this Declaration: provided, however, that no violation of this Declaration shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing party shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. The costs of breach, correction and/or restoration, including Third Parties' expenses, court costs, and attorney's fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of Third Parties, and no omissions or delay in acting shall constitute a waiver of any enforcement right. These rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, under any applicable permit or certification, or under the CD.
10. The Grantor, and any Defendants to this CD, and/or their contractors shall have the right to enter upon the Conserved Areas for the purpose of performing any work required by a restoration or mitigation plan approved under the CD, including construction, planting, maintenance, monitoring, long-term management, or any other restoration, enhancement, or mitigation work specified therein, provided such work is conducted in accordance with such approved plan.
11. Grantor reserves to itself, its successors or assigns, all rights as owners of the Property, including the right to engage in all uses of the Conserved Areas not inconsistent with the purpose and terms of this Declaration.
12. Grantor shall provide the Defendants to this CD, and Third Parties written notice of any transfer or change in ownership of, or of the execution of any subsequent easement affecting, any portion of the Conserved Areas, including but not limited to the name and address of the new owner at least thirty (30) days prior to the transfer or change in ownership, or execution of such easement.
13. Grantor agrees that the terms, conditions, restrictions and purposes of this Declaration will be inserted in any subsequent deed, subdivision deed, lease, sub-lease or other legal instrument by which Grantor divests itself of any interest in any portion of the Conserved Areas. Notwithstanding the failure of Grantor to include the terms and restrictions of this instrument, it shall run with the land and be binding on all heirs, successors and assigns.
14. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of Third Parties. Amendments to this Declaration must be in writing, and must be consistent with the conservation purposes of this Declaration. Grantor shall record any modification or termination of this Declaration in the Land Records of the county or counties where the Conserved Areas are located within sixty (60) days of executing such a modification or

termination. Grantor shall provide the Defendants to this CD, and Third Parties with proof of recordation within thirty (30) days of recording by the County Clerk.

15. For any modification, transfer, conveyance, or assignment accomplished under paragraphs 10 or 11, Grantor shall amend this instrument by preparing and submitting:
 - a. A revised plan and metes and bounds description for the area to be preserved under the Declaration (hereinafter the "Modification Documents"); and
 - b. An Amended Declaration of Deed Restrictions that reflects the modifications to the original Declaration, the justification for the modification, and that also includes the deed book and page of the title deed for the property or properties subject to the modified Declaration set forth in the Modification Documents.
16. Grantor shall record the documents listed in paragraph 12, above, in the same manner and place as this original Declaration was recorded.
17. Miscellaneous.
 - a. The laws of the State of West Virginia shall govern the interpretation and performance of this Declaration.
 - b. If any provision of this Declaration or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
 - c. Should there be more than one Grantor, the obligations imposed by this Declaration upon each Grantor shall be joint and several.
 - d. The covenants, terms, conditions and restrictions of this Declaration shall continue as a servitude running in perpetuity with the Conserved Area.
 - e. The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon construction or interpretation.
 - f. The covenants, terms, conditions, restrictions and purposes imposed with this Declaration shall not only be binding upon Grantor but also upon its agents, personal representatives, executors, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Conserved Area.

18. Any notice, demand, request, consent, approval or communication under this Declaration shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To Grantor:

To the Defendants to the CD:

J. Robert Gwynne
Executive Vice President
Greer Industries, Inc.
P.O. Box 1900
Morgantown, WV 26507-1900

To Third Parties:

TO EPA:

- (1) Pamela J. Lazos
Senior Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region III
MC 3RC20
1650 Arch St.
Philadelphia, PA 19103-2029
- (2) Jeffrey D. Lapp
Associate Director, Office of Environmental Programs
Environmental Assessment and Innovation Division
United States Environmental Protection Agency
Region III
MC 3EA40
1650 Arch St.
Philadelphia, PA 19103-2029

TO THE CORPS:

Dana M. Adipietro
Assistant District Counsel

U.S. Army Corps of Engineers
William S. Moorhead Federal Bldg.
1000 Liberty Ave., Fl. 22
Pittsburgh, PA 15222

Scott A. Hans
Section Chief
Regulatory Branch
U.S. Army Corps of Engineers
William S. Moorhead Federal Bldg.
1000 Liberty Ave., Fl. 20
Pittsburgh, PA 15222

19. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.

IN WITNESS WHEREOF, Grantor has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the [RELEVANT COUNTY].

[GRANTOR]

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

Be it remembered that on this ____ day of _____, 20__, before me, the subscriber, a Notary Public, personally appeared: [NAME] and he thereupon acknowledged that he signed the foregoing instrument in such capacity, and that said instrument is the voluntary act of deed of said [NAME].

Printed Name: _____
A Notary Public of _____

My Commission Expires: _____

EXHIBIT A
CONSERVED AREAS