

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA; : Civil No. 2:11-cv-1110-CWH
OFFICE OF THE GOVERNOR OF THE :
STATE OF SOUTH CAROLINA, SOUTH :
CAROLINA DEPARTMENT OF HEALTH AND :
ENVIRONMENTAL CONTROL, AND SOUTH :
CAROLINA DEPARTMENT OF NATURAL :
RESOURCES, AS AGENCIES OF THE STATE :
OF SOUTH CAROLINA AND AS TRUSTEES :
FOR NATURAL RESOURCES :
:
 Plaintiffs, :
:
 v. :
:
SOUTH CAROLINA ELECTRIC & GAS :
COMPANY :
:
 Defendant. :

TABLE OF CONTENTS

I. BACKGROUND 1
II. JURISDICTION 2
III. PARTIES BOUND 2
IV. DEFINITIONS 2
V. PAYMENTS BY THE DEFENDANT 5
VI. CONVEYANCE OF CONSERVATION EASEMENT BY DEFENDANT 6
VII. FAILURE TO COMPLY WITH CONSENT DECREE 7
VIII. COVENANTS BY PLAINTIFFS 9
IX. RESERVATIONS OF RIGHTS BY PLAINTIFFS 9
X. COVENANTS BY DEFENDANT 10
XI. EFFECT OF SETTLEMENT/CONTRIBUTION 11
XII. RETENTION OF RECORDS 12
XIII. NOTICES AND SUBMISSIONS 12
XIV. RETENTION OF JURISDICTION 14
XV. INTEGRATION/APPENDICES 14
XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 14
XVII. SIGNATORIES/SERVICE 15
XVIII. FINAL JUDGMENT 15

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Department of Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA") of the United States Department of Commerce ("Commerce"), filed a complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 *et seq.* ("CERCLA"), and the Park System Resource Protection Act ("PSRPA" or "19jj"), 16 U.S.C. § 19jj, against South Carolina Electric & Gas Company ("SCE&G"). The Office of the Governor of the State of South Carolina, the South Carolina Department of Health and Environmental Control ("SCDHEC") and the South Carolina Department of Natural Resources ("SCDNR") on behalf of the State of South Carolina, joined the Second Claim, and brought the Third Claim in the Complaint, for recovery of natural resource damages pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and the South Carolina Hazardous Waste Management Act, S.C. Code Ann., Sections 44-56-10 *et seq.* (Rev. 2002 & Supp. 2009) ("SCHWMA").

B. The United States seeks, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), recovery of unreimbursed costs incurred for activities undertaken in response to the release or threatened release of hazardous substances at the National Park Service's (hereinafter "NPS") Dockside II property located within Fort Sumter National Monument in Charleston, South Carolina (hereinafter "Dockside II Property"). The United States seeks damages under Section 107(a) of CERCLA for injury to, destruction of, or loss of natural resources, specifically injuries to benthic, subtidal resources, caused by the release or threatened release of hazardous substances at the Calhoun Park Area Site. 42 U.S.C. § 9607(a). Finally, the United States seeks recovery of damages incurred by the NPS as the result of a delay in construction caused by the contamination, pursuant to the PSRPA, 16 U.S.C. § 19jj.

C. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. section 300.600(1) and (2), DOI, acting through the U.S. Fish & Wildlife Service ("USFWS"), and Commerce, acting through NOAA, have been delegated authority to act as the Federal Trustees for natural resources impacted by the release of hazardous substances at or from the Site.

D. The Office of the Governor of the State of South Carolina, SCDHEC, and SCDNR (collectively, the "State Trustees") are co-plaintiffs and seek damages for injury to natural resources, including injuries to benthic, subtidal resources, and a separate claim for lost use of groundwater, brought pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607 and the South Carolina Hazardous Waste Management Act, S.C. Code Ann., Sections 44-56-10 *et seq.* (Rev. 2002 & Supp. 2009) ("SCHWMA"). The State Trustees are acting in their capacity as Trustees for Natural Resources which have been affected by the releases of hazardous substances. 40 C.F.R. § 300.605.

E. Defendant enters into this Consent Decree without admitting any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

#1
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F. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is 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 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Defendant waives all objections and defenses that it may have to the jurisdiction of this Court or to venue in this District. 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 and the State, and upon Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA and the PSRPA or in regulations promulgated under CERCLA and the PSRPA shall have the meanings assigned to them in CERCLA and PSRPA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq*;

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control;

"Conservation Site" shall mean approximately 16.6 acres of land, including approximately 4.38 acres of wetlands, located on the Back River in Goose Creek, South Carolina, near the Williams Station Electrical Generation Facility;

"Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or state or federal holiday, the period shall run until the close of business of the next working day;

#2
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“Defendant” shall mean South Carolina Electric & Gas Company;

“Dockside II Property” includes the 8.91 acres of land owned by the United States in Charleston, South Carolina, including the land on which the Fort Sumter National Monument visitors center and dock, Liberty Square, and South Carolina Aquarium are located;

“DOI” shall mean the United States Department of Interior and any successor departments, agencies, or instrumentalities of the United States;

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

“Effective Date” shall be 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;

“Federal Trustees” shall mean USFWS and NOAA;

“Incident” shall mean the release of hazardous substances including, but not limited to, polyaromatic hydrocarbons (“PAHs”), volatile organic compounds (“VOCs”) including benzene, toluene, ethylbenzene, and xylene (“BTEX”), cyanide, and heavy metals, including arsenic, from SCE&G’s Charlotte Street electrical substation property onto the Dockside II Property and the surrounding environment, and including releases and threatened releases addressed in the U.S. Environmental Protection Agency’s (“EPA’s”) Records of Decision for the Calhoun Park Area Site, which resulted in injury to park system resources and natural resource damages at the Calhoun Park Area Site;

“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;

“Natural Resource” or “Natural Resources” shall mean land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, State, or jointly by the United States and State, and the services provided by such resources;

“Natural Resource Damages” shall mean any damages recoverable by the United States or the State Trustees on behalf of the public for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources at the Calhoun Park Area Site as a result of the release of hazardous substances including, but not limited to: 1) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such release; 2) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent Natural Resources; 3) the costs of planning such restoration activities; 4)

#3
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compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and 5) each of the categories of recoverable damages described in 43 C.F.R. § 11.15;

“NOAA” shall mean the National Oceanic and Atmospheric Administration;

“NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund;

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

“Park system resources” shall have the meaning provided in the Park System Resource Protection Act, 16 U.S.C. § 19jj;

“Parties” shall mean the United States, the State of South Carolina, and Defendant;

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that DOI or DOJ on behalf of DOI has paid at or in connection with the Calhoun Park Area Site through December 31, 2010, plus accrued interest on all such costs through such date;

“Plaintiffs” shall mean the United States and the State of South Carolina;

“PSRPA” or “19jj” shall mean the Park System Resource Protection Act, 16 U.S.C. § 19jj;

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

“Site” shall mean the Calhoun Park Area Site, located in Charleston, South Carolina, as defined in EPA’s Records of Decision for the Calhoun Park Area Site;

“State” shall mean the State of South Carolina and each department, agency, and instrumentality of the State, including the Office of the Governor, SCDHEC, and SCDNR;

“State Trustees” means the Office of the Governor of the State of South Carolina, SCDHEC, and SCDNR;

“Trustees” means NOAA, USFWS, the Office of the Governor of the State of South Carolina, SCDHEC, and SCDNR;

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including DOI, DOJ, USFWS, and NOAA;

“USFWS” means the U.S. Fish & Wildlife Service

#4
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V. PAYMENTS BY THE DEFENDANT

4. Payment by Defendant for Past Response Costs. Within five days after the Effective Date, Defendant shall pay to DOJ the sum of \$3,400,000.00 in accordance with Paragraphs 5 and 6 below.

5. Payment by Defendant shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-1171/1. 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 District of South Carolina. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

6. The total amount paid pursuant to Paragraph 4 shall be deposited by DOJ in the DOJ Central Hazardous Materials Fund (“CHF”) by automated clearing-house known as Treasury’s Automated Clearing House (ACH)/Remittance Express program. The funds will be sent to:

Central Hazardous Materials Fund ALC 14010001
Tax ID Number: 53-0196949
7401 West Mansfield Ave., Mailstop D-2777
Lakewood, CO 80235

Receiver Bank: Federal Reserve Bank
New York, New York
ABA #051036706
Acct. # 312024

7. Payment by Defendant for Damages under the PSRPA. Within 15 days after the Effective Date, Defendant shall pay to the United States \$200,000 for PSRPA damages. Payment by Defendant shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-1171/1. 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 District of South Carolina. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

8. Payment by Defendant of Natural Resource Damages to the Settling Trustees. Within 15 days after the Effective Date, Defendant shall pay a total of \$150,000 to the State and Federal Trustees, as follows:

a. Payment for Trustee-Sponsored Oyster Reef Restoration Project(s). Defendant shall pay a total of \$120,528.88 to the trustees for Natural Resources Damages. Payment shall be made to SCDNR by cashier’s or certified check payable to the South Carolina Department of Natural Resources. Defendant shall send the check and notice of payment, referencing “Calhoun Park-Natural Resource Damages Settlement” and this civil action case name and number to Paul S. League, Deputy Chief Counsel, South Carolina Department of

Natural Resources, P.O. Box 167, Columbia, SC 29202. The total amount paid by Defendant shall be deposited and held in the Mitigation Trust Fund of South Carolina, S.C. Code Ann., Section 50-1-310, to be held and used on behalf of the Trustees, by the SCDNR solely to plan and implement one or more future oyster reef restoration actions within the Charleston Harbor watershed in order to restore natural resources or services affected by the Site-related hazardous substances. These funds will be used by SCDNR in conjunction with an ongoing oyster reef restoration project (the Macalloy Project) or a similar project in that area. SCDNR will notify and seek the Trustees' concurrence on the final identified project prior to implementation.

b. Payment for Assessment Costs Incurred by NOAA.

Defendant shall pay a total of \$26,932.51 to the United States for natural resource damage assessment costs incurred by NOAA. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-1171/1. 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 District of South Carolina. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

c. Payment for Assessment Costs Incurred by SCDHEC.

Defendant shall pay a total of \$1,589.26 to SCDHEC for natural resource damage assessment costs. Payment shall be made to SCDHEC by cashier's or certified check payable to the South Carolina Department of Health and Environmental Control. Defendant shall send the check and notice of payment, referencing "Dockside II, Calhoun Park -Natural Resource Damages Settlement" and this civil action case name and number to Ken Taylor, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.

d. Payment for Assessment Costs Incurred by SCDNR.

Defendant shall pay a total of \$949.35 to SCDNR for natural resource damage assessment costs. Payment shall be made to SCDNR by cashier's or certified check payable to the South Carolina Department of Natural Resources. Defendant shall send the check and notice of payment, referencing "Calhoun Park-Natural Resource Damages Settlement" and this civil action case name and number to Paul S. League, Deputy Chief Counsel, South Carolina Department of Natural Resources, P.O. Box 167, Columbia, S.C. 29202.

e. Notice of Payment.

Upon making any payment pursuant to this paragraph, Defendant shall send written notice according to Section XIII.

VI. CONVEYANCE OF CONSERVATION EASEMENT BY DEFENDANT PURSUANT TO STATE-ONLY GROUNDWATER CLAIM

9. In order to settle the State's Natural Resource Damages Claim for impacted groundwater at the Calhoun Park Area Site, Defendant shall, in accordance with the "Conservation Easement Act," S.C. Code Ann., Section 27-8-20, *et seq.* (Rev. 2007), execute a conservation easement on the property, the "Conservation Site" (in the same low-country

#6
CWH.

watershed) with a conservation trust or other appropriate entity selected in consultation with and approved by SCDHEC.

10. The Conservation Site is located on the Back River in Goose Creek, South Carolina, near the Williams Station Electrical Generation Facility. A plat of the Conservation Site is attached hereto as Appendix B. The Back River is a freshwater resource located in the same watershed as the Calhoun Park Area Site that would benefit from being restricted from future commercial or residential development. Both the Calhoun Park Area Site and Conservation Site are similar in size (the impacted areas of the Calhoun Park Areas Site has been estimated as 9.7 acres and the Conservation Site consists of 16.6 acres). The Conservation Site is an undeveloped tract of land and therefore has a greater intrinsic value (from both a hydrological and ecological perspective) than the man-made fill and developed area surrounding the Calhoun Park Area Site, which has been industrialized for hundreds of years. The conservation easement is appropriate as recourse for the groundwater injuries at the Calhoun Park Area Site because the preservation of the Conservation Site as undeveloped land will maintain and possibly improve groundwater quality. Conservation of this waterfront property will provide a buffer between the Cooper River and the ongoing residential development to the north of Williams Station. The environment and the public will benefit by receiving this 16.6 acres of land (including an approximately 4.38 acre wetlands area) into a conservation easement.

11. All costs related to or arising from execution and transfer of the easement on the Conservation Site to a trust will be paid by the Defendant. The conservation easement will provide that the conservation easement will run with the land, will provide third party enforcement rights to SCDHEC, and will require notice to SCDHEC and the trust if the Conservation Site is sold or otherwise transferred. The State will not bear any of the costs involved in granting the conservation easement to the trust or any other costs associated with the Conservation Site.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

12. Interest on Late Payments. If Defendant fails to make any payment under Paragraphs 4, 7, and 8 by the required due date, Interest shall accrue on the unpaid balance from the due date through the date of payment.

13. Stipulated Penalties.

a. If any amounts due to the United States under Paragraph 4 (Payment by Defendant for Past Response Costs) are not paid by the required date, Defendant shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, in addition to interest required pursuant to Paragraph 9, \$5,000, per violation per day that such payment is late.

b. If any payments due to the United States under Paragraph 7 (Payment by Defendant for damages under the PSRPA) are not paid by the required date, Defendant shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, in

#8
CWH.

addition to interest required pursuant to Paragraph 9, \$5,000, per violation per day that such payment is late.

c. If any payments due to Trustees under Paragraph 8 (Payment by Defendant for Natural Resource Damages) are not paid by the required date, Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, with 50% paid to the United States and 50% paid to state trustees (16.66% to the Office of the Governor, 16.66% to SCDHEC, and 16.66% to SCDNR), in addition to interest required pursuant to Paragraph 9, \$5,000, per violation per day that such payment is late.

d. If the Conservation Site described in Paragraphs 9 and 10 is not transferred by SCE&G to a Trust or other appropriate entity selected in consultation with and approved by SCDHEC within one year of entry of the Consent Decree, Defendant shall be in violation of this Consent Decree and shall pay to the State, as a stipulated penalty, \$5,000, per violation per day that such transfer does not occur; provided, however, that the one-year period may be extended by written approval of SCDHEC, which approval shall not be unreasonably withheld.

e. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by the United States or the State. All payments to Plaintiffs under this Paragraph shall be identified as "stipulated penalties" and shall be made pursuant to the instructions of the Plaintiffs.


f. At the time of payment, Defendant shall send notice that payment has been made to DOJ and the State in accordance with Section XII (Notices and Submissions),

g. Penalties shall accrue as provided in this Paragraph regardless of whether the United States or the State has notified Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or the day a violation occurs, and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

14. If the United States or the State brings an action to enforce this Consent Decree, Defendant shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

15. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Defendant's failure to comply with the requirements of this Consent Decree.

16. Notwithstanding any other provision of this Section, the United States or State may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Defendant from payment as required by Section V or from performance of any other requirement of this Consent Decree.



VIII. COVENANTS BY PLAINTIFFS

17. Covenants for Defendant by the United States. Except as specifically provided in Section IX (Reservation of Rights by the United States and State), the United States covenants not to sue or to take administrative action against Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover DOI's Past Response Costs and the United States' Natural Resource Damages at the Calhoun Park Area Site. The United States also covenants not to sue Defendant under the Park System Resource Protection Act, 16 U.S.C. § 19jj for damages related to the Incident. These covenants shall take effect upon receipt by the United States of all payments required by Section V, and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). These covenants are conditioned upon the satisfactory performance by Defendant of its obligations under this Consent Decree. These covenants extend only to Defendant and do not extend to any other person.

18. Covenants for Defendant by South Carolina. Except as specifically provided in Section VIII, South Carolina covenants not to sue or take administrative action against Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) or SCHWMA, S.C. Code Ann., Sections 44-56-10 *et seq.* (Rev. 2002 & Supp. 2009), to recover Past Response Costs and Natural Resource Damages at the Calhoun Park Area Site. These covenants shall take effect upon receipt by South Carolina of the payments required by Section V and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). These covenants are conditioned upon the satisfactory performance by Defendant of its obligations under this Consent Decree. These covenants extends only to Defendant and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY THE UNITED STATES AND STATE

19. The United States and State Trustees reserve, and this Consent Decree is without prejudice to, all rights against Defendant, with respect to all matters not expressly included within the Covenants by Plaintiffs in Paragraphs 17 and 18. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Defendant with respect to:

- a. liability for failure of Defendant to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States and State that are not within the definition of Past Response Costs, including EPA's past response costs at the Calhoun Park Area Site;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances unrelated to the Incident;

#9
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e. liability for destruction of, loss of, or injury to park system resources at Fort Sumter National Monument, unrelated to the Incident, under the PSRPA, 16 U.S.C. § 19jj; and

f. criminal liability.

X. COVENANTS BY DEFENDANT

20. Covenants by Defendant Not to Sue the United States. Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to CERCLA Past Response Costs and Natural Resource Damages. Defendant covenants not to bring claims, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Calhoun Park Area Site for which the Past Response Costs, including Defendant's past response costs, were incurred, including, but not limited to, any claim under the United States Constitution, the Constitution of the State of South Carolina, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States, including any department, agency, or instrumentality of the United States, pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), Section 1002(b)(2)(A) or OPA, 33 U.S.C. § 2702(b)(2)(A) and Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321 (4) and (5), or state law for response costs incurred by Defendant at the Calhoun Park Area Site; and

d. any direct or indirect claim for reimbursement under the Oil Pollution Act.

21. Covenant by Defendant Not to Sue the State. Defendant covenants not to sue and agrees not to assert any claims or causes of action against the State, or its departments, agencies, contractors, or employees, with respect to CERCLA Response Costs or Natural Resource Damages, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund or any state fund for Natural Resource Damages based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Calhoun Park Area Site for which the Past Response Costs, including Defendant's past response costs, were incurred, including, but not limited to, any claim under the United States Constitution, the Constitution of the State of South Carolina, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

#10
CWH

c. any claim against the State, including any department, agency, or instrumentality of the State, pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), Section 1002(b)(2)(A) or OPA, 33 U.S.C. § 2702(b)(2)(A) and Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321 (4) and (5), or state law for response costs incurred by Defendant at the Calhoun Park Area Site; and

d. any direct or indirect claim for reimbursement under the Oil Pollution Act.

22. Nothing in this Consent Decree shall be deemed to constitute approval or 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).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

23. 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 Dockside II Property or Calhoun Park Area Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States or the State, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. 9613 § (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and Natural Resource Damages and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

24. 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 that Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs, Natural Resource Damages, and damages under the PSRPA.

25. Defendant shall, with respect to any suit or written claim brought by it for Response Costs at the Calhoun Park Area Site related to this Consent Decree in the next five years, notify DOI and DOJ, in writing no later than 60 days prior to the initiation of such suit or claim. Defendant also shall, with respect to any suit or claim brought against it for Response Costs at the Calhoun Park Area Site related to this Consent Decree, notify DOI, NOAA, DOJ, the South Carolina Office of the Governor, SCDHEC, and SCDNR in writing within 10 days after service of the complaint or written claim upon it.

26. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, Natural Resource Damages, the PSRPA, or other relief relating to the Dockside II Property and Calhoun Park Area Site, 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

#11
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based upon any contention that the claims raised by the United States or the State 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 by Plaintiffs set forth in Section VIII.

XII. RETENTION OF RECORDS

27. Until five years after the entry of this Consent Decree, Defendant shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records") now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA or the PSRPA with respect to the Site, regardless of any corporate retention policy to the contrary.

28. After the conclusion of the five-year document retention period in the preceding paragraph, Defendant shall notify DOI, NOAA, and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by DOI, NOAA, or DOJ, Defendant shall deliver any such Records to DOI. Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the United States 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 subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged information only. Defendant shall retain all Records that they claim to be privileged until the United States has had 90 days to dispute the privilege claim and any such dispute has been resolved in Defendant's favor. However, no Records required to be created or generated by this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

29. Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has fully complied with any and all requests for information 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.

XIII. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed 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. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to DOJ, DOI, NOAA, the South Carolina Office of the Governor, SCDHEC, and SCDNR, and Defendant, respectively.

As to DOJ:

#12
CWH

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 # 90-11-2-1171/1

As to DOI:

Casey S. Padgett
Assistant Solicitor
Office of the Solicitor
U.S. Department of the Interior
1849 C Street NW, MS #5530
Washington, D.C. 20240
casey.padgett@sol.doi.gov

William B. Lodder, Jr.
CHF Manager, MS # 2462
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240
william.lodder@ios.doi.gov

#13
Coast.

Shawn P. Mulligan
Senior Environmental Program Advisor
National Park Service
1050 Walnut Street, Suite 220
Boulder, Colorado 80302
Shawn_Mulligan@nps.gov

As to NOAA:

NOAA Office of General Counsel for Natural Resources
Attn: Stephanie Willis
263 13th Ave S., Suite 177
St. Petersburg FL 33701

As to the Office of the Governor of South Carolina:

Swati Patel
Chief Legal Counsel
Office of the Governor
1205 Pendleton Street
Columbia, SC 29201

As to SCDHEC

Susan A. Lake
Staff Attorney
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, S.C. 29201

As to SCDNR

Paul S. League
Deputy General Counsel
South Carolina Department of Natural Resources
P.O. Box 167
Columbia, S.C. 29202

As to Defendant SCE&G:

South Carolina Electric & Gas Company
C/O Corporation Service Company
1703 Laurel Street
Columbia, S.C. 29201

#24
CWH

XIV. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

32. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this 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. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a map of the Calhoun Park Area Site; "Appendix B" includes maps of the Calhoun Park Area Site and the proposed Mitigation Site.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

33. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is void and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

35. Each undersigned representative of Defendant to this Consent Decree and the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice and undersigned representatives of the South Carolina Office of the Governor, SCDHEC, and SCDNR certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. 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 has notified Defendant in writing that it no longer supports entry of the Consent Decree.

37. Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by certified mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Defendant hereby 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. The Parties agree that Defendant need not

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file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

38. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and the Defendant.

SO ORDERED THIS 8th DAY OF Aug, 2011.

[Handwritten Signature]
United States District Judge

#16
COA

FOR THE UNITED STATES OF AMERICA:

WILLIAM N. NETTLES
UNITED STATES ATTORNEY

By: s/ R. Emery Clark
R. EMERY CLARK (Federal ID #1183)
Assistant United States Attorney
District of South Carolina
1441 Main Street, Suite 500
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Telephone: (803) 929-3085
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OF COUNSEL:

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United States Department of Justice
Washington, D.C. 20530

MATTHEW D. THURLOW
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Environmental Enforcement Section
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United States Department of Justice
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Washington, D.C. 20044-7611
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Facsimile: (202) 514-2583
Matthew.Thurlow@usdoj.gov

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FOR THE STATE OF SOUTH CAROLINA

OF COUNSEL:

SWATI PATEL
Chief Legal Counsel
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1205 Pendleton Street
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Telephone: (803) 734-5095
Fax: (803) 734-5167
SwatiPatel@gov.sc.gov

Date: 4/7/11

s/ Susan A. Lake
SUSAN A. LAKE (Federal ID #2583)
Staff Attorney
South Carolina Department of Health and
Environmental Control
2600 Bull Street
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Telephone: (803) 898-3350
Fax: (803) 898-3367
lakesa@dhec.sc.gov

Date: 3/30/11

s/ Paul S. League
PAUL S. LEAGUE (Federal ID #2625)
Deputy Chief Counsel
South Carolina Department of Natural Resources
P.O. Box 167
Columbia, SC 29202
Telephone: 803-734-4006
Fax: 803-734-3911
leaguep@dnr.sc.gov

#18
CWB

**FOR SOUTH CAROLINA ELECTRIC & GAS
COMPANY**

Date: 4/6/11

s/ Martin K. Phalen
Name: Martin K. Phalen
Title: Vice President Gas Operations
Address:

Agent Authorized to Accept Service on Behalf of Above-signed Party:
South Carolina Electric & Gas Company
C/O Corporation Service Company
1703 Laurel Street
Columbia, S.C. 29201

#19
CMA

EXHIBIT A

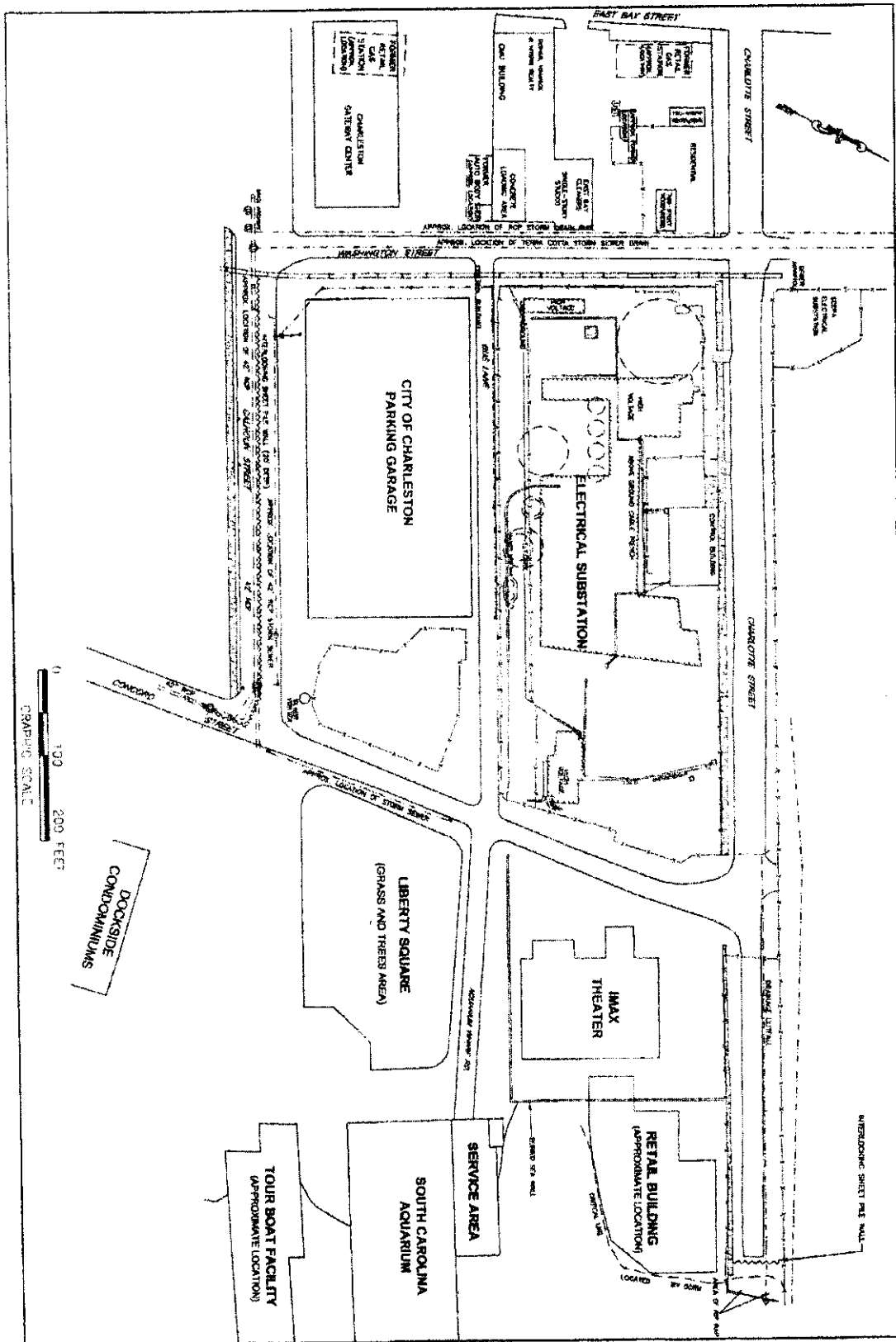


EXHIBIT B

