

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

UNITED STATES OF AMERICA)	
and)	
)	
COMMONWEALTH OF VIRGINIA)	CIVIL ACTION NOS. 90-0046-C,
Plaintiffs,)	91-0003-C
v.)	
)	
AMERICAN CYANAMID COMPANY (now)	
known as Wyeth Holdings Corporation),)	
CYTEC INDUSTRIES INC. and)	
PINEY RIVER RECOVERY CORP.)	
Defendants.)	

CONSENT DECREE THIRD MODIFICATION

Whereas the United States of America, the Commonwealth of Virginia (“the Commonwealth”), and the American Cyanamid Company have signed a Consent Decree entered by the Court on February 18, 1991, a Consent Decree Modification entered by the Court on February 18, 1991, a Consent Decree Second Modification entered by the Court March 26, 1991, and this Consent Decree Third Modification (collectively the “Decree”) pertaining to the U.S. Titanium Superfund Site (the “Site”); and

Whereas in December 1993, Cytec Industries Inc. (“Cytec”) acquired substantially all of the chemical operation assets of American Cyanamid Company n/k/a Wyeth Holdings Corporation (“Cyanamid”). As part of the same transaction, Cytec contractually agreed to assume, and to indemnify Cyanamid against, certain environmental liabilities arising out of or relating to Cyanamid’s former chemicals business, including those relating to the Site; and

Whereas Piney River Recovery Corp. (“Piney River”) is a wholly owned subsidiary of Cytec; and

Whereas Piney River is the owner of property within the Site which is to be subject to certain use restrictions; and

Whereas Cytec and Piney River agree to be bound by the Decree;

The Decree is hereby modified as follows:

- 5) Section I, **BACKGROUND**, page 4, paragraph J, is modified to read:
The decision by EPA, with concurrence by the Commonwealth, on the remedial action

("Remedy") to be implemented at the U.S. Titanium Site is embodied in a Record of Decision ("ROD"), executed on November 21, 1989 and as modified by an Explanation of Significant Differences ("ESD") dated September 20, 1990 ("ESD 1"), an ESD dated February 3, 1995 ("ESD 2") and an ESD dated September 25, 2002 ("ESD 3").

- 5) Section IV, **DEFINITIONS**, page 9, is modified to add a new paragraph N.1. as follows:

"Piney River Restricted Property" shall mean the portion of the Site owned by Piney River and with respect to which certain use restrictions shall be imposed in accordance with Section VI, Subsection 10.2, as identified on the map attached as Appendix 1 to this Consent Decree Third Modification.

- 3) Section IV, **DEFINITIONS**, page 9, paragraph P is modified to read:

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on November 21, 1989, by the Regional Administrator, EPA Region III, and all attachments, modifications and amendments thereto together with the Explanation of Significant Differences ("ESD") dated September 20, 1990 ("ESD 1"), the ESD dated February 3, 1995 ("ESD 2") to this Decree and the ESD dated September 25, 2002 ("ESD 3").

- 4) Section IV, **DEFINITIONS**, page 11, paragraph W is modified to read:

"Settling Defendant" shall mean, collectively and individually, Wyeth Holdings Corporation (formerly known as American Cyanamid Company), Cytec Industries Inc. and Piney River Recovery Corp.

- 5) Section VI, **PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**, page 20, paragraph 6 is modified as follows:

All activities undertaken by the Settling Defendant or any laboratory, contractor, or subcontractor pursuant to this Decree shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations ("ARARs") identified in the ROD and any permits and approvals required for the Work, except as provided in 40 C.F.R. Section 300.400(e)(1) and Section 121(e) of CERCLA, 42 U.S.C. Section 9621(e), as set forth in Paragraph 4(b) of this Decree; provided, however, that such ARARs are subject to change to protect human health or the environment, as provided in 40 C.F.R. Section 300.430(f)(1)(ii)(B)(1), to address a new component of the remedy, as provided in 40 C.F.R. Section 300.430(f)(1)(ii)(B)(2), or as a result of any amendments to the NCP or CERCLA.

- 6) Section VI, **PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**, page 32, is modified to add a new Subsection 10.1. **Institutional Controls** as follows:

a. Within sixty (60) days after entry by the Court of this Consent Decree Third Modification, the effective date of this Decree, Piney River shall file (1) a Declaration of Restrictive Covenants and (2) this Consent Decree Third Modification with the Clerk's Office in Nelson County, Virginia, and any other office where land ownership and transfer records are maintained for the Piney River Restricted Property. The Declaration of Restrictive Covenants shall recite the obligation to implement the use of property restrictions and provide access as set forth in Section VI.10.2 of this Consent Decree Third Modification. The recording shall be done in such manner as shall be effective to bring the Declarations of Restrictive Covenants to the attention of any person examining or researching the state and/or quality of the title to the real property constituting the Piney River Restricted Property or searching for any encumbrances, covenants, easements, liens, restrictions, or other limitations relating to such property. Such recording shall be made in the Grantor/Grantee and Lot/Block indices of the Land Records for the Piney River Restricted Property. Thereafter, each deed, title, or other instrument of conveyance for property executed by Piney River regarding portions of the Site subject to the Declarations of Restrictive Covenants, shall contain a notice stating that the property is subject to this Decree and any lien held by EPA pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), and shall reference the recorded location of the Declaration of Restrictive Covenants, this Decree and any restrictions applicable to the property under this Decree. Piney River shall not modify or release such Declaration of Restrictive Covenants without prior written approval of EPA. Piney River shall provide EPA and the Commonwealth with a certified copy of the recorded Declaration of Restrictive Covenants within fifteen (15) days of recording such Declaration of Restrictive Covenants.

b. If the Site, or any other property where institutional controls are needed to implement this Decree, is owned or controlled by persons other than Piney River, Settling Defendant shall within fifteen (15) days after entry by the Court of this Decree, use best efforts, as defined in Section X, Paragraph 20, of the Consent Decree entered by the Court on February 18, 1991, to secure from such persons an agreement to abide by the obligations and restrictions established by Paragraph VI.10.1.a of this Consent Decree Third Modification, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the response actions to be performed pursuant to this Decree.

c. At least (30) days prior to any change in control or the conveyance of any interest in Piney River Restricted Property, including, but not limited to, fee interests, leasehold interests, easements, land use interests, licenses and mortgage interests, Piney River shall give the grantee(s) or transferee(s)-in-interest a copy of this Decree and give the grantee(s) or transferee(s)-in-interest written notice of (i) this Decree and (ii) the use restriction and access requirements set forth in Sections VI and X, respectively. At least thirty (30) days prior to such conveyance, Piney River shall also give written notice to EPA and the Commonwealth of the proposed conveyance, including the name(s), address(es) and telephone number(s) of the grantee(s) or transferee(s)-in-interest, and the date on which notice of this Decree, and use restriction and access requirements of this Decree were given to the grantee(s).

d. In the event of any such conveyance, Piney River shall expressly reserve in the deed or other instrument effecting the transfer an irrevocable and permanent easement which

grants Settling Defendant the right to access for the purposes of carrying out its obligations under this Decree and imposes upon the subsequent grantee the restrictions set forth in Section VI, 10.2 of this Consent Decree Third Modification. Settling Defendant shall enforce the terms of any such easement against all subsequent grantees of a conveyance of Piney River Restricted Property or of an interest in Piney River Restricted Property. In no event shall the conveyance release or otherwise affect the obligations of Cytec and Piney River to comply with all provisions of this Decree, absent the prior written consent of EPA.

e. In the event that the Piney River files for bankruptcy or is placed involuntarily in bankruptcy proceedings, the Settling Defendant shall notify EPA within three (3) working days of such filing.

7) Section VI. **PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**, page 32, is modified to add a new Subsection 10.2. Use of Piney River Restricted Property as follows:

a. The Settling Defendant shall, commencing on the date of entry by the Court of this Consent Decree Third Modification, and thereafter, refrain from using the Piney River Restricted Property in a way that would compromise or adversely affect the effectiveness and protectiveness of the Remedy. The Settling Defendant shall refrain from using the Piney River Restricted Property for any purpose which might interfere with, obstruct, or disturb the performance, support, or supervision of the Work conducted or being conducted pursuant to the Consent Decree. In addition, unless required for implementation of the Work under the Consent Decree or otherwise determined to be necessary by EPA, Settling Defendant shall comply with the following restrictions and requirements concerning the Piney River Restricted Property:

1. Settling Defendant shall not install or permit to be installed any drinking water supply wells within areas of known groundwater contamination until the groundwater cleanup goals identified in the ROD have been attained;

2. Settling Defendant shall not initiate any new development at the Site that may adversely affect the performance of the groundwater remediation system or in areas where remedial measures have been taken;

3. Settling Defendant shall not conduct any earth moving activities in areas where remedial actions have occurred including the treatment plant and its associated facilities, except as necessary to implement other portions of the Remedy set forth in the ROD, or as otherwise authorized by EPA or the Commonwealth.

b. If EPA determines that land use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the institutional controls as described in ESD 3 or to maintain the protectiveness of the Remedy, the Settling Defendant shall not interfere with EPA and the Commonwealth's efforts to secure such governmental controls.

c. Notwithstanding any provision of this Decree, EPA retains all of its access authorities and rights, as well as all of its rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA and any other applicable statute or regulations. In addition, nothing in this Decree relieves Settling Defendant from liability under CERCLA or other applicable statute, regulation or common law resulting from Settling Defendant's activities at the Site before or after issuance of this Decree.

- 8) Section VI. **CERTIFICATE OF COMPLETION**, page 49, first sentence of paragraph 38, is modified as follows:

Within ninety (90) days after Settling Defendant concludes that all phases of the Work, except for the continuing obligations pursuant to Sections X (Access), XXIV (Access to Information), and XXV (Retention of Records) and Section VI, Subsection 11 (Use of Site Property) of this Decree, have been fully performed, Settling Defendant shall notify Plaintiffs by submitting a written report by a registered professional engineer certifying that the Work has been completed in full satisfaction of the requirements of this Decree.

- 9) Section XXI. **STIPULATED PENALTIES**, page 68, last sentence of paragraph 62 is modified as follows:

A copy of the check shall be sent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Barbara Borden, (3PM30), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029

- 10) Section XXI. **STIPULATED PENALTIES**, page 70, paragraph 65 (Stipulated Penalty Schedule), subparagraph (a) is modified as follows:

a. The following stipulated penalties will be payable per violation per day to the United States for any noncompliance with any of the provisions of this Decree, except for Settling Defendant's failure to submit timely or adequate reports pursuant to Section XI (Reporting Requirements); for failure to comply with Section VI, Subsection 10 (Institutional Controls) and for failure to comply with Section VI, Subsection 11 (Use of Restricted Site Property):

Penalty Per Violation Per Day	Period of Noncompliance
\$ 2,000	1 st through 7 th day
\$ 4,000	8 th through 14 th day
\$ 6,000	15 th through 30 th day
\$15,000	31 st day and beyond

11) Section XXI. **STIPULATED PENALTIES**, page 70, paragraph 65, (Stipulated Penalty Schedule), subparagraph b is modified as follows:

b. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate reports pursuant to Section XI (Reporting Requirements); for failure to notify Plaintiffs of contribution suits or claims pursuant to Paragraph 3(b); for failure to comply with Section VI, Subsection 10 (Institutional Controls) and for failure to comply with Section VI, Subsection 11 (Use of Site Property):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1 st through 14 th day
\$ 2,000	14 th through 30 th day
\$ 4,000	31 th day and beyond

12) Section XXVI. **NOTICES AND SUBMISSIONS**, page 84, paragraph 83 is modified as follows:

83. Whenever, under the terms of this Decree, written notice is required to be given or a report or other document is required to be sent by one party to another party, or by Settling Defendant to the Commonwealth, Virginia Department of Environmental Quality ("VDEQ"), the United States, or EPA, it shall be directed to the individuals and the addresses specified below, unless those individuals or their successors give notice of a change to the other individuals or parties in writing:

As to the United States:

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

DOJ Case No. 90-11-2-562

As to EPA:

Andrew Palestini
Delaware, Virginia, West Virginia Remedial Branch (3HS23)
United States Environmental Protection Agency

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

As to the Commonwealth of Virginia:

Cathie F. Hutchins
Assistant Attorney General
Environmental Unit
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219

As to Virginia Department of Environmental Quality:

Thomas Modena
Virginia Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219

10) Section XXXIV. SIGNATORIES, page 89, paragraph 96 is modified as follows:

The undersigned representative of the Settling Defendant to this Consent Decree Third Modification, the Virginia Assistant Attorney General representing the VDEQ, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certify that he or she is authorized to enter into the terms and conditions of this Consent Decree Third Modification and to execute and bind legally such Party to this document.

Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of it with respect to all matters arising under or relating to this Consent Decree Third Modification. Settling 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, including service of a summons. and any applicable local rules of this Court.

All other provisions in the Decree shall remain in full force and effect.

SO ORDERED THIS _____ DAY OF _____, 2____.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree Third Modification relating to the U.S. Titanium Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date: _____

NANCY FLICKINGER
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-5258

Date: _____

JULIA DUDLEY
Assistant United States Attorney
Western District of Virginia
301 1st Street, SW, Room 906
Roanoke, VA 24011

THE UNDERSIGNED PARTY enters into this Consent Decree Third Modification relating to the U.S. Titanium Superfund Site.

Date: 9/29/06

for

DONALD S. WELSH
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 9/29/06

WILLIAM C. EARLY
Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 9/29/06

SHEILA BRIGGS-STEUTEVILLE
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTY enters into this Consent Decree Third Modification relating to the U.S. Titanium Superfund Site.

FOR THE COMMONWEALTH OF VIRGINIA

Date: 9/11/2006

David K. Paylor
Director
Virginia Department of Environmental Quality
629 East Main Street
Richmond, VA 23219

Date: Sept. 25, 2006

Cathie F. Hutchins
Assistant Attorney General
Environmental Unit
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219

THE UNDERSIGNED PARTY enters into this Consent Decree Third Modification relating to the U.S. Titanium Superfund Site.

Date: 8-8-06

AMERICAN CYANAMID COMPANY (now known as Wyeth Holdings Corporation)

Date: 8-11-06

CYTEC INDUSTRIES INC.

Date: 8-11-06

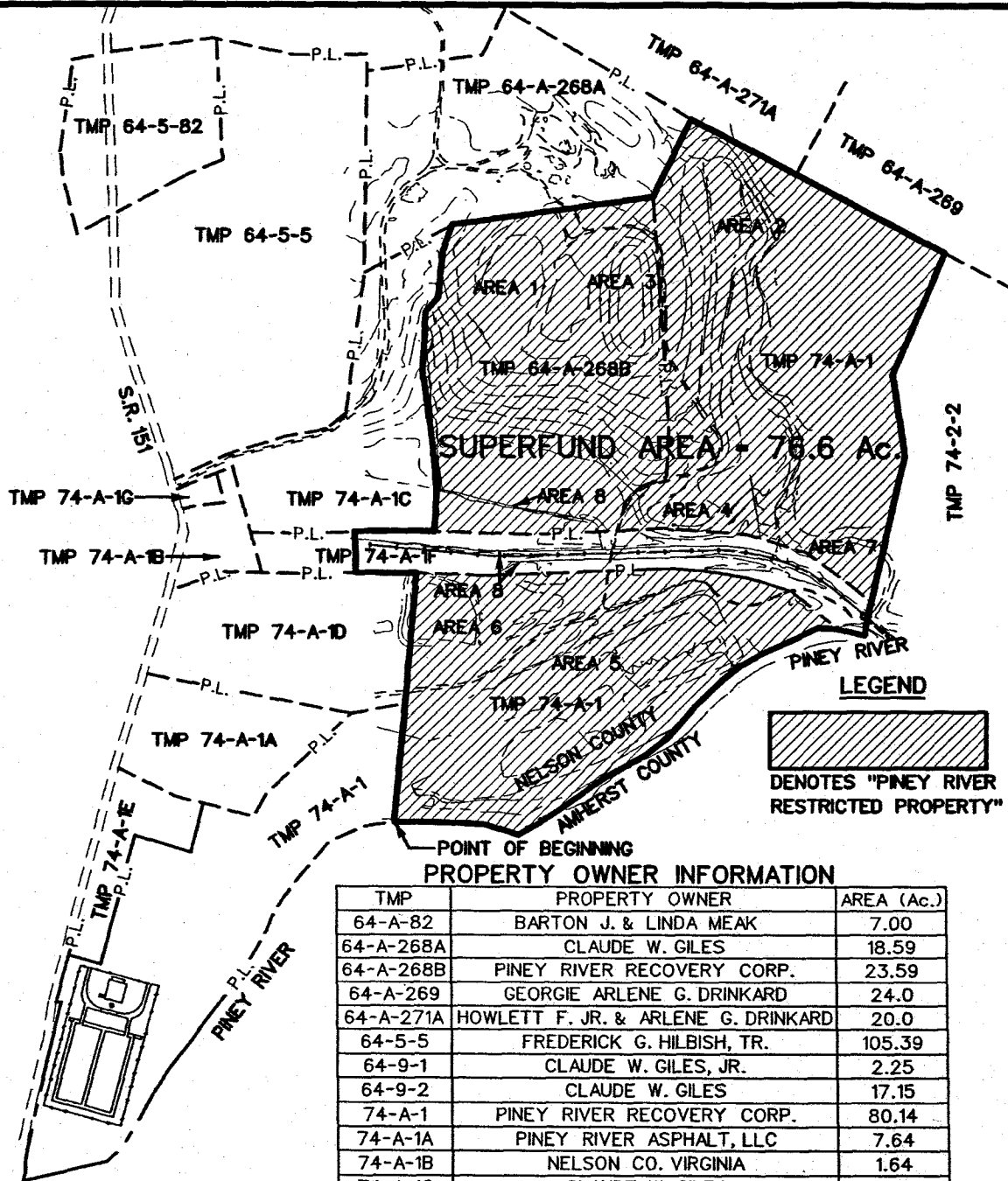
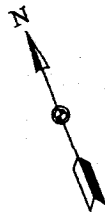
PINEY RIVER RECOVERY CORP.


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

Corporate Secretary
Cytec Industries Inc.
5 Garret Mountain Plaza
West Paterson, New Jersey 07424

APPENDIX 1

PINEY RIVER RESTRICTED PROPERTY



LEGEND

 DENOTES "PINEY RIVER RESTRICTED PROPERTY"

PROPERTY OWNER INFORMATION

TMP	PROPERTY OWNER	AREA (Ac.)
64-A-82	BARTON J. & LINDA MEAK	7.00
64-A-268A	CLAUDE W. GILES	18.59
64-A-268B	PINEY RIVER RECOVERY CORP.	23.59
64-A-269	GEORGIE ARLENE G. DRINKARD	24.0
64-A-271A	HOWLETT F. JR. & ARLENE G. DRINKARD	20.0
64-5-5	FREDERICK G. HILBISH, TR.	105.39
64-9-1	CLAUDE W. GILES, JR.	2.25
64-9-2	CLAUDE W. GILES	17.15
74-A-1	PINEY RIVER RECOVERY CORP.	80.14
74-A-1A	PINEY RIVER ASPHALT, LLC	7.64
74-A-1B	NELSON CO. VIRGINIA	1.64
74-A-1C	CLAUDE W. GILES	12.8
74-A-1D	PINEY RIVER ASPHALT, LLC	9.44
74-A-1E	JEFF D. & TERESA A. COFFEY	3.0
74-A-1F	COUNTY OF NELSON	59.39
74-A-1G	KERRY D. SCOTT	0.37
74-2-2	JANIS G. & MARK L. WILSON	53.80

NOTE: PROPERTY OWNER DATA OBTAINED FROM COMMISSIONER OF REVENUE OFFICE IN NELSON COUNTY.

SCALE: 1" = 600'



Wiley & Wilson
Employee-Owned

2310 Langhorne Road
 Lynchburg, VA 24501-1547
www.wileywilson.com

PROJECT
 U. S. TITANIUM SUPERFUND SITE
 PINEY RIVER RECOVERY CORP. AREA MAP
 PINEY RIVER, NELSON COUNTY, VIRGINIA

DRAWN	JUL/RAF	CHECKED	RJB	COMM. NO.	99069
CADD NO.	99069-SUPERFUND-MAP1.DGN		DATE	JUNE 14, 2006	