

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
) Civil Action No.
 v.)
)
 BROADKILN SPORTSMAN CLUB, INC.,)
)
 Defendant.)
)
)

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	4
III.	PARTIES BOUND.....	4
IV.	DEFINITIONS	5
V.	STATEMENT OF PURPOSE	9
VI.	JUDGMENT AND SETTLEMENT	9
VII.	PAYMENT PROCEDURES	11
VIII.	TRANSFER OF THE CLUB'S PROPERTY.....	12
IX.	RECORDING OF CONSERVATION EASEMENT, RIGHT-OF-WAY, AND DECLARATION OF RESTRICTIONS.....	16
X.	PAYMENT OF PROCEEDS FROM TRANSFER OF PROPERTY	19
XI.	ASSIGNMENT OF INSURANCE PROCEEDS	22
XII.	FAILURE TO COMPLY WITH CONSENT DECREE.....	24
XIII.	COVENANT NOT TO SUE BY UNITED STATES	26
XIV.	RESERVATION OF RIGHTS BY UNITED STATES.....	27
XV.	COVENANT NOT TO SUE BY THE CLUB	29
XVI.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	30

XXVII. ACCESS AND INSTITUTIONAL CONTROLS	33
XXVIII. ACCESS TO INFORMATION	33
XIX. RETENTION OF RECORDS	35
XX. NOTICES AND SUBMISSIONS	37
XXI. MODIFICATION OF CONSENT DECREE	38
XXII. RETENTION OF JURISDICTION	39
XXIII. INTEGRATION/APPENDICES	39
XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	40
XXV. SIGNATORIES/SERVICE	41
XXVI. FINAL JUDGMENT	42
APPENDICES A through F	

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UNITED STATES OF AMERICA,

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BROADKILN SPORTSMAN CLUB, INC.,

Defendant.

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CONSENT DECREE

I. BACKGROUND

WHEREAS, the United States of America (“United States”), on behalf of the Secretary of the United States Department of the Interior (“DOI”), filed a Complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(a), as amended (“CERCLA”), seeking reimbursement of Response Costs

incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Prime Hook National Wildlife Refuge, in Sussex County, Delaware (“the Site” or “the Refuge”);

WHEREAS, the United States has incurred Response Costs in connection with the Site;

WHEREAS, the Complaint filed by the United States alleges that the Broadkilm Sportsman Club, Inc. (“the Club”) is liable to the United States for reimbursement of Response Costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a person who is responsible for lead contamination on the Site;

WHEREAS, the Club does not admit liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the United States has reviewed the Financial Information submitted by the Club to determine the extent to which it is financially able to pay Response Costs incurred in connection with the Site. Based upon this Financial Information, the United States has determined that the Club has financial resources sufficient only to fund those activities required by Sections VI through X of this

Consent Decree;

WHEREAS, liability insurance policies may have been or were issued to or for the benefit of the Club or any predecessor in interest to the Club, including but not limited to policies for which the Club or any predecessor is an “insured,” “named insured,” or “additional insured,” including but not limited to comprehensive, primary, umbrella, and excess policies, and including environmental impairment and pollution liability policies (“Insurance Policies”), which Insurance Policies, if located, may provide coverage for all or part of the claims the United States is making against the Club;

WHEREAS, the Club will provide, upon lodging of this Consent Decree, notice of the United States’ Complaint in this action to certain insurance carriers identified as having issued Insurance Policies to the Club during the time the Club operated; and

WHEREAS, the United States and the Club 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(a) and 9613(b) and also has personal jurisdiction over the Club. The Club consents to and shall not challenge entry 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 upon the Club and its successors and assigns and other persons or entities bound by law. 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 the Club under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations.

Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 - 9675.
- b. "The Club" means the Broadkiln Sportsman Club, Inc., a Delaware Corporation, its members, directors, and officers, and its successors and assigns.
- c. "Club's Property" means those parcels identified as Sussex County tax reference 2-35-2-1, which are owned by the Club and located in Sussex County, Delaware and described more fully in the Deed attached as Appendix A.
- d. "Consent Decree" means this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

e. "Date of Entry" means the date the Consent Decree is approved or signed by the United States District Court judge.

f. "Date of Lodging" means the date the Consent Decree is lodged with the Clerk of the Court for the United States District Court for the District of Delaware.

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

h. "DOI" means the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

i. "DOJ" means the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

j. "Fair Market Value" means the price which the Club's Property actually brings or would bring at a fair sale between a willing buyer and a willing seller under actual market conditions, dealing at arm's length, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant

facts. In arriving at such value, the elements to be considered are recent sales of realty of comparable location and description, uses to which the realty is adapted and might reasonably be applied, demand for realty, and income produced by it, and all elements which a willing buyer and a willing seller would consider in arriving at a purchase price.

k. "Financial Information" means the information identified in the list of Financial Information provided by the Club to DOI and DOJ, attached hereto in Appendix B.

l. "Interest" means 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.

m. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

- n. "Parties" means the United States and the Broadkiln Sportsman Club, Inc.
- o. "Plaintiff" means the United States.
- p. "Response Costs" means costs incurred and to be incurred pursuant to CERCLA by the United States in connection with the Site.
- q. "RCRA" means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).
- r. "Section" means a portion of this Consent Decree identified by a Roman numeral.
- s. "Site" means the Prime Hook National Wildlife Refuge, located in Sussex County, Delaware.
- t. "Transfer" means any sale, assignment, or transfer by the Club of the Club Property, or any portion thereof, where title to the Club Property (or any portion or interest thereof) is transferred and Fair Market Value is received in consideration.
- u. "United States" means the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objectives of the Parties are: to facilitate a Transfer of the Club's Property and the payment of the proceeds of the Transfer of the Club's Property to the United States in reimbursement of Response Costs, to record a conservation easement in favor of the United States on a portion of the Club's Property, to record deed restrictions on the Club's Property, to record a Right-of-Way over a portion of the Club's Property, to assign the Club's rights to claim proceeds from certain insurance policies to the United States, and for the Club to resolve its alleged liability for costs incurred and to be incurred in connection with the Site, as provided in the Covenant Not to Sue by the United States in Section XIII, and subject to the Reservations of Rights by United States in Section XIV.

VI. JUDGMENT AND SETTLEMENT

5. Judgment shall be entered against the Club in the amount of \$948,000 in favor of the United States.

6. In recognition of the apparent financial status of the Club, the United States agrees not to attempt to recover any portion of the \$948,000 judgment from

the Club, provided:

(a) the Financial Information provided to the United States by the Club on January 16, 2007 and September 18, 2007, a list of such Financial Information is attached as Appendix B, was to the best of the Club's knowledge accurate at the time such information was provided to the United States;

(b) the Club (1) pays to the United States 75% of the Net Proceeds from the Transfer of the Club's Property in accordance with the requirements of Section X of this Consent Decree, and (2) assigns the Club's rights to claim proceeds from certain insurance policies to the United States pursuant to Section XI of this Consent Decree;

(c) the Club records a conservation easement in favor of the United States on those portions of the Club's Property depicted on the map attached as Appendix C;

(d) the Club is in compliance with the terms and requirements of this Consent Decree;

(e) the Club records, in accordance with Section IX of this Consent Decree, a restriction in the deed for the Club's Property enabling only a residential purpose for the Club's Property with the construction of a maximum of one (1) detached,

single-family dwelling with associated residential accessory-use structures, which may include, but are not limited to, horse barns and pens; and

(f) the Club records, in accordance with Section IX of this Consent Decree, a restriction in the deed for the Club's Property prohibiting commercial hunting on the Club's Property; that is, any hunting in which a fee is charged for hunting of native wildlife or pen-raised or propagated game animals.

VII. PAYMENT PROCEDURES

7. All payments made pursuant to the requirements of this Consent Decree shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOI File Number 14X1121-CHF and DOJ Case Number 90-11-3-08802. Payments shall be made in accordance with instructions provided to the Club by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Delaware following lodging of the Consent Decree. Any payment received by the Department of Justice after 3:00 p.m. Eastern Time shall be credited on the next business day.

8. At the time it makes any payment required by this Consent Decree, the

Club shall send notice that payment has been made to DOI and DOJ in accordance with Section XX (Notices and Submissions) and to:

U.S. Department of the Interior
Central Hazardous Materials Fund
Attn: Fund Manager
1849 C Street, N.W.
Mail Stop 2342
Washington, D.C. 20240

VIII. TRANSFER OF THE CLUB'S PROPERTY

9. The Club agrees that it will not sell, assign, transfer or exchange the Property except in accordance with the requirements of Sections VIII and IX of this Consent Decree. The Club hereby certifies that it does not own any real property other than those parcels identified as Sussex County tax reference 2-35-2-1, as described more fully in the Deed attached as Appendix A.

10. Beginning on the Date of Entry of this Consent Decree, the Club shall immediately undertake efforts to Transfer the Club's Property for use in accordance with all applicable local, state, and federal laws and regulations. The Club shall use its best efforts to Transfer the Club's Property. "Best Efforts," for purposes of this Consent Decree, shall include:

(a) soliciting suitable prospective purchasers for the Club's Property;

(b) responding to the reasonable inquiries of prospective purchasers;

(c) maintaining the Club's Property in a condition suitable for exhibition to prospective purchasers;

(d) allowing the Club's Property to be shown at all reasonable times;

(e) assisting the broker, dealer, agent, or consultant in any other reasonable way requested in an effort to Transfer the Club's Property at the highest price possible and as quickly as possible; and

(f) transferring the Club's Property based upon a reasonable current appraisal. DOI may waive this requirement in its nonreviewable discretion.

11. The Club may enter into an agreement with an agent or custodian to act on behalf of the Club to facilitate the marketing and Transfer of the Club's Property.

12. If the Club is unable to enter into an agreement for the Transfer of the Club's Property without the services of a real estate broker, dealer, agent, or consultant within one hundred eighty (180) Days from the Date of Entry of this Consent Decree, the Club shall contract with a real estate broker, dealer, agent, or consultant who is licensed to do business in the State of Delaware and who shall

follow the usual and normal practices for the Transfer of real property, including, for example, listing the property in one or more real estate listing services regularly used by real estate agents, brokers, and others and using other reasonable means, including but not limited to advertising, to ensure the availability of the subject property for sale is known to potential buyers. The 180-Day time period established in this Paragraph may be modified upon request by the Club and written agreement by DOI. DOI's decision whether to agree to any modification requested by the Club is not subject to review. Neither the Club nor any Related Parties shall act as a real estate broker, dealer, agent, or consultant. For purposes of this Paragraph, "Related Parties" includes the members of the Club, the spouses and former spouses of the members, the siblings of the members, any offspring of the members and their siblings, and the children of any offspring of the members and their siblings, and any businesses in which any of the foregoing own more than a 5% interest in the business.

13. The Club shall ensure that the listing agreement with the real estate broker, dealer, agent, or consultant provides that said broker, dealer, agent or consultant shall timely provide to DOI copies of all advertising published with

respect to the Club's Property, indicating when such advertising is/was displayed.

Copies shall be considered timely if the copies arrive at DOI within the month such advertising is/was displayed.

14. The Club agrees to provide DOI and DOJ, at the addresses specified in Paragraph 52 of this Consent Decree, with a copy of any written purchase offer acceptable to the buyer and the Club for the Club's Property, or any portion thereof, within forty-eight (48) hours of receipt of any such offer. If DOI approves the proposed Transfer within twenty (20) Days of DOI's receipt of the written purchase offer, the Club may proceed with execution of a contract for Transfer on the terms identified in the purchase offer. In the event that any material term of the purchase offer is modified after being provided to DOI, the Club must submit the modification to DOI within five (5) Days of the date the modification is proposed. If DOI approves the proposed modification within twenty (20) Days of DOI's receipt of the proposed modification, the Club may proceed with the contract for Transfer on the modified terms. The Club shall receive no fee for its efforts to Transfer the Club's Property. The Club agrees to close the Transfer of the Club's Property within the time period established in the contract for the Transfer of the

Club's Property, unless otherwise agreed to in writing by the Club and DOI.

15. The Club shall have eighteen (18) months from the Date of Lodging of this Consent Decree to use Best Efforts to Transfer the Club's Property. DOI, in its non-reviewable discretion, may modify the eighteen month period upon request from the Club. Any such modification of the eighteen month period must be in writing and signed by the Parties. If, after the eighteen month period set forth in this Paragraph, the Club is unable to Transfer the Club's Property, then DOI may unilaterally order that the Club's Property be auctioned to the highest bidder. The auction shall be conducted by the United States Marshals Service. The Marshals Service shall fully publicize the auction by means of daily advertisements in local newspapers for twenty-one (21) Days preceding the auction, as well as by all other appropriate and customary means for the auctioning of real property in the State of Delaware.

**IX. RECORDING OF CONSERVATION EASEMENT, RIGHT-OF-WAY,
AND DECLARATION OF RESTRICTIONS**

16. Conservation Easement, Right-of-Way, and Declaration of Restrictions

a. The Club shall take all actions necessary to ensure that a

Conservation Easement (the "Easement"), in the form attached hereto as Appendix

C, is executed and recorded with the Sussex County Recorder.

b. The Parties agree that the Easement shall create an easement, running with the land, that will ensure that the land will be retained forever in a substantially undisturbed natural state and that no action will be taken that will impair or interfere with the conservation values of the Easement. To protect the Easement, the Club shall grant to the U.S. Fish and Wildlife Service ("FWS") the right to preserve and protect the habitat conservation values of the Easement, to enter upon the Club's Property at reasonable times to monitor the Club's compliance with and otherwise to enforce the Easement, and to prevent any activity or use of the Club's Property that is inconsistent with the Easement and to require restoration of such area or features of the Easement that may be damaged by any inconsistent activity or use.

c. In order to ensure and facilitate the FWS's access to the Easement, the Club shall record with the Sussex County Recorder a Right-of-Way over a portion of the Club's Property which will run with the land. The legal description of such Right-of-Way is attached hereto as Appendix F.

d. The Club shall take all actions necessary to ensure that the

Declaration of Restrictions, in the form attached hereto as Appendix E, is executed and recorded with the Sussex County Recorder.

e. Within thirty (30) Days after the Date of Entry of this Consent Decree, the Club shall have the Easement, Right-of-Way, and Declaration of Restrictions executed and recorded. Within ten (10) Days of recording the Easement, Right-of-Way, and Declaration of Restrictions, the Club shall provide DOI a certified copy of the original instruments showing the appropriate Sussex County clerk's recording stamps.

17. Required Notices Before Grant or Transfer

a. Notice to Grantees and/or Transferees. At least 15 days prior to the conveyance or transfer of any interest in any portion of the Club's Property – including, but not limited to, fee interests, leasehold interests, mortgage interests, or beneficial interests in any trust that holds legal title to such Property – the Club shall give the proposed grantee or transferee a copy of the Easement.

b. Notice to DOI. At least twenty (20) Days before any Transfer of the Club's Property, the Club shall notify DOI of the proposed Transfer with a written notice describing the property to be Transferred, the identity of the

transferee, the terms of the Transfer (including the estimated closing costs, the consideration to be paid, a copy of the Transfer agreement, and the name and address of the title company or other entity conducting the closing), and the date on which the Club gave the proposed transferee a copy of the Easement.

18. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities related thereto under CERCLA and any other applicable statute or regulations.

X. PAYMENT OF PROCEEDS FROM TRANSFER OF THE CLUB'S PROPERTY

19. In the event of a Transfer of the Club's Property, the Club shall continue to be bound by all of the terms and conditions, and subject to all of the benefits, of this Consent Decree, unless this Consent Decree is modified in accordance with Section XXI.

20. Upon the Transfer of the Club's Property, the Club shall pay to DOI seventy-five percent (75%) of the Net Sales Proceeds from the Transfer of the Club's Property, but not to exceed the amount of DOI's unreimbursed Response Costs incurred in connection with the Site. The Net Sales Proceeds from the Transfer of the Club's Property shall be calculated by subtracting from the purchase

price the following costs:

(a) the real estate broker, dealer, agent, or consultant's fee or commission (including advertising costs), if any, up to a maximum of six (6) percent of the purchase price ;

(b) required recording fees normally paid by seller in Delaware;

(c) required transfer taxes normally paid by seller in Delaware;

(d) state and local property taxes due on the property at the time of Transfer;

(e) reasonable attorney's fees related solely to the closing on the Transfer of the Club's Property; and

(f) reasonable fees associated with the actual wiring of the proceeds of the Transfer to the United States.

21. The Club shall make all necessary arrangements with the title company or other entity conducting the closing on any Transfer of the Club's Property, or portion thereof, to pay seventy-five percent (75%) of the Net Sales Proceeds under this Paragraph as soon as practicable after the closing, but no later than five (5) Days after the date of closing. Payment shall be made by EFT in accordance with

the instructions provided in Paragraph 7 of this Consent Decree. Until the wire transfer of funds is completed in accordance with the requirements of Paragraph 7 and this Paragraph of this Consent Decree, seventy-five percent (75%) of the Net Sales Proceeds shall be held in an escrow account for the benefit of DOI by the title company or other entity conducting the closing. In the event there is any dispute with regard to the closing costs and the Net Sales Proceeds, the disputed portions of the funds shall be held in escrow for the benefit of the Parties pending resolution of the dispute. Any undisputed closing costs shall be paid to the appropriate party at the time of closing. Undisputed portions of the Net Sales Proceeds shall be paid to DOI in accordance with the EFT instructions in Paragraph 7 of this Consent Decree.

22. At the same time that the Club pays the Net Sales Proceeds from the Transfer of the Club's Property to the United States, the Club shall provide DOI and DOJ with an accounting identifying the purchase price, the Net Sales Proceeds, and each item subtracted from the purchase price to obtain the "Net Sales Proceeds" amount. The Club shall not subtract from the purchase price any costs not actually paid by the seller. The Club shall not subtract from the purchase price any costs

paid to Related Parties. For purposes of this Paragraph, "Related Parties" includes the members of the Club, the spouses and former spouses of the members, the siblings of the members, any offspring of the members and their siblings, and the children of any offspring of the members and their siblings, and any businesses in which any of the foregoing own more than a 5% interest in the business.

23. Within thirty (30) Days of any auction as required by Paragraph 15 of this Consent Decree, the Club shall deliver to DOI the "Net Proceeds from the Auction" and shall provide DOI with a copy of all documentation of conveyance. "Net Proceeds from the Auction" shall mean, for the purpose of this Paragraph, the gross proceeds from the auction of the Club's Property, or any portion thereof, minus the costs of Transfer, including attorney's fees, auctioneer's fees, or commissions. The Club's payment of the Net Proceeds from the Auction pursuant to this Paragraph shall be made in accordance with the requirements of Section VII of this Consent Decree.

XI. ASSIGNMENT OF INSURANCE PROCEEDS

24. Beginning on the Date of Lodging of this Consent Decree, the Club shall use its Best Efforts to obtain recovery of insurance proceeds for

reimbursement of the \$948,000 in Response Costs incurred by the United States for response action in connection with releases from the Club's Property. "Best Efforts" for purposes of this Paragraph means the Club shall attempt to locate and identify any and all insurance policies that may cover Response Costs incurred in connection with the Club's Property.

25. Upon the Date of Entry of this Consent Decree, the Club shall be deemed to have irrevocably assigned to DOI all potential rights to insurance claims proceeds under the Insurance Policies, including, but not limited to, all proceeds under the Insurance Policies with respect to the United States' claims with respect to the Site and with regard to all expenditures to date by the Club relating to the Site. The Club further agrees to execute all necessary documentation to effectuate this assignment and to allow and facilitate the pursuit, and collection by DOI or its designee, of any insurance claims proceeds under the Insurance Policies.

26. The Club further agrees to cooperate fully with the United States in efforts to locate the Insurance Policies or evidence of the Insurance Policies, and in addressing and responding to appropriate inquiries by insurers with regard to such claims or the Insurance Policies.

XII. FAILURE TO COMPLY WITH CONSENT DECREE

27. Interest on Late Payments. If the Club fails to make any payment required by any provision of this Consent Decree by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

28. Stipulated Penalty.

a. If any payments due under this Consent Decree are not paid by the required date, as provided in Section X of this Consent Decree, the Club shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 27, \$2,000.00 per violation per Day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) Days of the date of the demand for payment of the penalties by DOI. All payments to DOI under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to DOI. The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Club's name, and DOJ Case Number 90-11-3-08802, and shall be sent

to:

Financial Litigation Unit
Office of the United States Attorney
1007 N. Orange Street
Suite 700
Wilmington, DE 19801

c. At the time it makes its payment, the Club shall send notice that payment has been made to DOI and DOJ in accordance with Section XX (Notices and Submissions).

d. Penalties shall accrue as provided in this Paragraph regardless of whether DOI has notified the Club of its 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 and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

29. If the United States brings an action to enforce this Consent Decree, the Club shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

30. Payments made under this Section shall be in addition to any other

remedies or sanctions available to the United States by virtue of the Club's failure to comply with the requirements of this Consent Decree.

31. Notwithstanding any other provision of this Section, the United States may, in its nonreviewable 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 the Club from payment as required by Paragraphs 7, 21, and 24 of this Consent Decree or from performance of any other requirements of this Consent Decree.

XIII. COVENANT NOT TO SUE BY UNITED STATES

32. Except as specifically provided in Section XIV (Reservation of Rights by United States), the United States covenants not to sue the Club pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs. With respect to the Club, this covenant not to sue shall take effect upon receipt by DOI of the Club's payments required by Section X of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by the Club of all of its obligations under this Consent Decree, including but not limited to, Sections VIII, IX, X and XI of this Consent Decree, and cooperation in addressing inquiries by

insurers, and execution of all necessary agreements to allow the pursuit, and collection by the United States or its designee, of insurance claims proceeds. This covenant not to sue extends only to the Club, its members, directors, and officers, and its successors and assigns, and does not extend to any other person. With respect to the Club, this covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to DOI by the Club. If the Financial Information provided by the Club is subsequently determined to be false or, in any material respect, inaccurate, the Club shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 40 shall be null and void as to the Club. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from the Club's false or materially inaccurate information.

XIV. RESERVATION OF RIGHTS BY UNITED STATES

33. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Club with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Paragraph 32.

Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the Club with respect to:

- a. liability for failure to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and
- d. liability for response costs that have been or may be incurred by the United States Environmental Protection Agency.

34. Financial Certification. The Parties recognize that the payments required by this Consent Decree reflect a compromise resulting from an assessment of the Club's financial condition based upon information it has provided to the DOI and DOJ through September 18, 2007, and identified in the list of Financial Information provided by the Club, attached hereto as Appendix B. By its signature to this Consent Decree, the Club certifies that, to the best of its knowledge and belief, the financial information provided to the DOI and DOJ is true, correct, and complete. The United States reserves all rights it may have to bring any action

against the Club and the covenant not to sue in Section XIII shall not be effective if any information provided by or on behalf of the Club is not true, correct, and complete.

35. Nothing in this Consent Decree is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Consent Decree.

XV. COVENANT NOT TO SUE BY THE CLUB

36. Waiver of Claims. The Club 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 the Site or this Consent Decree, 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 response actions at or in connection with the Site, including any claim under the United States Constitution, 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 pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

37. Except as provided in Paragraph 36 (Waiver of Claims) and Paragraph 42 (Waiver of Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 33a – 33d, but only to the extent that the Club's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

38. 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).

XVI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

39. 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.

The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

40. The Parties agree, and by entering this Consent Decree this Court finds, that the Club is entitled, as of the Date of Entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Response Costs. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against the Club coming within the scope of such reservations.

41. The Club agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify DOI and DOJ in writing no later than sixty (60) Days prior to the initiation of such suit or claim. The Club also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify DOI and DOJ in writing within ten (10) Days of service of the Complaint or claim upon it. In addition, the Club shall notify DOI and DOJ within ten (10) Days of service or receipt of any Motion for Summary Judgment, and within ten (10) Days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

42. Waiver of Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response Costs, or other relief relating to the Site, the Club shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States 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 Covenant Not to Sue by United States set forth in Section XIII.

XVII. ACCESS AND INSTITUTIONAL CONTROLS

43. If DOI determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed on the Club's Property to ensure the integrity and protectiveness of response actions at the Site, or ensure non-interference with them, the Club shall cooperate with DOI's efforts to secure such governmental controls.

44. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XVIII. ACCESS TO INFORMATION

45. The Club hereby certifies that it has provided to DOI all records, reports, or information (hereinafter referred to as "records") within its possession, including those of its contractors or agents, relating to releases of hazardous substances at or adjacent to the Site, response actions at the Site and the liability of

any person under CERCLA with respect to the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

46. Confidential Business Information and Privileged Documents.

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

b. The Club may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Club asserts such a privilege in lieu of providing records, the Club shall provide the

DOI and the DOJ with the following: 1) the title of the record; 2) the date of the record; 3) the name and title 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. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

47. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XIX. RETENTION OF RECORDS

48. Until three (3) years after the Date of Entry of this Consent Decree, the Club shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to releases of any hazardous substances at or adjacent to the Site, response actions taken at the Site, or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

49. After the conclusion of the document retention period in the preceding paragraph, the Club shall notify DOI at least ninety (90) Days prior to the destruction of any such records, and, upon request by DOI, the Club shall deliver any such records to DOI. The Club may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Club asserts such a privilege, it shall provide the DOI and DOJ with the following: 1) the title of the record; 2) the date of the record; 3) the name and title 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. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

50. In the event that the Club initiates a dissolution, the Club shall give notice to DOI at least ninety (90) Days prior to such dissolution and, upon request by DOI, the Club shall deliver to DOI all records referenced in Paragraph 48 of this Section.

51. The Club hereby certifies that, to the best of its knowledge and belief,

after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site, and that it has fully complied with any and all DOI requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XX. NOTICES AND SUBMISSIONS

52. 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 herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Department of Justice, DOI, and the Club, respectively.

As to the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-08802)
P.O. Box 7611

Ben Franklin Station
Washington, D.C. 20044-7611

As to the U.S. Department of the Interior:

U.S. Department of the Interior
Central Hazardous Materials Fund
Attn: Fund Manager
1849 C Street, N.W.
Mail Stop 2342
Washington, D.C. 20240

As to The Club:

Broadkilm Sportsman Club, Inc.
26283 Deep Branch Road
Milton, DE 19968

With a carbon copy to:

Stephanie L. Hansen, Esq.
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801

XXI. MODIFICATION OF CONSENT DECREE

53. Any modification of this Consent Decree must be in writing and approved by the Court. Any agreed upon written modification must be signed by the Parties to this Consent Decree. No Party may petition the Court for modification

without having first made a good faith effort to reach agreement with the other Parties on the terms of such modification.

XXII. RETENTION OF JURISDICTION

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

XXIII. INTEGRATION/APPENDICES

55. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between 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” consists off the Deed for the Club’s Property, which is comprised of those parcels located in Sussex County, Delaware and identified as Sussex County tax reference 2-35-2-1.

“Appendix B” consists of a list of Financial Information provided by the Club to the DOI and DOJ.

“Appendix C” consists of the Conservation Easement (the “Easement”), to be executed and recorded with the Sussex County Recorder.

“Appendix D” consists of a Secretary’s Certificate of Corporate Resolutions authorizing Walter F. Carlsten, Treasurer, to act on behalf of the Club with respect to certain requirements of this Consent Decree and authorizing Walter F. Carlsten, Treasurer, to sign this Consent Decree on behalf of the Club. Walter F. Carlsten is alternatively referred to as W. F. Carlsten, W. Fred Carlsten or Fred Carlsten in documents associated with this Consent Decree.

“Appendix E” consists of the Declaration of Restrictions on the Club’s Property to be executed and recorded with the Sussex County Recorder.

“Appendix F” consists of the legal description of the Right-of-Way over a portion of the Club’s property to be recorded with the Sussex County Recorder.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

56. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public 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. The Club consents to the entry of this Consent Decree without further notice.

XXV. SIGNATORIES/SERVICE

57. The undersigned representative of the Club to this Consent Decree certifies that he is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Club to this document. "Appendix D" consists of a Secretary's Certificate of Corporate Resolutions authorizing the undersigned representative to act on behalf of the Club with respect to certain requirements of this Consent Decree and authorizing him to sign this Consent Decree on behalf of the Club.

58. The Club hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

59. The Club 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 its behalf with respect to all matters arising under or relating to this Consent Decree. The Club 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 the Club need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXVI. FINAL JUDGMENT

60. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and the Club. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 20__.

United States District Judge

FOR THE UNITED STATES OF AMERICA:

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: Oct 2, 2008

BRUCE S. GELBER
Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

Date: _____

ELLIOT M. ROCKLER
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-2653

COLM F. CONNOLLY
United States Attorney
District of Delaware

Date: _____

PATRICIA A. HANNIGAN
Assistant United States Attorney
Chemical Bank Plaza
1201 Market Street, Suite 100
Wilmington, Delaware 19899

The UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Broadkilm Sportsman Club, Inc., (Civil Action No. _____) concerning environmental contamination at the Prime Hook National Wildlife Refuge.

FOR DEFENDANT BROADKILN SPORTSMAN CLUB, INC.:

Date: 9/5/08

Name: W. F. CARLSTEN
Title: TREA.

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

J.K. Beebe
31452 Point Drive
Lewes, DE 19958
(302) 645-5260