



**NOTICE OF INTENT TO PERFORM  
A NATURAL RESOURCE DAMAGE ASSESSMENT**

In re: **NEWTON COUNTY MINE TAILINGS SUPERFUND SITE  
NEWTON COUNTY SUPERFUND SITE  
NEWTON COUNTY, MISSOURI**

**POTENTIALLY RESPONSIBLE PARTIES:**

Blue Tee Corporation  
Burlington Northern & Santa Fe Railway Company  
Eljer Plumbingware, Incorporated  
Viacom, Incorporated

Pursuant to state or federal laws, the Missouri Department of Natural Resources and the U.S. Department of the Interior (collectively, the Trustees) have trusteeship authority to perform a natural resources damages assessment for the Newton County Mine Tailings Superfund Site (hereinafter referred to as the Newton County Superfund Site). Each agency's specific authority to act in this capacity is specified in Attachment A. This is to notify your company or entity of, and invite its participation in, the development and performance of the assessment of damages for injuries to natural resources at the Newton County Superfund Site.

The Missouri Department of Natural Resources and the U.S. Department of the Interior (USDOJ), have taken the initial step of conducting a Preassessment Screen for the Newton County Superfund Site in accordance with Subpart B – Preassessment Phase, Sections 11.20 – 11.25 of the USDOJ Natural Resource Damage Assessment (NRDA) Regulations, 43 CFR Part 11, as amended. The NRDA regulations provide a method for assessing damages for natural resources injuries resulting from releases of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 USC §9601 et. seq.). Adherence to the methods set forth in the NRDA regulations are not mandatory and do not preclude the Trustees from using alternative assessment methods, or arriving at a negotiated settlement with the potentially responsible parties.

A copy of the Preassessment Screen is attached for your review (Attachment B). The Preassessment Screen contains, to the extent known, a description of the site; releases of hazardous substances of concern to the Natural Resource Trustees; and the natural resources potentially injured. The Preassessment Screen is a public document. The public will be encouraged to provide input into the assessment process, including reviewing and commenting on the development of the Assessment Plan as well as any restoration proposals developed pursuant to the NRDA regulations.

Based on the Preassessment Screen, the Trustees have made a preliminary determination that the specified criteria in Section 11.23(e) of the NRDA regulations have been met.

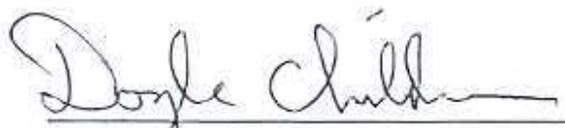
1. Releases of hazardous substances have occurred.
2. Natural resources for which the Missouri Department of Natural Resources and the U.S. Department of the Interior may assert trusteeship under CERCLA have been, or likely have been adversely affected by the releases.
3. The quantity and concentration of the released hazardous substances are sufficient to potentially cause injury to those natural resources.
4. Data sufficient to pursue an assessment are readily available, or likely to be obtained at a reasonable cost.
5. Response actions, if any, carried out or planned do not or will not sufficiently remedy the injury to natural resources without further action.

Based upon an evaluation of these five criteria, the Trustees have determined that a NRDA is warranted at this site in accordance with 43 CFR Part 11 Subparts C and E. The NRDA will assess damages for injuries to natural resources caused by releases of cadmium, lead and zinc and other hazardous substances potentially released from the Newton County Superfund Site including copper, selenium, and acid mine drainage. More detail concerning the impact of these hazardous substances may be found in the Preassessment Screen.

A preliminary determination has also been made that your company or entity, as well as the other companies or entities listed in Attachment C, are potentially liable for any natural resources damages at the Newton County Superfund Site. Additional information on the background of the site and basis of the preliminary determination may be found in the Preassessment Screen.

We recommend that you evaluate your potential responsibility and determine whether you will participate in the assessment. Within thirty (30) calendar days of your receipt of this notice, please provide a written response to each of the Trustee contacts in the attached letter indicating whether you intend to participate in the NRDA process at the Newton County Superfund Site.

MISSOURI DEPARTMENT OF NATURAL RESOURCES



Doyle Childers, Director  
Missouri Department of Natural Resources

12-4-07

Date

U.S. DEPARTMENT OF THE INTERIOR



Benjamin Tuggle, Director  
Region 2  
U.S. Fish & Wildlife Service  
U.S. Department of the Interior

1/03/08

Date

## ATTACHMENT A

### **Missouri Department of Natural Resources Natural Resource Damage Assessment Authority**

The Missouri Department of Natural Resources is responsible for administering environmental regulatory programs for the State of Missouri. In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §9601 et seq.; Federal Water Pollution Act, 33 U.S.C. §1251 et seq., as amended; Oil Pollution Act of 1990, 33 U.S.C. §2701 et seq., as amended; National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, and in accordance with these authorities, the Director of the Missouri Department of Natural Resources has been designated the natural resource trustee by the Governor of Missouri (April 12, 2005). The Missouri Department of Natural Resources acts on behalf of the public as trustee for natural resources, including their supporting ecosystems, within the boundaries of the State of Missouri, or belonging to, managed by, controlled by, or appertaining to the State of Missouri. The Missouri Department of Natural Resources has or shares trusteeship over the natural resources of the Newton County Mine Tailings Superfund Site (known as the Newton County Superfund Site).

### **U.S. Department of the Interior Natural Resources Damages Authority**

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §9601 et seq.; Federal Water Pollution Act, 33 U.S.C. §1251 et seq., as amended; and Oil Pollution Act of 1990, 33 U.S.C. §2701 et seq., as amended, authorize the President to recover, on behalf of the public, damages for injuries to natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States. The President has designated federal natural resource trustees in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR §300.600. The NCP provides for federal natural resources trusteeship to extend to resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or controlled") by the United States, including supporting ecosystems.

Federal trusteeship may be derived from any federal authority, or combination of authorities such as treaties, statutes, regulations or executive orders, which give the federal government legal rights in, or responsibility or legal authority to manage, control or protect natural resources. The federal authority need not be exclusive, comprehensive or primary, but reflect a federal interest in or authority over the natural resources. Federal trusteeship may overlap with that of other federal agencies, state or Native American tribes.

The Secretary of the Interior acts as trustee for the natural resources managed or controlled by the U.S. Department of the Interior (USDOI), including their supporting ecosystems. USDOI's authority for asserting trusteeship include: 40 CFR §300.600(b); Fish and Wildlife Coordination Act, 16 U.S.C. §§661 et. seq.; Fish and Wildlife Act 16 U.S.C. §§742a et seq., which provides that the United States, in part through the USDOI, manages and/or controls all natural resources regulated under the Clean Water Act.; and Migratory Bird Treaty Act 16 U.S.C. §§701 et. seq., which provides that the United States, through USDOI, manages and/or controls all migratory birds.

**ATTACHMENT B**

**PREASSESSMENT SCREEN FOR THE  
NEWTON COUNTY MINE TAILINGS  
SUPERFUND SITE  
(NEWTON COUNTY SUPERFUND SITE)**

## ATTACHMENT C

### LIST OF POTENTIALLY RESPONSIBLE PARTIES AND ADDRESSES

Blue Tee Corporation (Beazer East, Inc.), c/o Terrance Faye, Attorney at Law, 506  
Mabeth Drive, Greensburg, PA 15601 or Beazer East, Inc., One Oxford Center,  
Pittsburgh, PA 15219

Burlington Northern & Santa Fe Railway Co., c/o Matthew K. Rose, Chairman, President  
& Chief Executive Officer, 2650 Lou Menk Drive, 2<sup>nd</sup> Floor, P.O. Box 961057, Fort  
Worth, TX 76161-0057

Eljer Plumbingware, Incorporated, c/o James Harris, Chief Executive Officer, 14801  
Quorum Drive, Dallas, TX 75240

Paramount Communications (Viacom, Inc.), c/o Jeffrey Groy, Vice President  
Counsel/Environment, 111 East Broadway, Ste 1100, Salt Lake City, UT 84111-5233