

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA and)
the STATE OF OKLAHOMA,)

Plaintiffs,)

v.)

CIV-06-887-C

Union Pacific Railroad; Affiliated Foods, Inc.;)

Judge Robin Cauthron

AGCO Corp.; Air Liquide Electronics U.S., LP.;)

Amarillo Gear Co.; American Financial Group;)

Americold Realty Trust; APAC Kansas, Inc.;)

Arkema Inc.; AS America, Inc.; ATC Technology)

Corp.; Atmos Energy Corp.; Aubrey Chevrolet;)

Autco, Inc.; Automobiles of Italy; Avis Rent a Car)

System, Inc.; B&M Oil Co., Inc.; Badgett Steam)

Lubricator Corp.; BAE Systems Resolution Inc.)

f/k/a Stewart & Stevenson Services, Inc.; Baker)

Hughes Inc.; Baldor Electric Co.; Balon Corp.;)

Battison Motors, Inc.; Ben E. Keith Co.; Billingsley)

Ford, Inc.; Billy M. Arnold, Inc.; Board of County)

Commissioners of the County of Blaine, OK;)

Board of County Commissioners of the County of)

Oklahoma, OK; Bob Maloney Ford-Mercury, Inc.;)

Bob Moore Auto Group, LLC.; Bob Tomes Ford, Inc.;

Boeckman Ford, Inc.; Brad Fenton, Inc.; Breeden)

Dodge, Inc.; Brenntag Southwest, Inc.; Bright Truck)

Leasing, L.P.; Brown Automotive Group L.P. d/b/a)

Brown Pontiac GMC Buick; Brown Automotive)

Group L.P. d/b/a Southwest Honda; Bruckner Truck)

Sales Inc.; Brunner & Lay Inc.; Cameron L. Kerran;)

Cargill, Inc.; Carco Rentals, Inc.; Cascade Die)

Casting Group, Inc.; Chapman Construction Co.,)

L.P.; Chris Nikel's Autohaus, Inc.; CIA Machinery,)

Inc.; City of Ardmore, OK; City of Broken Arrow,)

OK; City of Del City, OK; City of Denton, TX; City)

of Derby, KS; City of Eufless, TX; City of Farmers)

Branch, TX; City of Hurst, TX; City of Kingman,)

KS; City of Lubbock, TX; City of Mesquite, TX;)

City of Moore, OK; City of Muskogee, OK; City of)

North Richland Hills, TX; City of Stillwater, OK;)

Clarence L. Boyd, Inc.; Coach USA, Inc. d/b/a)
 Sporrán KBUSCO; Coca-Cola Enterprises Inc.;)
 ConAgra Foods, Inc.; Cox Communications, Inc.;)
 Crash Rescue Equipment Service, Inc.; Crawford &)
 Bargas, Inc.; CTS Corp.; Cutrell Trucking Co., Inc.;)
 D.H. Blattner & Sons, Inc.; Dalhart Consumers Fuel)
 Association, Inc.; Dallas County Schools; Darling)
 International Inc.; DeFehr Implement, Delp, Inc.;)
 Dobrinski Chevrolet Pontiac Buick; Doenges Toyota)
 Ford Lincoln Mercury; Don Davis Auto Group, Inc.;)
 Donohue Holdings, Inc., formerly Big Red Sports/)
 Imports, Inc.; Double Eagle Refining Co.; Duit)
 Construction Co., Inc.; Dunn Ford Co.; Eagle)
 Imports, L.P. d/b/a John Eagle Honda & John Eagle)
 Lincoln-Mercury, LLP; East Texas Mack Sales)
 L.L.C.; East Tulsa Dodge, Inc.; England Ford, Inc.;)
 Exxon Mobil Corp.; Federal Express Corp.; Flowers)
 Foods, Inc., on behalf of Flowers Frozen Desserts of)
 Stillwell, LLC.; Floyd Traylor Motor Co.; Ford)
 Investment Enterprises Corp., Successor-in-Interest)
 to Doenges Bros. Ford, Inc., Jim Nelson Ford, Inc. &)
 Turnpike Ford, Inc.; Fronk Oil Co., Inc.; Frontier)
 Chevrolet, Inc.; Frontier International Trucks, Inc.;)
 Frozen Food Express Industries, Inc.; Gardner)
 Denver, Inc.; GEA Rainey Corp.; Gene Huggins)
 Enterprises, Inc. dba Huggins Mitsubishi; Gene)
 Smith, Inc.; George Nunnally Chevrolet, Inc.;)
 Geotrace Technologies, Inc.; Goddard Ready Mix)
 Concrete, Inc.; Golden Spread Redi-Mix, Inc.;)
 Goodpasture, Ltd.; Graff Chevolet; Greenleaf)
 Nursery Co.; Griffith Motor Co.; GTE Southwest)
 Inc. (d/b/a Verizon Southwest); Guardian Industries)
 Corp.; Gulf State Supply LLC.; Hagan Tractor Parts,)
 Inc.; Harland McClaskey, as Owner of Harland's)
 Diesel Service, Inc.; Harry Robinson Buick-GMC,)
 Inc.; Harvey's Inc.; Haskell-Lemon Construction)
 Co.; Heartland Chevrolet, formerly John Gibbs)
 Motor Co. Inc.; Heartland Express, Inc.; Hesselbein)
 Tire Co., Inc.; Hickory Springs Manufacturing Co.;)
 Hill Country Chevrolet-Toyota Co.; HJG Trucking)
 Co., Inc.; Hoffmeier, Inc.; Holmes Construction Co.,)
 L.P.; Hondura, Inc.; Huffines Dodge Lewisville, Inc.;)
 Hulcher Services, Inc.; Hydro Aluminum North)
 America, Inc.; Independent Foreign Car Repair;)
 Independent School District No. 29 of Cleveland)
 County, OK.; Independent School District No. 52)

of Oklahoma County, OK., a/k/a the Midwest City-)
 Del City Public Schools; Industrial Diesel, Inc.;)
 Industrial Vehicles International, Inc.; Ingersoll-)
 Rand Co.; Iowa 80 Group, Inc.; J.B. Hunt Transport)
 Inc.; J.M. Huber Corp.; Jackie Cooper Imports, LLC;))
 Jantz Implement, Inc.; Jensen's Inc.; Jim Norton)
 Buick, Inc.; Johnson's of Kingfisher, Inc.; Jones)
 Motorcars Inc.; Kansas Turnpike Authority;)
 Kennedy Tire & Auto Service, Inc.; Ken's Tire &)
 Auto Service, Inc.; Kent Chevrolet, Cadillac, Inc.)
 Keystone Chevrolet, Inc.; Keystone Equipment Co.,))
 Inc.; Kimberly-Clark Corp., Successor In Interest)
 to Scott Paper Co.; Kingfisher County, OK.;)
 Kwikset Corp.; Lafarge Building Materials Inc.;)
 Lakeside Chevrolet Co., Ltd.; Lamb County Electric)
 Cooperative, Inc.; Lasko Products, Inc.; LB Smith,)
 Inc.; Lift Truck Center, Inc.; Lorenz, Inc.; Lowe's)
 Home Centers, Inc.; Lowry Chevrolet, Inc.; Lufkin)
 Industries, Inc.; Mack Truck Sales of Tulsa, Inc.;)
 Mack Trucks, Inc.; Martin K. Eby Construction Co.,))
 Inc.; McCorkle Truck Line, Inc.; McElroy)
 Manufacturing, Inc.; McKee Foods Corp.;)
 McKesson Corp.; McKinney Automotive Limited)
 Partnership; Metzeler Automotive Profile Systems)
 of Oklahoma, Inc.; Michael Kerran; Mid-Continent)
 Concrete Co.; Inc., f/k/a The Hardesty Co., Inc.;)
 Mid-Continent Thermo King, Inc.; Mid-Kansas)
 Cooperative Association; Midwesco Industries, Inc.;))
 Midwest Corporate Aviation, Inc.; Mike Garrett)
 Chevrolet, Inc.; Milo Gordon Inc.; Moritz Partners,)
 L.P.; Muskogee Bridge Co., Inc.; Musser Motors,)
 Inc.; Navistar, Inc.; Nestle Holdings, Inc.; Newell)
 Rubbermaid Inc.; Nine-Eleven Enterprises, Inc.;)
 Northwest Tire Service Inc.; Oakley Pontiac-Buick,)
 Inc.; Oil States Industries, Inc.; ONEOK, Inc.; Owen)
 R. Thomas, Inc.; Parker Lube, Inc.; Paul Penley Oil)
 Co.; Inc.; People's Electric Cooperative; Phoenix)
 Transmission; Plano Independent School Dist.;)
 Preformed Line Products Co.; Putnam Lincoln-)
 Mercury, Inc.; Radioshack Corp.; Range Oil Co.,)
 Inc.; Reed Beidler; Reher Morrison Racing Engines,))
 Inc.; Republic Services, Inc.; Rick Jones Buick)
 GMC Inc. (f/k/a Rick Jones Pontiac Buick & GMC,)
 Inc.; Roberts Truck Center of Oklahoma, LLC &)
 H.D. Copeland International Trucks, Inc.; Ron)
 Shirley Pontiac Buick GMC, Inc.; Ruan Logistics)

Corp.; Safeway Inc.; Sammons BW, Inc.; Sara Lee)
Corp.; Sasol North America, Inc.; Schwarz Ready)
Mix Inc.; Scoggin-Dickey Chevrolet-Buick, Inc.;)
Service Automall, Inc.; Setco, Inc.; Shep Chevrolet)
Inc.; Shipley Motor Equipment Co.; Sinclair Oil)
Corp.; Six Flags Over Texas, Inc.; Smith)
Automotive, Inc.; Smith Chevrolet Cadillac Co.;)
Sooner Lift, Inc.; Southern Material Handling Co.;)
Southern Star central Gas pipeline, Inc.; Southside)
Dodge Sales, Inc.; Southwest Auction Co., Inc.;)
Southwestern Baptist Theological Seminary;)
Southwestern Petroleum Corp.; Spartan Aviation)
Industries, Inc.; Spider Webb Farm Implements,)
Inc.; Stovall Corp.; Stuart Pontiac-Cadillac, Inc.;)
Suburban Motors, Inc.; Sullivan's Trucking Co., Inc.;)
Superior Ford, Inc.; Superior Industries International,)
Inc.; Sysco Denver, Inc., a subsidiary of Sysco Corp.;)
TDY Industries, Inc.; TEFS Holding L.P.; Terracon)
Consultants, Inc.; Terry Miller Pontiac Buick GMC)
Truck, Inc.; Testers, Inc.; Texas Industries, Inc.;)
The Cloro Co.; The Kansas City Southern Railway)
Co.; The Bradbury Co., Inc.; The Lane Construction)
Corp.; Thomas Cadillac, Inc.; Trane, Inc.; Trinity)
Industries, Inc.; Trowell & Turner Automotive, Inc.;)
Trucks for You, Inc.; Tulsa Recycle & Transfer, Inc.)
Turner Bros., LLC.; United Industries Corp., a)
Delaware Corp. d/b/a Spectrum Brands, d/b/a)
Chemisco, Inc., f/k/a Chemisco. Inc; U.S.)
Foodservice, Inc.; United Rentals, Inc.; United)
Technologies Corp. and its subsidiary, Carrier Corp.;)
W&W Steel Company/W&W Steel, LLC; Wagner)
Buick, Inc.; Walz, Harman & Huffman Construction,)
Inc.; Warren Power & Machinery, Inc.; Waste)
Management of Arkansas, Inc.; Waste Management)
of Oklahoma, Inc.; Waste Oil Service Co.; Waukesha)
Pearce Industries, Inc; Wayne Edison Chevrolet-)
Oldsmobile-Buick-Pontiac, Inc.; Webb Wheel)
Products, Inc.; Western Auto Supply Co.; Western)
Technology Center; Weyerhaeuser Co.; Wilmes)
Superstore, Inc.; Wilson Chevrolet, Inc.; WNA Cups)
Illustrated, Inc.; Wood Motor Co., Inc.;)
Yellowhouse Machinery Co.)

Defendants.)

v.)

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”) and the United States Department of the Interior, filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”) and Title 27A O.S. §§ 1-2-101, 1-3-101, and 2-3-101, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Double Eagle Refinery Site in Oklahoma City, Oklahoma (“the Site”), as well as damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from such a release.

B. The State of Oklahoma (the “State”) is a co-plaintiff in the complaint filed in this Court seeking recovery under Section 107 of CERCLA, 42 U.S.C. § 9607 and Title 27A O.S. §§ 1-2-101, 1-3-101, and 2-3-101. The State seeks reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Site, as well as damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from such a release.

C. Settling Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint. The Settling Federal and State Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by any Settling Defendant or any claim by the State.

D. The United States, the State, and Settling Defendants 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, 1345, and 1367(a) and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants 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 Settling Defendants and their 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 Settling Defendants 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 meanings 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. "Anticipated Future Response Costs" shall mean the future costs of all Five Year Reviews at the Site.

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

c. "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.

d. "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 federal holiday, the period shall run until the close of business of the next working day.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Federal Natural Resource Trustee" shall mean the United States Department of the Interior, by and through the United States Fish and Wildlife Service.

i. "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.

j. "Natural Resource Damages" shall mean damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from releases of hazardous substances at the Site as defined in 42 U.S.C. §§ 9601, 9607, 40 C.F.R. § 300.600, and 27A O.S. § 1-2-101. For the purposes of this Consent Decree, "Natural Resource Damages" shall mean the estimated sum of money necessary to restore, replace or acquire the equivalent of natural resources injured, destroyed or lost as a result of releases of hazardous substances at the Site, which shall include impairment of services or functions of natural resources, as well as the Natural Resource Trustees' damage assessment costs. "Natural Resource Damages" shall also include the Natural Resource Trustees' estimated costs to plan, design, permit, implement, administer, and monitor project(s) to restore, replace, or acquire the equivalent of natural resources that have been injured, destroyed, or lost, or to have these activities performed under their oversight.

k. "Natural resource" and "natural resources" shall mean land, fish, biota, air, water, groundwater, drinking water supplies, and such other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the State, and shall also mean the services provided by such resources to other resources or to humans.

l. "Natural Resource Trustees" shall mean the State Natural Resource Trustee and the Federal Natural Resource Trustee collectively.

m. "ODEQ" shall mean the Oklahoma Department of Environmental Quality and any successor departments, agencies, or instrumentalities of the State.

n. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

o. "Parties" shall mean the United States, the State, Settling Federal Agencies, Settling State Agencies and Settling Defendants.

p. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through June 30, 2010, plus accrued Interest on all such costs through such date.

q. "Plaintiffs" shall mean the United States and the State.

s. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

u. "Settling Defendants" shall mean Union Pacific Railroad Company and the parties listed in Appendix D and their predecessors, successors-in-interest, parents, subsidiaries, divisions, affiliates, assigns, directors, officers, and shareholders.

v. "Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix B.

w. "Settling State Agencies" shall mean those departments, agencies, and instrumentalities of the State identified in Appendix C.

x. "Site" shall mean the Double Eagle Superfund Site, located at 1900 N.E. First Street, near the intersection of Martin Luther King Ave. and Reno Ave. in Oklahoma City, Oklahoma, and generally shown on the map included in Appendix A. The Site shall include any areas of contamination where contaminants from the Site have migrated or been released, including, but not limited to the areas described more fully in the Records of Decision for Source Control (OU1, issued on September 28, 1992) and Ground Water (OU2, issued on April 19, 1994), including the Radio Tower area and Parcel H.

y. "State" shall mean the State of Oklahoma, including its departments, agencies, and instrumentalities.

z. "State Natural Resource Trustee" shall mean the Oklahoma Secretary of the Environment, or any duly designated official or agency of the State acting as Natural Resource Trustee for the State pursuant to Section 1-2-101 of Title 27A of the Oklahoma Statutes.

aa. "State Past Response Costs" shall mean all costs for removal, remediation, or monitoring incurred by the ODEQ through August 1, 2010, including but not limited to direct and indirect costs, together with accrued interest, in response to the release or threatened release of hazardous substances at or in connection with the Site, but not including amounts reimbursed to the State by EPA.

cc. "Union Pacific" shall mean Union Pacific Railroad Company and its predecessors, successors-in-interest, parents, subsidiaries, divisions, affiliates, assigns, directors, officers, and shareholders.

dd. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

**V. PAYMENT OF RESPONSE COSTS
AND NATURAL RESOURCE DAMAGES**

4. Payment of Past and Anticipated Future Response Costs to EPA.

(a) Within 10 days of entry of this Consent Decree, Union Pacific shall, on behalf of all Settling Defendants, pay to EPA \$13,606,241, plus an additional sum for Interest on that amount calculated from the date this Consent Decree is lodged with the Court, through the date of payment, for Past Response Costs at the Site.

(b) Within 10 days of entry of this Consent Decree, Union Pacific shall, on behalf of all Settling Defendants, pay to EPA \$160,000, plus an additional sum for Interest on that amount calculated from the date this Consent Decree is lodged with the Court, through the date of payment, for Anticipated Future Response Costs at the Site.

5. Payment by Union Pacific on behalf of all Settling Defendants pursuant to Paragraph 4 shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with EFT instructions to be provided to the Defendant by the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Oklahoma, following lodging of the Consent Decree.

6. At the time of payments pursuant to Paragraph 4, Union Pacific shall, on behalf of all Settling Defendants, also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 06B1, DOJ case number 90-11-2-857/1, and the civil action number.

7. The total amount to be paid by Union Pacific on behalf of all Settling Defendants pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

8. As soon as reasonably practicable after the date of entry of this Consent Decree, and consistent with Paragraph 8(a)(iii), the United States, on behalf of Settling Federal Agencies, shall:

(a)(i). Pay to the EPA \$384,844, plus an additional sum for Interest on that amount calculated from the date this Consent Decree is lodged with the Court, in reimbursement of Past Response Costs. Of this amount, \$137,808 plus Interest on that amount shall be paid on behalf of the United States Postal Service.

(a)(ii). The total amount to be paid by Settling Federal Agencies pursuant to Paragraph 8(a)(i) shall be deposited in the EPA Hazardous Substance Superfund.

(a)(iii). If the payment to EPA required by Paragraph 8(a)(i) is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the date of entry of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

9. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

10. Payment of Natural Resource Damages.

(a) Within 10 Days after entry of this Consent Decree, Union Pacific shall pay, on behalf of all Settling Defendants, as explained in the remainder of this Paragraph, Natural Resource Damages to the Natural Resource Trustees.

(b)(i) Payment of Joint State and Federal Natural Resource Damage Claims and DOI Assessment Costs. Union Pacific shall pay, on behalf of all Settling Defendants, \$274,755.79 plus an additional sum for Interest on that amount calculated from the date this Consent Decree is lodged with the Court through the date of payment, for the joint State and Federal Natural Resource Damage claims for injury to terrestrial wildlife and habitat and for DOI assessment costs. Payment of this sum shall be made by Fed Wire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions to be provided to Defendant following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Oklahoma. Such monies are to be deposited in the NRDAR Fund, referencing: file number 14X5198 (NRDAR), Agency Code INTE, DOJ # 90-11-2-857/1, the Defendant’s name, and the NRDAR case name (the Double Eagle Superfund Site, Oklahoma Co., OK). Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day.

(b)(ii) At the time of payment, Union Pacific shall, on behalf of all Settling Defendants, send written notice of payment of Joint State and Federal Natural Resource Damage Claims and DOI Assessment Costs, together with a copy of any transmittal documentation, referencing NRDAR account number 14X5198, Agency Code INTE, DOJ # 90-11-2-857/1, the civil action number, the Defendant’s name, and the NRDAR case name (Double Eagle Superfund Site, Oklahoma Co., OK). The notice shall state that the payment is for Natural Resource Damages sustained by the United States and the State of Oklahoma with respect to the Double Eagle Superfund Site in Oklahoma. The notices shall be sent to:

Bruce Gelber, Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, DC 20044-7611

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 4449
Washington, DC 20204

Martin Steinmetz
Tulsa Field Solicitor Office
United States Department of the Interior
7906 East 33rd Street, Suite 100
Tulsa, OK 74104

Jerry J. Brabander
Field Supervisor
Fish & Wildlife Service
Division of Ecological Services
222 South Houston, Suite A
Tulsa, OK 74127

J.D. Strong, Oklahoma Secretary of the Environment
3800 Classen Boulevard
Oklahoma City, OK 73118

Richard Hatcher, Executive Director
Mark Howery
William Ray
Oklahoma Department of Wildlife Conservation
1801 N. Lincoln Boulevard
Oklahoma City, OK 73152

Oklahoma Office of the Attorney General
Environmental Protection Unit
Attention: Clayton Eubanks, Assistant Attorney General
313 NW 21st Street
Oklahoma City, OK 73105

(c) Payment of State's Natural Resource Damages for Injury to Groundwater.

Within 10 days after entry of this Consent Decree, Union Pacific shall, on behalf of all Settling Defendants, pay to the State \$163,451.21, plus an additional sum for Interest on that amount calculated from the date this Consent Decree is lodged with the Court through the date of payment, for injury to groundwater resources. Payment shall be by certified cashier's check made payable to the "State of Oklahoma" and delivered to:

Oklahoma Office of the Attorney General
Environmental Protection Unit
Attention: Clayton Eubanks, Assistant Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

and shall clearly state either on the certified check or in any accompanying documentation that such payment is for the State's Natural Resource Damage claims for groundwater with respect to the Double Eagle Superfund Site in Oklahoma County, Oklahoma. At the time of payment, Union Pacific shall, on behalf of all Settling Defendants, also send notice of such payment, including a copy of the certified check and any accompanying documentation, to:

J.D. Strong, Oklahoma Secretary of the Environment
3800 Classen Boulevard
Oklahoma City, OK 73118

(d) Payment to the State of Natural Resource Past Assessment Costs. Within 10

days after entry of this Consent Decree, Union Pacific shall, on behalf of all Settling Defendants, pay to the State \$11,793.00, plus an additional sum for Interest on that amount calculated from the date this Consent Decree is lodged with the Court through the date of payment, for assessment of damages of the State's natural resources. Payment shall be made by certified cashier's check payable to the "State of Oklahoma" and delivered to:

Oklahoma Office of the Attorney General
Environmental Protection Unit
Attention: Clayton Eubanks, Assistant Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

and shall clearly state either on the certified check or in any accompanying documentation that such payment is for past costs incurred by the State in the assessment of Natural Resource Damages at the Double Eagle Superfund Site in Oklahoma County, Oklahoma. At the time of payment, Union Pacific shall, on behalf of all Settling Defendants, also send notice of such payment, including a copy of the certified check and any accompanying documentation, to:

J.D. Strong, Oklahoma Secretary of the Environment
3800 Classen Boulevard
Oklahoma City, OK 73118.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

11. Interest on Late Payments. If Union Pacific fails to make any payment under Paragraphs 4 or 10 (Payment of Past Response Costs and Natural Resource Damages) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

12. Stipulated Penalty.

(a)(i) If any amounts due under Paragraphs 4 or 10 are not paid by the required date, Union Pacific shall be in violation of this Consent Decree and shall pay to the agency due to receive the funds, as a stipulated penalty, in addition to the Interest required by Paragraph 11, \$10,000 per violation per day that such payment is late.

(a)(ii) If Union Pacific does not comply with its obligations under Paragraph 25 to withdraw its complaint in intervention or refrain from opposing the entry of the lodged Consent Decree in *United States of America, et al. v. Albert Inv. Co., et al.*, Case No. 08-CV-637-C (W.D. Okla.), as amended to include the limited reopener provision set forth in Paragraph 22 herein, Union Pacific shall be in violation of this Consent Decree and shall pay to EPA and the State, as a stipulated penalty, \$10,000 per violation per day of such noncompliance.

(b) Stipulated penalties for failure to make payment under Paragraph 4, or for failing to comply with the obligations set forth in Paragraph 25, are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 06B1, DOJ Case Number DJ # 90-11-2-857/1, and the civil action number. Union Pacific shall send the check (and any accompanying documentation) to:

U.S. Environmental Protection Agency, Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(c) At the time of each payment under Paragraph 12(b), Union Pacific, on behalf of all Settling Defendants, shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA

Region and Site/Spill ID Number 06B1, DOJ Case Number DJ # 90-11-2-857/1, and the civil action number.

(d) Stipulated penalties due to the State under Paragraph 12(b) are due and payable within 30 days of the date of the demand for payment of the penalties by the State. All payments to the State under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified funds check or public agency warrant made payable to the “State of Oklahoma.” The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, and the civil action number. The check (and any accompanying letter) shall be sent to:

Oklahoma Office of the Attorney General
Attention: Clayton Eubanks, Assistant Attorney General
313 NE 21st Street, Room 2082
Oklahoma City, OK 73105

(e) At the time of payment of a stipulated penalty under Paragraph 12(d), the party making the payment shall also send notice that payment has been made to ODEQ in accordance with Section XII (Notices and Submissions). Such notice shall reference the civil action number and Site name.

(f) Stipulated penalties for failure to make payment under Paragraph 10 are due and payable within 30 days of the date of the demand for payment of the penalties by the Natural Resource Trustees. All payments to the Natural Resource Trustees under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified funds check following the instructions found in the demand letter by the respective Natural Resource Trustee. The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site Name, the DOJ case number DJ # 90-11-2-857/1, and the civil action number. The party making the payment shall send the check (and any accompanying letter) to the Natural Resource Trustee to whom stipulated penalties are owed.

(g) Penalties shall accrue as provided in this Paragraph regardless of whether the United States or the State has notified Union Pacific 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 or performance is due or the day a violation occurs and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

13. If the United States or the State brings an action to enforce this Consent Decree, Union Pacific shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time, unless the suit to enforce the Consent Decree is based on objection or intervention of a Settling Defendant other than Union Pacific to either

this Consent Decree or the Consent Decree in *United States of America, et al. v. Albert Inv. Co., et al.*, Case No. 08-CV-637-C (W.D. Okla.), amended to include the limited reopener provision set forth in Paragraph 22 herein. In that event, the Settling Defendant that intervened or made the objection shall reimburse the United States and the State for all costs of such action including but not limited to costs of attorney time.

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

15. The obligation to pay the United States and the State the amounts owed under Paragraphs 4 and 10, combined with the interest accrued under Paragraph 11 and penalties incurred under Paragraph 12(a)(i) shall be the responsibility of Union Pacific to pay on behalf of all Settling Defendants.

16. The obligation to pay stipulated penalties under Paragraph 12(a)(ii) shall be borne solely by Union Pacific.

17. Notwithstanding any other provision of this Section, the United States and/or the 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 Union Pacific from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY PLAINTIFFS

18. Covenant Not to Sue Settling Defendants and Settling State Agencies by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants or Settling State Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA and the Federal Natural Resource Trustee of all payments required by Section V, Paragraphs 4 (Payment of Past Response Costs) and 10 (Payment of Natural Resource Damages) and any amount due to the United States under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants and Settling State Agencies of their respective obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and Settling State Agencies and does not extend to any other person.

19. Covenant for Settling Federal Agencies by EPA. Except as specifically provided in Section VIII (Reservation of Rights by United States), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site. This covenant shall take effect upon receipt by

EPA of all payments required by Paragraph 8 of Section V. This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

20. Covenant for Settling Federal Agencies by Federal Natural Resource Trustee. Except as specifically provided in Section VIII (Reservation of Rights by United States and State of Oklahoma), the Federal Natural Resource Trustee covenants not to take administrative action against Settling Federal Agencies pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Natural Resource Damages with regard to the Site. This covenant is conditioned and takes effect upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

21. Covenant Not to Sue by State of Oklahoma. Except as specifically provided in Section VIII (Reservation of Rights by United States and the State of Oklahoma), the State covenants not to sue or to take administrative action against Settling Defendants or Settling Federal Agencies pursuant to Title 27A O.S. §§ 1-2-101, 1-3-101, and 2-3-101, Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants and Settling Federal Agencies of their respective obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and Settling Federal Agencies and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES AND STATE OF OKLAHOMA

22. (a) Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order against Settling Defendants to perform further response actions relating to the Site and/or to pay the United States and the State for additional costs of response if, (a) subsequent to the date of entry of this Consent Decree, (i) conditions at the Site, previously unknown to EPA and/or the State, are discovered, or (ii) information, previously unknown to EPA and/or the State, is received in whole or in part, and (b) EPA determines that these previously unknown conditions or this previously unknown information together with other relevant information indicates that the remedial action completed by EPA is not protective of human health or the environment.

(b) For purposes of Paragraph 22(a), the information and conditions known to EPA and/or the State will include only that information and those conditions known to EPA and/or the State as of the date of entry of this Consent Decree as set forth in the Source Control Operable Unit Record of Decision issued September 1992 and associated Administrative Record (SDMS

1008264 includes Index for Administrative Record), the Groundwater Operable Unit Record of Decision issued April 1994 and associated Administrative Record (SDMS 1008288 includes Index for Administrative Record), the Preliminary Close Out Report (September 1999), the Remedial Action Completion Report (February 2000), the Explanation of Significant Differences issued January 19, 2006 (SDMS 196649) and associated Administrative Record (SDMS 214463), a second Explanation of Significant Differences dated May 19, 2008 (SDMS 9046351) and associated Administrative Record (SDMS 9046376), the Five Year Review Reports issued June 2002 and May 2007, the Final Close Out Report (March 2006), and the Deletion Docket for the Site referenced in the Federal Register supporting EPA deletion of the Site from the National Priorities List, 73 FR 49353 (Aug. 21, 2008) and the May 3, 2010 EPA Update for the Site.

23. The United States and the State of Oklahoma reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, Settling Federal Agencies, and Settling State Agencies with respect to all matters not expressly included within, respectively, the Covenant Not to Sue Settling Defendants and Settling State Agencies by United States in Paragraph 18, the Covenant for Settling Federal Agencies by EPA in Paragraph 19, the Covenant for Settling Federal Agencies by the Federal Natural Resource Trustee in Paragraph 20, and the Covenant Not to Sue by State of Oklahoma in Paragraph 21. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, Settling Federal Agencies, and Settling State Agencies, with respect to:

- (a) liability for failure of Settling Defendants, Settling Federal Agencies, or Settling State Agencies to meet a requirement of this Consent Decree;
- (b) liability based on the ownership or operation of the Site by Settling Defendants or Settling Federal Agencies when such ownership or operation commences after signature of this Consent Decree;
- (c) liability based on Settling Defendants' or Settling Federal Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of hazardous substances (as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14)) or any pollutant or contaminant (as defined by Section 101(33) of CERCLA, 42 U.S.C. § 9601(33)), at or in connection with the Site, but only to the extent that the same arises out of an act of transportation, treatment, storage or disposal that occurs after signature of this Consent Decree;
- (d) criminal liability; and
- (e) 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.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

24. Settling Defendants covenant not to sue and agree not to assert or prosecute any claims or causes of action against the United States or the State, or their contractors or employees, with respect to Site, 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 Site, including any claim under the United States Constitution, the Constitution or laws of the State of Oklahoma, 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;

(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;

(d) any counterclaim, cross-claim, or third-party claim against the United States or the State in any action filed or to be filed relating to the Site.

25. Settling Defendants shall move to withdraw any opposition already raised, and refrain from making any new objections to the consent decree that will be lodged in *United States of America, et al. v. Albert Inv. Co., et al.*, Case No. 08-CV-637-C (W.D. Okla.), provided that it is amended to include the limited reopener provision set forth in Paragraph 22 herein. Settling Defendants shall move to withdraw their objections within ten days of the lodging of this Consent Decree or the filing of the consent decree in *United States of America, et al. v. Albert Inv. Co., et al.*, Case No. 08-CV-637-C (W.D. Okla.) that is amended to include the limited reopener provision set forth in Paragraph 22 herein, whichever occurs last. Settling Defendants shall further refrain from making any objections to this Consent Decree or making any objections to or filing any interventions in any amended consent decree that is lodged in *United States of America, et al. v. Albert Inv. Co., et al.*, Case No. 08-CV-637-C (W.D. Okla.), provided that it contains the limited reopener provision as set forth in Paragraph 22 herein.

26. (a) Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including, but not limited to, claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613) that they may have for all matters relating to the Site against any person that has entered into a final settlement with the United States or the State with respect to the Site as of the date of entry of the Consent Decree. This covenant and waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

(b) This covenant and waiver shall apply in all circumstances, except as follows: in the event the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 22, Settling Defendants may bring an action against the defendants in *United States of America, et al. v. Albert Inv. Co., et al.*, Case No. 08-CV-637-C (W.D. Okla.), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

27. 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).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

28. Except as provided in Paragraph 25 (Dismissal of Claims) and Paragraph 26 (Waiver of Claims), 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. Except as provided in Paragraph 26 (Waiver of Claims), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that 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. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue persons that are not Parties to this Consent Decree to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

29. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendants, Settling Federal Agencies, and Settling State Agencies are 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), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. "The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person; provided, however, that if the United States or the State exercises rights against Settling Defendants (or if EPA or the federal natural resource trustee or the State assert rights against Settling Federal Agencies) under the reservations in Section VIII (Reservations of Rights by United States and the State of Oklahoma), other than in Paragraphs 23(a) (claims for failure to meet a requirement of the Decree), or 23(d) (criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

30. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA, DOJ, and the State in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim brought against it for matters related to this Consent Decree, it will notify EPA, DOJ and the State in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA, DOJ and the State within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

31. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs or natural resource damages, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses 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 VII.

XI. RETENTION OF RECORDS

32. Until ten years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records, reports or information (hereinafter referred to as “records”) now in its possession or control, or which 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 with respect to the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the ten-year document retention period in the preceding paragraph, each Settling Defendant shall notify EPA, DOJ, and the State at least 90 days prior to the destruction of any such records, and, upon request by EPA, DOJ, or the State, such Settling Defendant shall deliver any such records to EPA or the State. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs 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 Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States and the State have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants’ favor. However, no records created or generated pursuant

to the requirements of this or any other settlement with the EPA or the State pertaining to the Site shall be withheld on the grounds that they are privileged.

34. Each Settling Defendant hereby certifies individually 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 information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA 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.

35. The United States acknowledges that each Settling Federal Agency 1) is subject to all applicable Federal record retention laws, regulations, and policies; and 2) has fully complied with any and all EPA and State 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.

XII. NOTICES AND SUBMISSIONS

36. 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 United States, EPA, DOI, DOJ, the Settling Federal Agencies, the State, the Settling State Agencies, and the Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-857/1)
P.O. Box 7611
Washington, D.C. 20044-7611

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-857/1)
P.O. Box 23986
Washington, D.C. 20026-3986

As to EPA:

Team Leader, Enforcement Assessment Team
Superfund Division
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

As to the Federal Natural Resource Trustees:

Regional Director, Region 2
U.S. Fish and Wildlife Service
Attn: Karen Cathey
500 Gold Ave. SW
Albuquerque, NM 87102

Martin Steinmetz
Tulsa Field Solicitor Office
United States Department of the Interior
7906 East 33rd Street, Suite 100
Tulsa, OK 74104

As to the State:

Oklahoma Department of Environmental Quality:

Oklahoma Department of Environmental Quality
Steven A. Thompson, Executive Director
P.O. Box 1677
Oklahoma City, OK 73101-1677

Environmental Protection Unit
Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

State of Oklahoma Natural Resource Trustee:

J.D. Strong, Oklahoma Secretary of the Environment
3800 Classen Boulevard
Oklahoma City, OK 73118

Environmental Protection Unit
Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Oklahoma Department of Wildlife Conservation:

Richard Hatcher, Executive Director
William Ray
Mark Howery
Oklahoma Department of Wildlife Conservation
1801 N. Lincoln Boulevard
Oklahoma City, OK 73152

Environmental Protection Unit Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Settling State Agencies:

Environmental Protection Unit Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

As to Settling Defendants:

Rami S. Hanash, Esq.
Union Pacific Railroad Company
Law Department - MS 1580
1400 Douglas Street
Omaha, Nebraska 68179

XIII. RETENTION OF JURISDICTION

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

XIV. INTEGRATION/APPENDICES

38. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Defendants 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 the map of the Site; “Appendix B” is the complete list of Settling Federal Agencies; “Appendix C” is the complete list of Settling State Agencies, and Appendix D is the list of Settling Defendants.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

39. 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. Settling Defendants consent to the entry of this Consent Decree without further notice.

40. If for any reason this Court should decline to approve this Consent Decree in the form presented, or if the Court declines to enter the consent decree that is lodged in *United States of America, et al. v. Albert Inv. Co., et al.*, Case No. 08-CV-637-C (W.D. Okla.), amended to include the limited reopener provision set forth in Paragraph 22 herein, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. SIGNATORIES/SERVICE

41. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, and the State of Oklahoma on behalf of the Oklahoma Department of Environmental Quality and the Oklahoma Secretary of the Environment 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.

42. Each Settling Defendant hereby 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 Settling Defendants in writing that it no longer supports entry of the Consent Decree.

43. 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 that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree 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.

XVII. FINAL JUDGMENT

44. Upon approval and 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 Settling Defendants. 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 6th DAY OF December, 2010.



ROBIN J. CAUTHRON
United States District Judge