

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,
and the STATE OF TEXAS,

Plaintiffs,

vs.

BP AMOCO CHEMICAL COMPANY; et al.,

Defendants.

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CIV. NO.

CONSENT DECREE ADDRESSING NATURAL RESOURCE DAMAGES

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CONSENT DECREE ADDRESSING NATURAL RESOURCE DAMAGES

This Consent Decree is made and entered into by and between the United States of America ("United States"), on behalf of the Under Secretary of Commerce for Oceans and Atmosphere of the National Oceanic and Atmospheric Administration ("NOAA") acting on behalf of the Secretary of Commerce, and the Secretary of the Department of the Interior acting through the United States Fish and Wildlife Service ("DOI/FWS"); and the State of Texas on behalf of the Texas Commission on Environmental Quality ("TCEQ"), the Texas Parks and Wildlife Department ("TPWD"), and the Texas General Land Office ("GLO") (collectively, the "Trustees"); and the Settling Defendants listed in Exhibit A to this Consent Decree

BACKGROUND

A. This Consent Decree resolves issues pertaining to Natural Resource Damages resulting from industrial activities at the Brio Refining, Inc. Superfund Site ("Brio Site") and the Dixie Oil Processors Superfund Site ("Dixie Site"). The Brio Site is located at 2501 Dixie Farm Road, Harris County, Texas; the Dixie Site is located at 2505 Dixie Farm Road, Harris County, Texas (collectively, "Brio/Dixie Site" or "Site"). Dixie Farm Road divides the property into what is called Brio North (48.8 acres), Dixie North (19.0 acres), Brio South (9.3 acres) and Dixie

South (7.6 acres).

B. The industrial activities at the Brio Site included the reclamation (or recycling) of petrochemicals from tank bottoms, residues, and tars to produce toluene, ethylbenzene, aromatic solvents, naphthalene, diesel fuel, and kerosene from 1957-1978. The Brio Site was also used as a crude oil topping unit for jet fuel production from 1978-1982. The Dixie Site housed a copper recovery and hydrocarbon "washing" operation from 1969-1978. From 1978-1986, the Dixie Site operated industrial activities that included used oil recovery. Both Sites received materials sent from off-Site generators, including Defendants or their predecessor companies.

C. Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, the U.S. Environmental Protection Agency ("EPA") placed the Brio Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, in March 31, 1989. A Record of Decision ("ROD") selecting a remedy for cleanup of the Brio Site was issued by EPA on March 31, 1988, and an Amended ROD was issued on July 2, 1997.

D. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the EPA placed the Dixie Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, on October 4, 1989. A ROD selecting a remedy for cleanup of the Dixie Site was issued by EPA on March 31, 1988.

E. Pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), the United States filed Complaints against, *inter alia*, the Settling Defendants (or their predecessor companies) in the Southern District of Texas in Civil Action Nos. 89-2734 (regarding the Dixie Site) and H-91-0830 (regarding the Brio Site).

F. Some of the Defendants in Civil Action No. H-91-0830, *i.e.*, the Brio Settling

Defendants, entered into a Consent Decree with the United States on April 4, 1991, to implement the requirements of EPA's original ROD for the Brio Site. On March 5, 1999, an Amended Consent Decree was entered, to provide for the Brio Settling Defendants' implementation of the requirements of the Amended ROD for the Brio Site. Response actions pertaining to the Amended ROD and the Amended Consent Decree are continuing at the Brio Site.

G. Pursuant to Administrative Order CERCLA Docket No. 6-23-91, some of the potentially responsible parties at the Dixie Site, *i.e.*, the Dixie Settling Defendants, implemented EPA's selected response to the release or threatened release of hazardous substances at the Dixie Site. The Dixie Site is currently in the operation and maintenance phase.

H. Pursuant to Section 107 of CERCLA, the Trustees implemented a natural resource damage assessment ("NRDA") to evaluate the injury, loss, or destruction of natural resources and resource services at the Site due to the release of hazardous substances at or from the Site, the response actions conducted at the Site, and the response actions expected to be implemented at the Site. The Settling Defendants participated in the NRDA process for the Site. The NRDA conducted for the Site is described in the Restoration Plan and Environmental Assessment for the Brio Superfund Site and Dixie Oil Processors Superfund Site, Harris County, Texas ("RP/EA"), which was released on May 25, 2005 after providing an opportunity for public comment.

I. The Trustees determined that releases of hazardous substances (including, but not limited to, polycyclic aromatic hydrocarbons ("PAHs"), volatile organic compounds, chlorinated organic compounds, and trace metals (primarily copper) in the wetlands, surface water, groundwater, sediments, and terrestrial habitats at or near the Site have resulted in injury to these habitats and that these injuries will continue until remediation is complete and/or the habitats

recover naturally. Specifically, the Trustees determined that mortality and injury to birds, mortality and injury to terrestrial receptors, mortality and injury to benthic aquatic invertebrates, and alterations in benthic invertebrate community structure were caused by releases of hazardous substances at or from the Site.

J. Pursuant to this Consent Decree, the Settling Defendants will restore and replace the natural resource services injured by releases of hazardous substances at or from the Site and implement the Restoration Projects as described in the RP/EA in accordance with the Monitoring and Success Criteria Plan (“MSCP”) attached as Exhibit B to this Consent Decree. The Restoration Projects will be implemented on real property that is currently owned by a fiduciary agent of the Settling Defendants.

K. This Consent Decree is a settlement of a contested matter, and neither payment nor the acceptance of any consideration represents an admission of liability or responsibility by any Party .

L. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and implementation of this Consent Decree will expedite the restoration of natural resources and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b). Venue is proper in this Court pursuant to

28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

II. PARTIES

2. The parties to this Consent Decree are the United States of America, on behalf of NOAA and DOI/FWS; the State of Texas, on behalf of TCEQ, TPWD, and GLO; and the Settling Defendants.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA, 42 U.S.C. § 9601 et seq., or in regulations promulgated under CERCLA, 43 C.F.R. Part 11 and 40 C.F.R. Part 300, 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 the attachments attached hereto and incorporated hereunder, the following definitions shall apply:

A. The term "Clear Creek Preserve" or "Easement Area" means a tract of land containing 142 acres, plus or minus, known as Lots 66 and 67 of the Hoidale and Coffman Subdivision, Harris County, Texas, being more particularly described by metes and bounds in Attachment A to Exhibit C to this Consent Decree, that is the real estate where the Wetland Creation Project and the Mixed Forest Habitat Preservation Project (hereinafter, the "Forest Project") are located.

B. The term "Consent Decree" means this document entitled "Consent Decree Addressing Natural Resource Damages," all attachments thereto, and any modifications made pursuant to Section XXII, MODIFICATIONS.

C. The term "Conservation Easement" means the instrument and attachments thereto attached to this Consent Decree as Exhibit C and incorporated herein by reference.

D. The term "Conservation Values" means those conditions documented in the Baseline Inventory Report on the Easement Area dated May 13 and 17, 2005 ("Baseline Report") containing reports, maps, photographs, and an inventory of plant and animal species found on the Easement Area. The Baseline Report and any supplemental reports produced after completion of the Remediation Projects are intended to provide an accurate representation of the resources contained within the Easement Area as of the date of the Baseline Report and any supplements. The text portion of the Baseline Report is included as Attachment B to the Conservation Easement.

E. The term "Date of Entry" means the date on which this Consent Decree is entered by the Clerk of Court after the United States and State of Texas have moved for entry and the District Court Judge has signed the Consent Decree.

F. The term "Date of Lodging" means the date that this Consent Decree is lodged with the Clerk of Court.

G. The term "Federal Trustees" means DOI/FWS and NOAA.

H. The term "Future Costs" means the costs which the Settling Defendants will pay the Trustees in accordance with Paragraph 20.

I. The term "Lead Administrative Trustee" means the individual designated by the Trustees to coordinate Trustee activities.

J. The term "Governmental Requirements" mean activities carried out and to be carried out to implement Section V of this Consent Decree or to implement the Remediation Consent Decree at the Brio Site, most recently amended on March 8, 1999, in Cause No. H-89-2734 in the U.S. District Court for the Southern District of Texas, and to implement an EPA Administrative Order issued on July 10, 1991, Docket No. 6-23-91, at the Dixie Site.

K. The term "Monitoring and Success Criteria Plan" or "MSCP" means the document attached to this Consent Decree as Exhibit B describing the Wetland Creation and Forest Projects to be performed by or on behalf of the Settling Defendants.

L. The term "Natural Resource Damages" means civil compensatory relief, including the reasonable costs of assessing such damages, which is recoverable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), by the Trustees on behalf of the public for injury to, destruction of, loss of, or loss of uses of the natural resources or resource services resulting from the release of hazardous substances at or from the Site, the response actions conducted at the Site, and the response actions expected to be implemented at the Site in the future.

M. The term "Parties" means the United States, the State of Texas, and the Settling Defendants.

N. The term "Past Costs" means the costs incurred by the Trustees in assessing the natural resources actually or potentially injured, destroyed, or lost as a result of releases of hazardous substances at or from the Site, the response actions conducted at the Site, and the response actions expected to be implemented at the Site, and in identifying and planning for restoration actions to compensate for such injuries and losses through December 31, 2004. Such costs include administrative costs and other costs or expenses associated with providing for public participation which are incurred incident to or in support of the assessment and restoration planning process.

O. The term "Permitted Encumbrance(s)" means the mineral interests, easements and other encumbrances described in Attachment F to Exhibit C, referenced in the Baseline Inventory Report, Attachment B to Exhibit C, and reflected in the real property records of Harris County, Texas at the time of the Easement's recordation.

P. The term "Restoration Plan" or "RP/EA" means the plan entitled "Restoration Plan and Environmental Assessment, Brio Superfund Site and Dixie Oil Processors Superfund Site, Harris County, Texas," which was released on May 25, 2005.

Q. The term "Restoration Projects" means the restoration actions comprised of the Wetland Creation Project and the Forest Project described in the Monitoring and Success Criteria Plan ("MSCP") attached as Exhibit B to this Consent Decree and implemented in accordance with that Plan and the terms of this Consent Decree.

R. The term "Settling Defendants" means the Parties Listed in Exhibit A to this Consent Decree.

S. The term "Site" means collectively the Brio Refining, Inc. Superfund Site located at 2501 Dixie Farm Road, Harris County, Texas and the Dixie Oil Processors Superfund Site located at 2505 Dixie Farm Road, Harris County, Texas. Dixie Farm Road divides the Site into what is called Brio North (48.8 acres), Dixie North (19.0 acres), Brio South (9.3 acres) and Dixie South (7.6 acres).

T. The term "State Trustees" means TCEQ, TPWD, and GLO.

U. The term "Trustees" means the Federal Trustees and the State Trustees.

IV. APPLICABILITY OF CONSENT DECREE

4. This Consent Decree applies to and is binding upon the United States and the State of Texas and upon the Settling Defendants and their successors and assigns. Except as otherwise provided in this Consent Decree, any change in ownership or corporate status of any of the Settling Defendants, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter their rights or obligations under this Consent Decree.

5. The Settling Defendants shall provide a copy of this Consent Decree to each

contractor hired to perform the Restoration Projects required by this Consent Decree and to each person representing the Settling Defendants with respect to the Restoration Projects and shall condition all contracts entered into hereunder upon performance of the Restoration Projects in conformity with the terms of the Consent Decree. The Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Restoration Projects required by the Consent Decree. The Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Restoration Projects contemplated herein in accordance with this Consent Decree.

6. Consent Decree Not a Permit. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation. The United States and the State of Texas do not, by their consent to this Consent Decree, warrant or aver in any manner that the Settling Defendants' compliance with this Consent Decree will constitute or result in compliance with the requirements of any Federal, State, and local laws and regulations which may be applicable to the implementation of any Restoration Project or other activities required by the terms of this Consent Decree.

7. Responsibility for Compliance. No action by the Trustees, including, without limitation, their issuance of the RP/EA or the review and approval of any design, plan, report, or other information or action formulated by the Settling Defendants under this Consent Decree, shall relieve the Settling Defendants of their responsibility for compliance with all terms and requirements of this Consent Decree, including those related to success criteria.

8. The United States and/or the State may take any and all legal or administrative actions necessary to enforce the terms of this Consent Decree.

V. NATURAL RESOURCE DAMAGE RESTORATION REQUIREMENTS

9. This Consent Decree provides the terms upon which the United States, the State of Texas, and the Settling Defendants agree to settle the claims of the Trustees for Natural Resource Damages.

10. The Settling Defendants shall fully restore or replace, as described in this Consent Decree, losses of injured natural resource services. The Settling Defendants shall satisfy this obligation by implementing the Restoration Projects in accordance with the requirements specified in the MSCP and other plans approved by the Trustees pursuant to Paragraphs 16 and 17.

11. The Restoration Projects will provide for the restoration of or replacement with the equivalent of natural resources or natural resource services, injured, destroyed, or lost as a result of releases of hazardous substances at or from the Site. The Restoration Projects consist of the Wetland Creation Project (construction of six acres of wetland habitat) and the Forest Project (preservation of 100 acres of bottomland hardwood habitat with a 19-acre pasture buffer zone).

12. Real Property Requirements

A. Conservation Easement.

(i) Within 15 days after the Date of Entry, the Settling Defendants shall record the Conservation Easement in the deed records of Harris County, Texas in order to preserve in perpetuity the natural resources that are to be preserved or created by the Restoration Projects.

(ii) The State Trustees shall have third party rights of enforcement under the Conservation Easement to prevent any activity on or use of the Easement Area that is inconsistent with the Conservation Easement and to ensure that the intended purpose of this Consent Decree is satisfied.

B. Title Commitment. The Settling Defendants have provided, as Exhibit D, a title commitment and title certification which shows title to the Easement Area is held by a fiduciary agent of Settling Defendants and that the Easement Area is free and clear of all liens and encumbrances other than the Permitted Encumbrances listed in Attachment F to the Conservation Easement and referenced in the Baseline Inventory Report, Attachment B to the Conservation Easement.

C. Baseline Report. The Trustees have been provided with the Baseline Report which contains reports, maps, photographs, an inventory of plant and animal species found on the Easement Area, and a list of Permitted Encumbrances on the Conservation Property. The Baseline Report is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of the Restoration Projects. The Parties agree that the Baseline Report provides an accurate representation of the Easement Area as of the Date of Entry of this Consent Decree. The completion certificates for the Wetland Creation Project and the Forest Project shall be considered additional information documenting the Easement Area's baseline condition and the Property's Conservation Values. A complete copy of the Baseline Report (text, maps, photographs, and video) shall be maintained for enforcement purposes in the files of the Lead Administrative Trustee.

D. Surface Use Agreements. For so long as the Easement Area is owned by the Settling Defendants or their fiduciary agent, Settling Defendants shall require their fiduciary agent to enforce the provisions of any mineral lease, surface use agreement, or easement affecting the Easement Area, as necessary to protect the Conservation Values of the Property. Settling Defendants shall ensure that the holder of a Permitted Encumbrance complies with all conditions in its easement, lease, right-of-way, surface use agreement, or similar document as necessary to

protect the Conservation Values of the Property, including any requirement therein to restore adversely affected areas to their pre-existing condition. Within ninety (90) days after the Date of Entry, the Settling Defendants shall send a letter to all record holders of a Permitted Encumbrance notifying them of the recordation of the Conservation Easement and of their obligation to abide by all relevant terms of their lease, right of way, surface use agreement, or similar document so as not to jeopardize the Conservation Values of the Property. Settling Defendants shall have no obligations under this Paragraph after they have properly transferred the Easement Area to a third party (other than a fiduciary agent of the Settling Defendants) in accordance with this Consent Decree.

E. Preservation of Conservation Values. For so long as the Easement Area is owned by the Settling Defendants or their fiduciary agent, in the event a holder of a Permitted Encumbrance fails to comply with the requirements of its easement, lease, right-of-way, or surface use agreement so as to degrade the Conservation Values of the Property, Settling Defendants shall require their fiduciary agent to restore or secure the restoration of any adversely affected area of the Easement Area to its pre-existing condition. If the fiduciary agent fails to restore or secure the restoration of the Easement Area to its pre-existing condition and the State Trustees seek to enforce the terms of the Conservation Easement or this Consent Decree, Settling Defendants shall be responsible for the costs of restoration and all costs incurred by the State Trustees, including court costs and attorney's fees, to restore the Easement Area. Settling Defendants shall have no obligations under this Paragraph after they or their fiduciary agent have properly transferred the Easement Area to a third party (other than a fiduciary agent of Settling Defendants) in accordance with this Consent Decree and obtained a Wetland Creation Project Completion Certificate and a Final Forest Project Completion Certificate from the

Trustees as provided in Paragraph 17.C.

F. Transfer of Real Property.

(i) At least 30 days prior to the conveyance of any interest in the Easement Area, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Defendants shall provide the prospective purchaser with written notice of (a) this Consent Decree, and (b) a copy of the Conservation Easement. At least 30 days prior to such conveyance, the Settling Defendants shall also give written notice to the Trustees of the proposed conveyance, including the name and address of the prospective purchaser, and the date on which notice of the Consent Decree and a copy of the Conservation Easement was provided to the prospective purchaser. In the event that the property is transferred, the prospective purchaser may not be the same person or entity that is the Holder of the Conservation Easement. "Holder" has the meaning as defined in Chapter 183 of the Texas Natural Resources Code.

(ii) In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including, but not limited to, their obligation to implement the Restoration Projects under this Consent Decree, shall continue to be met by the Settling Defendants. Except as otherwise provided in Paragraphs 12.D and 12.E. of this Consent Decree, the conveyance shall not release or otherwise affect the liability of the Settling Defendants to comply with all provisions of this Consent Decree, absent the prior written consent of the United States and the State. If the Trustees approve, the purchaser may perform some or all of the requirements under this Consent Decree.

G. Subdivision of the Easement Area. The Easement Area shall not be subdivided for any purpose. This Paragraph is not intended to prevent the Settling Defendants or their agent

from conveying their ownership interest in the Easement Area consistent with the terms of this Consent Decree and the Conservation Easement.

13. Wetland Creation Project. The Settling Defendants shall implement the Wetland Creation Project in accordance with the requirements of the MSCP and plans approved by the Trustees pursuant to Paragraph 16. The Settling Defendants shall monitor the Wetland Creation Project in accordance with the requirements of the MSCP and plans approved by the Trustees pursuant to Paragraph 17.

14. Forest Project. The Settling Defendants shall implement the Forest Project in accordance with the requirements of the MSCP and plans approved by the Trustees pursuant to Paragraph 16. The Settling Defendants shall monitor the Forest Project in accordance with the requirements of the MSCP and plans approved by the Trustees pursuant to Paragraph 17.

15. Project Review Group.

A. Not later than 30 days after the Date of Entry of this Consent Decree, a Project Review Group shall be established consisting of one representative each from NOAA, DOI/FWS, TCEQ, TPWD, and GLO. The Project Review Group shall act on behalf of the Trustees on all matters related to the Restoration Projects under the terms of this Consent Decree, including, but not limited to, the following:

(i) Reviewing and approving all work plans and specifications, including success criteria, for use in implementing and monitoring the Restoration Projects;

(ii) Overseeing the implementation of such plans, including inspecting the Restoration Projects;

(iii) Certifying planting of the Wetland Creation Project and implementation of the Forest Project when completed, as provided in Paragraph 16. For the Restoration

Projects, completion also includes completing the requirements of Paragraph 12 of this Consent Decree;

(iv) Monitoring the Wetland Creation Project post-construction to evaluate its viability and to provide timely identification of problems or conditions to be addressed under this Consent Decree;

(v) Determining appropriate corrective measures for the Wetland Creation Project to ensure that success criteria will be met; and

(vi) Certifying the satisfactory completion of the Wetland Creation Project and the Forest Project when success criteria are achieved, as provided in Paragraph 17.

B. Not later than 30 days after the Date of Entry, the Settling Defendants shall designate a liaison to act as the Project Review Group's point-of-contact with the Settling Defendants and to coordinate the Settling Defendants' activities in implementing the Restoration Projects in accordance with this Consent Decree.

16. Planning and Implementation of the Forest and Wetland Creation Projects.

A. Wetland Creation Project. Not later than 30 days after the Date of Entry, the Settling Defendants shall submit to the Project Review Group a planting plan and schedule for the Wetland Creation Project. The planting plan and schedule shall:

- (i) be consistent with the RP/EA and MSCP;
- (ii) identify any Federal, State, or local permits required to implement the Wetland Creation Project and be consistent with the requirements of such permits;
- (iii) identify a schedule for planting of the Wetland Creation Project, including both a proposed date to begin planting and an anticipated date of completion;
- (iv) propose, consistent with the criteria specified in the RP/EA and MSCP and

this Consent Decree, success criteria and documentation for use in determining completion of the planting of the Wetland Creation Project;

(v) propose, consistent with the success criteria and the parameters, schedule, and documentation for monitoring specified in the MSCP and this Consent Decree, a Monitoring Plan for monitoring and assessing the Wetland Creation Project's performance; and

(vi) propose a means for monitoring and maintaining the flow between Mud Gully and the Created Wetland at the elevation of 15 feet NGVD (1978 Adjusted).

B. Forest Project. Not later than 30 days after the Date of Entry, the Settling Defendants shall submit to the Project Review Group a plan and schedule for implementing the Forest Project. The plan and schedule shall

(i) be consistent with the RP/EA and MSCP;

(ii) identify any Federal, State, or local permits required for the Forest Restoration Project and be consistent with the requirements of such permits;

(iii) propose a schedule for implementing the Forest Project;

(iv) propose, consistent with the criteria specified in the MSCP and this Consent Decree, success criteria and documentation for use in determining the success of the Forest Project; and

(v) propose, consistent with the success criteria and the parameters, schedule, and documentation for monitoring specified in the MSCP and this Consent Decree, a Monitoring Plan for monitoring and assessing the Forest Project's performance.

C. Review of Plans and Schedules by the Project Review Group. The following procedures apply to review and development of the plans and schedule for the Created Wetland

Creation Project and the Forest Project:

(i) The Project Review Group will review the plans and schedules for the planting of the Wetland Creation Project and implementing the Forest Project and either approve the plans or disapprove the plans with comments. The Project Review Group may approve or disapprove one plan without approving or disapproving the other.

(ii) If a plan or schedule is disapproved, within 30 days after receipt of the Project Review Group's comments, the Settling Defendants shall revise the plan and schedule in accordance with the Project Review Group's comments and shall submit the revised plan to the Project Review Group. The Project Review Group shall review the revised plan or schedule as provided in the Paragraph 16.C.(i). If the Project Review Group does not approve the revised plan or schedule, the Settling Defendants shall, within 30 days of receipt of notice of disapproval, submit the additional information or a modification, or invoke the Dispute Resolution provisions of Section XI of this Consent Decree as to the need for such additional information or modification.

(iii) Upon approval by the Project Review Group, the plans and schedules shall become final and shall be implemented by the Settling Defendants according to the construction schedule identified therein.

D. Permits. All permits, right-of-way, access agreements, and other documents necessary to implement the Restoration Projects shall be obtained by the Settling Defendants at their expense, and the Settling Defendants shall comply with all applicable federal, state, and local laws in implementing the Restoration Projects.

E. Notice of Completion of Planting of Wetland Creation Project. Within 30 days of completion of planting the Wetland Creation Project, the Settling Defendants shall notify the

Project Review Group that the planting is complete and provide an as-built survey and drawings showing the elevations of the Wetland Creation Project and the location of plants and other features.

F. Notice of Forest Project Completion. The Settling Defendants shall notify the Project Review Group within 30 days of completion that the work required to preserve the Forest Project, including fencing of the forest and pasture, is completed.

G. Inspection and Certification of Completion of the Initial Phases of the Wetland Creation and Forest Projects. The following procedures will apply to the Project Review Group or its designees' inspection and certification of the Wetland Creation Project and Forest Project:

(i) Upon notification by the Settling Defendants that they have completed the work required by the wetland planting plan and schedule and the forest preservation plan and schedule, the Project Review Group will inspect the Projects and review information provided by the Settling Defendants to determine whether the Wetland Creation Project and Forest Project were completed in accordance with the MSCP and the projects' plans and schedules.

(ii) If the Project Review Group determines that the Wetland Creation Project or Forest Project were completed in accordance with the RP/EA and MSCP, it shall so notify the Settling Defendants by issuing a dated written statement certifying one or both of the projects are complete ("Wetland Planting Certificate" and "Interim Forest Project Completion Certificate"). Schedules for monitoring and maintenance of the projects shall commence on the date the respective completion certificates are issued.

(iii) In the event the Project Review Group determines that either of the projects were not completed in accordance with the RP/EA and MSCP, the Project Review Group

shall so notify the Settling Defendants and provide comments stating what remains to be completed. Within 60 days after receipt of the Project Review Group's comments, the Settling Defendants shall modify the Wetland Creation Project or Forest Project in accordance with the Project Review Group's comments and shall notify the Project Review Group of the completion of the modifications. The Project Review Group or its designees will again inspect the project noticed as complete and review information provided by the Settling Defendants. If the Project Review Group does not approve the project noticed as complete, the Settling Defendants shall, within 30 days of receipt of notice of disapproval, either submit additional information, modify the construction, or invoke the Dispute Resolution provisions of Section XI of this Consent Decree.

17. Project Monitoring.

A. Upon issuance of the Wetland Planting Certificate for the Wetland Creation Project, the Settling Defendants shall initiate the Monitoring Plan for the Wetland Creation Project as specified in the MSCP and any other monitoring plans approved by the Project Review Group. Upon issuance of the Interim Forest Project Completion Certificate, the Settling Defendants shall initiate the Monitoring Plan for the Forest Project as specified in the MSCP and any other monitoring plans approved by the Project Review Group.

B. The Settling Defendants shall provide the Project Review Group with periodic reports on the condition of the Wetland Creation Project and the Forest Project as specified in the MSCP.

C. If the Project Review Group determines that 1) the success criteria in the MSCP have been achieved and maintained for three years or 2) six years have elapsed since the issuance of the Wetland Planting Certificate, whichever occurs sooner, the Project Review Group shall

provide the Settling Defendants with written statements certifying completion of the projects ("Wetland Creation Project Completion Certificate" and "Final Forest Project Completion Certificate"). Said certificates shall represent fulfillment of the Settling Defendants' obligations under this Consent Decree relative to the Restoration Projects.

D. In the event the Project Review Group determines that the success criteria in the Wetland Creation Project Monitoring Plan or Forest Project Monitoring Plan have not been achieved in accordance with the requirements specified in the Plan,

(i) the Project Review Group, in consultation with the Settling Defendants, will determine what corrective measures are necessary or appropriate to achieve the success criteria.

(ii) The Settling Defendants shall submit a work plan for conducting such corrective measures to the Project Review Group. The Project Review Group shall review the work plan as provided in Paragraph 16.C. The Settling Defendants shall complete the actions specified in the approved work plan and notify the Project Review Group after it completes these actions. After receipt of this notice, the Project Review Group shall follow the procedures specified in Paragraph 16.G regarding inspection and certification. This process shall be repeated until the success criteria have been met or until any Dispute Resolution procedures have been exhausted in accordance with Section XI of this Consent Decree.

18. Preservation of NRD Compensation Values

A. Effect of Governmental Requirements. The Parties recognize that the Easement Area may be subject to the Governmental Requirements arising from the Remediation Consent Decree for the Brio Site and the EPA Administrative Order for the Dixie Site. Upon completion of all

Governmental Requirements related to the Site, Settling Defendants shall, consistent with said Governmental Requirements, remove or arrange for the removal of equipment, utility lines, pipelines, and remedial equipment. Settling Defendants shall also abandon all groundwater monitoring wells not required for long-term groundwater monitoring and repair all damage to the Easement Area caused by carrying out Governmental Requirements. In the event that implementation of the Governmental Requirements damages the Easement Area, Settling Defendants shall, after consultation with the Trustees, either restore the Easement Area to its pre-disturbance condition as soon as practicable after completing the Governmental Requirements, or provide additional compensatory restoration, as determined by the Trustees in accordance with the Federal-State Trustee Memorandum of Agreement ("MOA"). Any directive to provide additional compensatory restoration shall be subject to the Dispute Resolution provisions of Section XI of this Consent Decree.

B. Effect of Loss of Easement Area. This settlement is based on a natural resource damage assessment by the Trustees and Settling Defendants. The amount of compensation provided by the Settling Defendants was determined based on the natural resource damage assessment carried out by the Trustees. If, at any time after the Date of Entry, all or part of the Easement Area is taken by exercise of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority or altered in any way by a current easement holder so that the Easement Area's conservation value is reduced such that the Trustees determine that the Conservation Value of the Easement Area is no longer sufficient to compensate for the natural resources damaged at the Site, the Settling Defendants shall provide equivalent additional compensation, as determined by the Trustees (in accordance with Federal-State Trustee MOA) by paying compensation to the Trustees to acquire replacement property or

to fund equivalent conservation activities. In no event shall compensation under this Paragraph 18.B exceed \$35,000.

VI. PAST COSTS REIMBURSEMENT

19. The Trustees have expended time, funds, and resources in assessing damages for the natural resource injuries and losses that resulted from the releases of hazardous substances at or from the Site. The Settling Defendants shall reimburse each Trustee for their Past Costs in accordance with the following procedures:

A. As to NOAA, the Settling Defendants shall make payment by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in the amount of \$70,120.71 within 30 days of the Date of Entry, or within 30 days of the Defendants' receipt of wiring instructions from the United States Attorney's Office for the Southern District of Texas, whichever is later. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The payment shall reference "USAO File Number 2005V00961, DOJ case number 90-11-2-325/1, Agency Code: cdoa-(case civil action no.) "Brio/Dixie (Brio Refining)"- NOAA's DARRF."

Notice of the payment shall be sent to the following:

NOAA/NOS/OR&R
ATTN: Kathy Salter
SSMC 4, Room 9331
1305 East West Highway
Silver Spring, MD 20910-3281

and

Jason S. Forman, Esq.
NOAA Office of General Counsel
1315 East West Highway, Room 15107
Silver Spring, MD 20910

B. As to DOI/FWS, the Settling Defendants shall make payment by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in the amount of \$37,659.79 within 30 days of the Date of Entry, or within 30 days of the Defendants' receipt of wiring instructions from the United States Attorney's Office for the Southern District of Texas, whichever is later. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The payment shall reference "USAO File Number 2005V00961, DOJ case number 90-11-2-325/1, Agency Code: INTE; doifws 14x5198, Brio/DOP Site.

Notice of the payment shall be sent to the following:

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 4449
Washington, D.C. 20240

Martin Steinmetz, Esq.
Office of the Field Solicitor
U.S. Department of the Interior
7906 E. 33rd St., Suite 100
Tulsa, OK 74145

Chief, Division of Finance
U.S. Fish and Wildlife Service
4401 N. Fairfax Dr., Room 380
Arlington, VA 22203

C. The Settling Defendants shall reimburse each State Trustee for their Past Costs within 30 days after the Date of Entry by paying the State of Texas \$169,568.36 in the form of a certified check made payable to the "State of Texas" and referencing the "Brio/Dixie Natural Resource Restoration." The check shall bear the identifying number "AG# 93-251822." Of the total Past Costs payable to the State, \$133,973.18 shall be allocated to the TCEQ, \$14,510.39

shall be allocated to the GLO, and \$21,084.79 shall be allocated to the TPWD. The payment shall be mailed to:

Chief
Natural Resources Division
Texas Attorney General's Office
P.O. Box 12548
Austin, TX 78711

A copy of the check shall be sent to the State Trustee contacts identified in Paragraph 21.B.

D. In the event that any payments required by this Paragraph are not made by the 30th day after the Date of Entry, the Settling Defendants shall pay interest on the unpaid balance. Interest shall begin to accrue commencing on the 31st day after the Date of Entry and continue to accrue through the date of payment. In accordance with 42 U.S.C. § 9607(a), interest shall accrue at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year. All accrued interest shall be paid at the time the principal amount of Past Costs is paid.

VII. FUTURE COSTS

20. The Trustees will continue to incur Future Costs in connection with oversight and monitoring of the Restoration Projects and subsequent performance monitoring activities pursuant to this Consent Decree. The Trustee agencies' estimates of their Future Costs are as follows:

NOAA:	\$18,080
TCEQ:	\$16,274
TPWD:	\$17,712
GLO:	\$9,389

DOI/FWS: \$8,500

B. The Settling Defendants shall reimburse each Trustee for its anticipated Future Costs as identified in this Paragraph within 30 days after the Date of Entry. Payment for these Future Costs shall be made in the same manner and with the same interest provisions as described in Paragraph 19, above. Payment by Settling Defendants of the Future Costs identified in this Section shall be in full satisfaction of all Future Costs and Trustees shall not assess, and Settling Defendants shall not be liable, for any other Future Costs, except that any work takeover costs incurred by the Trustees pursuant to Paragraph 49 will not be considered to be Future Costs.

VIII. TRUSTEE AND SETTLING DEFENDANTS CONTACTS

21. Each Trustee agency hereby respectively designates the following person(s) as its representative for receipt of information and notices required or occasioned under this Consent Decree and as its member of the Project Review Group:

A. For the Federal Trustees:

(i) NOAA: Jessica White NOAA CRC 6
c/o US EPA (6SF-L)
1445 Ross Ave
Dallas, TX 75214-2733
(214) 665-2217
jessica.white@noaa.gov

(ii) DOI/FWS: Kenneth Rice
U.S. Fish & Wildlife Service
c/o TAMU-CC
6300 Ocean Drive, Unit 5837
Corpus Christi, TX 78412
(361) 994-9005

B. For the State Trustees:

(i) TCEQ: Richard Seiler
Mail Code 142
Texas Commission on Environmental Quality

P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-2523

(ii) TPWD: Andy Tirpak
Texas Parks and Wildlife Department
Natural Resource Trustee Program
1502 Pine Drive (FM 517)
Dickinson, Texas 77539
Tel: (281) 534-0137

(iii) GLO: Eddie Fisher
Texas General Land Office
P.O. Box 12873
Austin, TX 78711-2873
Tel: (512) 463-9215

22. The Settling Defendants hereby respectively designate the following person(s) as their representative for receipt of information and notices required or occasioned under this Consent Decree:

Project Coordinator
Brio Site Task Force
Dixie Farm Road
Houston, Texas 77089
(281) 922-1054

23. Any Trustee or the Settling Defendants may change the address and the person designated under Paragraphs 21 or 22 by communicating such changes in writing to the other Parties.

24. The Settling Defendants shall provide notice of payment of Future Costs, interest, and stipulated penalties and notices invoking force majeure and dispute resolution to the Texas Office of the Attorney General at the address specified below:

Albert Bronson
Assistant Attorney General
Texas Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548

The Texas Office of the Attorney General may change the person designated under this Subparagraph by submitting written notice to all Parties.

25. The Settling Defendants shall provide notice of all payments, whether for Past Costs, Future Costs, interest, or stipulated penalties; copies of any notice contesting stipulated penalties; copies of written documents, including notices and reports, pertaining to force majeure; and copies of written documents, including notices and reports, pertaining to dispute resolution to the United States at the addresses specified below.

A. As to the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
DJ # 90-11-2-325/1

B. As to NOAA:

Sheila O'Brien
NOAA GC NR SE
9721 Executive Center Drive North
St Petersburg, FL 33702
(727) 570-5587

C. As to DOI/FWS:

Martin Steinmetz, Esq.
Office of the Field Solicitor
U.S. Department of the Interior
7906 E. 33rd St., Suite 100
Tulsa, OK 74145

The United States may change the persons designated under this Paragraph by submitting written notice to all Parties.

26. All notices and submissions shall be considered effective upon receipt unless

otherwise provided. All notices shall be sent by first-class United States mail. Submission of written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Parties.

IX. INDEMNIFICATION

27. The United States and the State of Texas do not assume any liability by entering into this Consent Decree. The Settling Defendants shall indemnify, save, and hold harmless the United States and the State of Texas and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any person acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Further, the Settling Defendants agree to pay the United States and the State of Texas all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State of Texas based on negligent or other wrongful acts or omissions of the Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State of Texas shall be held out as a party to any contract entered into by or on behalf of the Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor of the Settling Defendants shall be considered an agent of the United States or the State of Texas.

28. The United States and the State of Texas shall give the Settling Defendants prompt notice of any claim for which the United States or the State of Texas plans to seek

indemnification pursuant to Paragraph 27 and shall consult with the Settling Defendants prior to settling such claim.

29. The Settling Defendants waive all claims against the United States and the State of Texas for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State of Texas, arising from or on account of any contract, agreement, or arrangement between the Settling Defendants and any person for implementing the Restoration Projects, including, but not limited to, claims on account of construction delays. In addition, the Settling Defendants shall indemnify, save, and hold harmless the United States and the State of Texas with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Settling Defendants and any person for performance of the Restoration Projects including, but not limited to, claims on account of construction delays.

X. FORCE MAJEURE

30. "Force majeure," for the purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by the Settling Defendants, or of the Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendants' best efforts to fulfill the obligation, except the obligations to make payments described in Sections VI and VII of this Consent Decree shall not be subject to force majeure. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using the best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial

inability to complete a Restoration Project or a failure (not itself caused by an event of force majeure) to satisfy the requirements of an approved plan.

31. If any circumstance occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by force majeure, the Settling Defendants shall orally notify the members of the Project Review Group within 48 hours of the time that the Settling Defendants first knew or should have known that the circumstances might cause a delay. Within 5 days thereafter, the Settling Defendants shall provide in writing to the Trustees a detailed description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay; the Settling Defendants' rationale for attributing such a delay to a force majeure if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such circumstances may cause or contribute to an endangerment to public health or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Settling Defendants from asserting any claim of force majeure for that circumstance for the period of time of such failure to comply, and for any additional delay caused by such failure. The Settling Defendants shall be deemed to know of any circumstances of which the Settling Defendants, any entity controlled by the Settling Defendants, or the Settling Defendants' contractors knew or should have known.

32. If the Trustees agree that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the Trustees for such time as necessary to complete the

obligations. Any extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Trustees will notify the Settling Defendants in writing of their decision. If the Trustees agree that the delay is attributable to a force majeure, the Trustees will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

33. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution) regarding the Trustees' notice under Paragraph 32, they shall do so no later than 15 days after receipt of the Trustees' notice. In any such proceeding, the Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendants complied with the requirements of Paragraphs 30 and 31, above. If the Settling Defendants carry this burden, the delay at issue shall not be deemed to be a violation by the Settling Defendants of the affected obligations of this Consent Decree.

XI. DISPUTE RESOLUTION

34. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to the terms of this Consent Decree, including disputes arising under the MSCP. However, the procedures set forth in this Section shall not apply to actions by the United States or the State of Texas to enforce obligations of the Settling Defendants that have not been

disputed in accordance with this Section.

35. Informal Dispute Resolution. If, in the opinion of either the Trustees or the Settling Defendants, there is a dispute which arises under or with respect to this Consent Decree, that Party shall send written notice to the other Parties to the dispute outlining the nature of the dispute and requesting negotiations to resolve the dispute. The Parties shall endeavor to resolve the dispute through good faith negotiations. The period for informal negotiations shall not exceed 30 days from the date the notice is sent, unless this time period is modified by written agreement of the Parties.

36. Formal Dispute Resolution.

A. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustees shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, the Settling Defendants invoke the formal dispute resolution procedures of this Section. Settling Defendants shall invoke formal dispute resolution by serving the Trustees, as provided in Paragraphs 21, 24, and 25 with a written Statement of Position on the matter in dispute including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Settling Defendants.

B. Within 60 days after receipt of the Settling Defendants' Statement of Position, the Trustees will serve on the Settling Defendants their Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustees. Within 15 days after receipt of this Statement of Position, the Settling Defendants may submit a Reply.

C. An administrative record of the dispute shall be maintained by the Trustees and shall

contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Trustees may allow submission of supplemental statements of position by the Parties to the dispute.

D. The Trustees will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 36.C. This decision shall be binding on the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 36.E.

E. Any administrative decision made by the Trustees pursuant to this Paragraph shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of the Trustees' decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The Trustees may file a response to the Settling Defendants' motion.

F. In proceedings on any dispute governed by this Paragraph, the Settling Defendants shall have the burden of demonstrating that the decision of the Trustees is not in accordance with the requirements of the Consent Decree, according to a standard of review based on applicable law. Judicial review of the decision of the Trustees shall be on the administrative record compiled pursuant to Paragraph 36.C.

37. The invocation of informal or formal dispute resolution procedures pursuant to prior Paragraphs shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree that is not directly in dispute, unless the Trustees agree or the Court rules otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay

of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties).

XII. STIPULATED PENALTIES

38. The Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 39 to the United States and the State of Texas for failure to comply with the requirements of this Consent Decree. "Compliance" by the Settling Defendants shall include completion of the activities identified in Paragraph 39 within the schedules established in the Consent Decree.

39. The following stipulated penalties shall accrue per violation per day for the Settling Defendants' failure to comply with the time schedules established for the following implementation requirements:

A. Failure to timely submit a materially complete or accurate draft planting plan, or failure to timely submit a materially complete or accurate revised planting plan under Paragraphs 16 or 17: \$500/day.

B. Failure to comply with schedules approved under Paragraphs 16 or 17 for implementing the Wetland Creation and Forest Projects: \$1000/day.

C. Failure to comply with Section 3 or Section 15 of the Conservation Easement during ownership of the Easement Area by the Settling Defendants or their fiduciary agent: \$1000/day for each day after Settling Defendants have failed to cure such noncompliance following any required notice of same and after a reasonable opportunity to correct the noncompliance has elapsed without the noncompliance having been

remedied.

40. All penalties shall begin to accrue on the day after the Settling Defendants should have performed an obligation specified in Paragraph 39, after any required notification and corrective measure period has elapsed, and shall continue to accrue through the day the Settling Defendants comply with the obligation.

41. All penalties due under this Section shall be due and payable within thirty (30) days of the Settling Defendants' receipt of a demand for payment from the United States and/or the State of Texas, unless the Settling Defendants invoke dispute resolution under Section XI of this Consent Decree. If the Settling Defendants invoke dispute resolution under Section XI, then stipulated penalties shall be due at the time specified in Paragraph 37. Stipulated penalties shall be paid 50% to the United States and 50% to the State of Texas.

A. All payments to the United States under this Section shall be paid by certified check made payable to "U.S. Treasury." This payment shall be mailed to the U.S. Attorney's Office, Southern District of Texas, P.O. Box 61129, Houston, Texas, 77208, Attn: Claude Hippard, Chief, Financial Litigation Unit, referencing "United States and the State of Texas v. BP AMOCO Chemical Co., Inc; USAO File Number 2005V00961; DOJ Case Number: 90-11-2-325/1;" and the name and address of the party making payment. Copies of the check and notice shall be sent to the Parties as specified in Section VIII (Trustee and Settling Defendants Contact Persons).

B. All payments made to the State of Texas under this Section shall be made as provided in Paragraph 19.C.

42. In the event the Settling Defendants fail to pay stipulated penalties when due, the United States and/or the State of Texas may institute a legal proceeding to collect such penalties,

as well as interest accruing on any unpaid balance, as provided by law. Pursuant to Paragraph 37, however, stipulated penalties continue to accrue during dispute resolution but are not due and payable until resolution of the dispute.

XIII. COVENANTS NOT TO SUE BY THE UNITED STATES AND THE STATE OF TEXAS

43. In consideration of the satisfactory performance by the Settling Defendants of all of their obligations under this Consent Decree, and except as specifically provided in Paragraphs 44 and 46, the United States and the State of Texas each hereby covenant not to sue or to take administrative action against the Settling Defendants for Natural Resource Damages, including all Past Costs and Future Costs. For the payment of Past Costs and Future Costs to the Federal Trustees, these covenants not to sue shall take effect upon receipt by the Federal Trustees of the payment of all Past Costs and Future Costs due pursuant to Paragraphs 19 and 20 of this Consent Decree. For the payment of Past Costs and Future Costs to the State Trustees, these covenants not to sue shall take effect upon receipt by the State Trustees of the payment of all Past Costs and Future Costs due pursuant to Paragraphs 19 and 20 of this Consent Decree. With respect to all obligations under this Consent Decree other than payment of the Trustees' Past Costs and Future Costs, these covenants not to sue shall take effect upon the issuance of both the Wetland Creation Project Completion Certificate and the Final Forest Project Completion Certificate by the Trustees (pursuant to Paragraph 17) or the receipt by the Trustees of all payments due pursuant to Paragraph 49 and the receipt by the Trustees of all payments due pursuant to Section XII (Stipulated Penalties), whichever occurs last. These covenants not to sue are conditioned upon the satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not

extend to any other person.

XIV. RESERVATION OF RIGHTS BY THE UNITED STATES AND THE STATE OF TEXAS

44. Notwithstanding any other provision of this Consent Decree, the United States and the State of Texas reserve the right to institute civil or administrative proceedings, as applicable, against the Settling Defendants in this action or in a new action, seeking recovery of additional Natural Resource Damages, if:

(i) conditions, including the release of hazardous substances at or from the Site that were previously unknown to the Trustees, are discovered; or

(ii) information about the release of hazardous substances from the Site that previously was unknown to the Trustees, in whole or in part, is received,

and these previously unknown conditions or this information together with any other relevant information indicates that there are new or additional injuries to, destruction of, or losses of natural resources or new or additional natural resource service losses that were unknown to the Trustees when they issued the RP/EA.

45. Information and conditions known to the Trustees shall include only the information and conditions set forth in the administrative records supporting the RP/EA or supporting EPA's response actions undertaken at the Site as the administrative record existed at the time the RP/EA was issued.

46. Nothing in the Consent Decree is intended to be, nor shall be construed as, a release from liability or a covenant not to sue for any claim or cause of action, administrative or judicial for the following:

A. The Settling Defendants' failure to pay the Trustees' Past and Future Costs, to

complete the Restoration Projects and related obligations described in Section V (Natural Resource Damage Restoration Requirements), or to comply with any other obligation or requirement of this Consent Decree;

B. Claims brought on behalf of the United States and the State of Texas, including State and Federal agencies, for costs, damages, and expenses of any sort, other than for Natural Resource Damages that are the subject of this Consent Decree;

C. Liability arising from any past, present, or future releases of hazardous substances other than the releases at or from the Site that are the subject of this Consent Decree;

D. Liability arising from any releases of hazardous substances from any site or location that is not the subject of this Consent Decree, including, but not limited to, any hazardous substance taken from the Site and disposed of at another site or location;

E. Liability for violations of Federal and State law which occur during or incident to the implementation and/or monitoring of the Restoration Projects

F. Any and all criminal liability; and

G. Any matter not expressly included in the covenant not to sue for Natural Resource Damages set forth in Section XIII (Covenants Not to Sue by the United States and the State of Texas) of this Consent Decree.

47. With regard to State property interests, the State of Texas reserves full rights, title, and interest in state-owned land.

48. The failure of the Trustees to insist upon strict and prompt performance of any provision of this Consent Decree shall not operate as a waiver of any requirement of this Consent Decree or of the Trustees' right to insist on prompt compliance in the future with such

provision, and shall not prevent a subsequent action by the Trustees to enforce such a provision.

49. Work Takeover. In the event the Trustees determine that the Settling Defendants have ceased implementation of any portion of the Restoration Projects, are seriously or repeatedly deficient or late in their performance of the Restoration Projects, or are implementing the Restoration Projects in a manner which may cause an endangerment to human health or the environment, the Trustees may assume the performance of all or any portion of the Restoration Projects as they determine necessary. The Settling Defendants may invoke the procedures set forth in Section XI (Dispute Resolution) to dispute the Trustees' determination that takeover of the Restoration Projects is warranted under this Paragraph. Costs incurred by the Trustees in performing the Restoration Projects pursuant to this Paragraph shall be considered recoverable by Trustees notwithstanding the Future Costs payment made by Settling Defendants pursuant to Section VII (Future Costs).

50. In any subsequent administrative or judicial proceeding initiated by the United States or the State of Texas for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the 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 claim raised by the United States or the State of Texas in subsequent proceedings were or should have been brought in this Natural Resource Damage case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIII (Covenants Not to Sue by the United States and the State of Texas).

51. Notwithstanding any other provision of this Consent Decree, the United States and the State of Texas retain all authority and reserve all rights to take any and all actions authorized

by law.

XV. COVENANTS BY THE SETTLING DEFENDANTS

52. The Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State of Texas for any claims arising from or relating to the Restoration Projects or any claims arising from or relating to Natural Resource Damages, pursuant to any Federal, State, or common law, including, but not limited to the following:

A. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9607, 9611, 9612, and 9613, or any other provision of State or Federal law; or

B. any claims arising out of activities related to the Restoration Projects, including without limitation, claims based on the Trustees' selection of the Restoration Projects, oversight of the Restoration Projects, and/or approval of plans for such activities.

53. The Settling Defendants hereby covenant not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States or the State of Texas notifies them in writing that it no longer supports entry of the Consent Decree.

54. Nothing in this Consent Decree shall be deemed to constitute 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).

55. Notwithstanding any other provision of this Consent Decree, this Consent Decree is without prejudice to all rights of the Settling Defendants with respect to all matters other than

those expressly specified in the covenants set forth in Paragraphs 52 and 53.

XVI. EFFECT OF SETTLEMENT~ CONTRIBUTION PROTECTION

56. 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. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution against third parties), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to Natural Resource Damages against any person not a Party hereto.

57. The Parties agree, and by entering into this Consent Decree this Court finds, that the Settling Defendants 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), for Natural Resource Damages.

XVII. CERTIFICATION

58. The Settling Defendants certify that, to the best of their knowledge and belief, they have fully and accurately disclosed to the Trustees all information requested by the Trustees regarding potential Natural Resource Damages that is currently in the possession of the Settling Defendants or their officers, employees, contractors, or agents.

59. Each undersigned representative of a Settling Defendant to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

XVIII. ACCESS

60. Access to Restoration Project Sites: The Settling Defendants agree to provide the Project Review Group and/or its representatives, including contractors, access at all reasonable times to the Restoration Project sites and to any other property to which access is required for the implementation of this Consent Decree, to the extent that access is controlled by the Settling Defendants for the purposes of conducting any activity related to this Consent Decree including but not limited to:

- A. Overseeing or monitoring the implementation of the Restoration Projects;
- B. Verifying any data or information submitted to the Trustees;
- C. Conducting investigations related to implementation of the Restoration Projects;
- D. Obtaining samples;
- E. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by the Settling Defendants or their agents, consistent with this Section; and
- F. Assessing the Settling Defendants' compliance with this Consent Decree.

61. The Settling Defendants shall use their best efforts to obtain any necessary access agreements for the purpose of implementing the Restoration Projects from property owners who control property adjoining the Easement Area.

62. Access to Information: The Settling Defendants shall provide to the Trustees, upon request, copies of all documents and information within their possession or control relating to the Restoration Projects or the implementation of this Consent Decree, including, but not limited to, sampling, analyses, chain of custody records, manifests, receipts, reports, correspondence, or other documents or information related to the implementation of the Restoration Projects. The

Settling Defendants shall also make available to the Trustees, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the implementation, condition, or performance of the Restoration Projects.

63. Other Access Provisions: Notwithstanding any provision of this Consent Decree, the United States and the State of Texas retain all access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Clean Water Act ("CWA"), or any other applicable Federal or State statute or regulation.

XIX. VOIDABILITY

64. If for any reason the District Court should decline to approve entry of this Consent Decree in the form presented, this Consent Decree and the settlement embodied herein shall be voidable by written notice to the other Parties at the sole discretion of any Party to this Consent Decree, and the terms hereof may not be used as evidence in any litigation.

XX. COMPLIANCE WITH OTHER LAWS

65. This Consent Decree shall not be construed in any way to relieve the Settling Defendants or any other person or entity from the obligation to comply with any Federal, State, or local law.

XXI. RETENTION OF JURISDICTION

66. The Court shall retain jurisdiction of this matter for the purpose of entering such further order, direction, or relief as may be necessary or appropriate for the construction, implementation, resolution of disputes, or enforcement of this Consent Decree.

XXII. MODIFICATION

67. Any modification that materially alters a Restoration Project or any other

requirement of this Consent Decree must be approved by the Court.

68. Any modification to the Consent Decree, including the attachments thereto, that does not materially alter a Restoration Project or any other requirement of this Consent Decree may be authorized by written agreement between the Trustees and the Settling Defendants, or in accordance with the dispute resolution process as provided in Section XI (Dispute Resolution).

XXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

69. The Parties agree and acknowledge that final approval by the United States and the State of Texas and entry of this Consent Decree is subject to a thirty-day (30) period for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7 as to the United States and Section 7.110 of the Texas Water Code as to the State of Texas. The United States and the State reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice.

XXIV. TERMINATION

70. Any Party may file a Motion to the Court to terminate the Consent Decree after 1) the Settling Defendants have made all payments required by this Consent Decree; and 2) the Trustees have issued the Wetland Creation Project Completion Certificate and Final Forest Project Completion Certificate pursuant to Paragraph 17.C. If a Party files a Motion to terminate the Consent Decree, then any other Party may file an opposition within ninety (90) days. Termination of this Consent Decree shall not affect the requirements, covenants, reservations, and effects of settlement set forth in Section XIII (Covenants Not to Sue by the United States and the State of Texas); Section XIV (Reservation of Rights by the United States and the State of

Texas); Section XV (Covenants by the Settling Defendants); and Section XVI (Effect of Settlement; Contribution Protection); or the Settling Defendants' obligation under Paragraph 18 (Preservation of NRD Compensation Values).

XXV. SIGNATORIES/SERVICE

71. The Settling Defendants shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Decree. The 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 rules of this Court, including, but not limited to, service of a summons.

72. This Consent Decree may be executed in any number of counterparts and, as executed, shall constitute one agreement, binding on all of the Parties hereto, even though all of the Parties do not sign the original or the same counterpart.

XXVI. APPENDIX

73. The following appendix is attached to and incorporated into this Consent Decree: "Exhibit A" is the List of Settling Defendants; "Exhibit B" is the Monitoring and Success Criteria Plan, "Exhibit C" is the Conservation Easement, and "Exhibit D" is the Title Commitment and Certification.

XXVII. FINAL JUDGMENT

74. This Consent Decree and its attached Exhibits constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those contained expressly in

this Consent Decree.

75. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgement between and among the United States, the State of Texas, and the Settling Defendants.

SO ORDERED THIS _____ DAY OF _____, 2005.

United States District Judge

FOR THE PLAINTIFF UNITED STATES:

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

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Houston, TX 77079

On Behalf of DEFENDANT BP Amoco
Chemical Company and DEFENDANT Atlantic
Richfield Company

BP AMOCO CHEMICAL COMPANY
Designated Agent Per Section XXV:

C.T. Corporation System
Name _____

350 N. Saint Paul Street, Dallas Texas – 75201
Address

Telephone Number

ATLANTIC RICHFIELD COMPANY
Designated Agent Per Section XXV:

C.T. Corporation System
Name _____

350 N. Saint Paul Street, Dallas Texas -- 75201
Address

Telephone Number _____

FOR DEFENDANT ALLIED WASTE INDUSTRIES, as successor to BFI Waste Systems of North America, Inc. and Browning-Ferris Inc. (Delaware)

[name] / Jo Lynn White
[title] Deputy General Counsel
[company] Allied Waste Industries
[address] 15880 N. Greenway-Hayden Loop
[city, state zip code] Scottsdale, AZ 85260
[telephone number]

Designated Agent per Section XXV:

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Care of: Kay Heise
Allied Waste Industries
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Address

- Mark Allendorf

Telephone Number

FOR DEFENDANT CHEVRON CHEMICAL COMPANY, a division of Chevron U.S.A., Inc., as successor to Chevron Chemical Company LLC

[name] Richard J. Harris
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Designated Agent per Section XXV:

Name

Jane Anderson

Address

Chevron Environmental Management Company
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San Ramon, CA 94583

Telephone Number

FOR DEFENDANT ~~FINA OIL AND CHEMICAL COMPANY (for Cos-Mar Company)~~

TOTAL PETROCHEMICALS USA, INC., as successor to Fina

Oil and Chemical Company (for Cos-Mar Company) *and* *and*

dfs
[name] RICHARD CHARTER
[title] SENIOR VICE PRESIDENT - MANUFACTURING SERVICES *fs*
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CT CORPORATION SYSTEMS
Name

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FOR DEFENDANT GE PETROCHEMICALS, INC. (for Cos-Mar Company and Borg Warner Petrochemicals, Inc.)

Charles E. Crew
Vice President, General Electric Company
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Pittsfield, MA 01201

on behalf of
DEFENDANT GE PETROCHEMICALS, INC.

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Senior Environmental, Health and Safety Counsel
General Electric – Plastics
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Telephone Number

FOR DEFENDANT HUNTSMAN CORPORATION (for Rexene Products and El Paso Products Company)

[name] ✓
[title]
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[city, state zip code]
[telephone number]

Designated Agent per Section XXV:

Elizabeth E. McDaniel
EHS Vice President – Americas Region

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Designated Agent per Section XXV:

Ellen S. Friedell

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FOR DEFENDANT LYONDELL CHEMICAL COMPANY, AS SUCCESSOR TO ARCO
CHEMICAL COMPANY

4

[name]	Deborah W. Kryak	Remediation
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