UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA, and the STATE OF TEXAS,	)	
Plaintiffs,	)	
v.	)	Civil Action No.
CHEVRON U.S.A. INC., CHEVRON ENVIRONMENTAL MANAGEMENT CO., and CHEVRON PHILLIPS CHEMICAL COMPANY, LP	)	
Defendants.	)	

CONSENT DECREE

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ATTACHMENT B: Map Depicting the Port Arthur Refinery Site (formerly owned by Chevron U.S.A. Inc., and known as the Chevron Port Arthur Refinery) Located at 1801 South Gulfway Drive in Port Arthur, Jefferson County, Texas, and Showing the Assessed Areas

ATTACHMENT C: Access Agreement between the State of Texas, Chevron U.S.A. Inc., and Chevron Environmental Management Company

ATTACHMENT D: Compensation Available to Offset the Compensatory Ecological Restoration

CONSENT DECREE

This Consent Decree is made and entered into by and between the United States of America ("United States"), on behalf of the Under Secretary 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 ("DOI"); 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 Chevron U.S.A. Inc., Chevron Environmental Management Company, and Chevron Phillips Chemical Company, LP (collectively, the "Settling Defendants").

I. BACKGROUND

A. The Port Arthur Refinery (the "Refinery")(formerly owned by Chevron U.S.A. Inc. prior to its sale to Clark Refining & Marketing, Inc. in 1995), which encompasses approximately 4,000 acres, is located at 1801 South Gulfway Drive in Port Arthur, Jefferson County, Texas. A refinery has been continuously operated at this location since the early 1900s.

B. In June 1997, Chevron U.S.A. Inc., Clark Refining & Marketing, Inc. (now known as The Premcor Refining Group, Inc.), and the Texas Natural Resources Conservation Commission (now known as TCEQ), acting pursuant to its authority under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., entered into an Agreed Order requiring that environmental investigations be conducted on and adjacent to the Refinery and that certain corrective measures be undertaken for high priority areas at the Refinery and adjacent areas (the "Site"). The Agreed Order also required the completion of a RCRA facility investigation of solid waste management units and other areas of concern at the Site. These activities are continuing at the Site.

C. In June 1999, using data gathered by Chevron U.S.A. Inc. during various investigations and studies at the Site, including those required under the Agreed Order, the Trustees and Chevron U.S.A. Inc. began a cooperative assessment to evaluate potential injury to, loss or destruction of natural resources and resource services at the Site resulting from historical releases of hazardous substances and/or oil at the Site. The data initially considered by the Trustees in their assessment of the Site was comprised of chemical data from soil, surface water, sediment, and groundwater samples and biota tissue and biological monitoring data including, but not limited to, bird monitoring data. The assessment showed that hazardous substances including, but not limited to, polycyclic aromatic hydrocarbons ("PAHs") consisting of 2-methylnaphthalene, acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, chrysene, dibenz(a,h)anthracene, fluoranthene, fluorene, napthalene, phenanthrene, and pyrene; lead; chromium; and other metals were present in soil, surface water, sediments, and groundwater at the Site. Based on that assessment, the Trustees have determined that the release of hazardous substances and/or oil at the Site caused Natural Resource Damages in areas at the Site, including but not limited to, the open water, sediments, wetlands, and terrestrial habitats, to birds, terrestrial receptors, benthic aquatic invertebrates, and alterations in benthic invertebrate community.

D. The Trustees' assessment of these injuries to natural resources, including their estimates of interim service losses, and the restoration projects proposed to compensate for those losses are identified in the Final Restoration Plan and Environmental Assessment for the Chevron/Port Arthur Refinery Site. ("Restoration Plan"), dated September 10, 2004.

E. In December 1999, Chevron U.S.A. Inc. performed an emergency restoration project at the State-owned J.D. Murphree Wildlife Management Area ("WMA") located near the Site. For the emergency restoration project, Chevron U.S.A. Inc. provided pumps and fuel to pump water into impoundments at the J.D. Murphree WMA in order to provide habitat and shelter for migratory birds during severe drought conditions. In the Restoration Plan, the Trustees have offset the Natural Resource Damages at the Site by the estimated benefit to the environment resulting from this emergency restoration project.

F. The Restoration Plan specifies restoration projects to be implemented by the Settling Defendants to restore the natural resources injured by releases of hazardous substances and/or oil at the Site. The Restoration Plan specifies three restoration projects to be undertaken in state wildlife management areas that are owned and managed by TPWD: the Jefferson County ("J.C.") Wetlands Restoration Project, the Old River South ("ORS") Water Control Structures Restoration Project, and the ORS Marsh Complex and Wet Prairie Restoration Project. For the J.C. Wetlands Restoration Project, the Settling Defendants will construct water control structures and levees that will be used by the State of Texas to restore hydrology and historical salinity gradients to the J. D. Murphree WMA. For the ORS Water Control Structures Restoration Project at the Lower Neches Wildlife Management Area, the Settling Defendants will construct a low water plug and eight culverts to be used by the State of Texas to better manage and improve impoundments used for bird and wildlife habitat. For the ORS Marsh Complex and Wet Prairie Restoration Project at the Lower Neches Wildlife Management Area, the Settling Defendants will create eighty-five (85) acres of marsh and thirty (30) acres of coastal wet prairie to enhance productivity of the ecosystems utilized by birds, fish, and other creatures.

G. Contemporaneously with the lodging of this Consent Decree, the United States, on behalf of DOI and NOAA, and the State of Texas, on behalf of TCEQ, TPWD, and GLO, filed a Complaint in this matter against Settling Defendants pursuant to Sections 107 and 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613(b); Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. § 1321; Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702(b)(2)(A); and the Oil Spill Prevention and Response Act ("OSPRA"), Tex. Nat. Res. Code Ann., § 40.107 and 40.203. In the Complaint, the United States and the State of Texas seek (1) Natural Resource Damages for the injury, loss or destruction of natural resources, including the interim loss of the services or use of such resources, resulting from the release of hazardous substances and/or oil at the Site, (2) past costs incurred by the Trustees in assessing these Natural Resource Damages based on releases of hazardous substances and/or oil at the Site, and (3) future restoration costs to be incurred by the Trustees in overseeing and monitoring the Restoration Projects to be undertaken by Settling Defendants as outlined in this Consent Decree.

H. 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. In signing this Decree, the Settling Defendants deny any and all legal and equitable liability and, except as provided in Paragraph 55, reserve all defenses under federal, state or local statute, regulation or common law for any Natural Resource Damages arising from or pertaining to any releases or threatened releases of hazardous substances and/or discharges of hazardous substances and/or oil at the Site. Pursuant to Section 122(d)(1)(B) of CERCLA, 42 U.S.C. § 9622(d)(1)(B), entry of this Consent Decree is not an acknowledgment or admission by the

Settling Defendants that the release or threatened release of a hazardous substance constitutes an imminent and substantial endangerment to public health or welfare or the environment. The Settling Defendants do not admit and retain the right to controvert any of the factual or legal statements or determinations made herein in any judicial or administrative proceeding except in an action to enforce this Consent Decree. The Settling Defendants agree to the Court's jurisdiction to enter and enforce this Consent Decree, and agree in any such enforcement proceeding not to challenge the terms of this Decree.

I. 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:

II. JURISDICTION AND VENUE

1. The Parties stipulate that 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), and that 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). Solely for the purposes of this Consent Decree, the Settling Defendants waive all objections and defenses that they may have to the personal jurisdiction of the Court, to venue in this District, and to service of process.

III. DEFENDANTS

2. Chevron U.S.A. Inc. means Chevron U.S.A. Inc. (formerly known as "Gulf Oil Corporation"), a Pennsylvania corporation, its successors and assigns.

3. Chevron Environmental Management Company is a California corporation which is registered to conduct business in the State of Texas.

4. Chevron Phillips Chemical Company, LP is a Delaware limited partnership which is registered to conduct business in the State of Texas.

IV. DEFINITIONS

5. 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. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

B. "Chevron U.S.A. Inc." means Chevron U.S.A. Inc. (formerly known as Gulf Oil Corporation), a Pennsylvania corporation, and its successors and assigns.

C. "Consent Decree" means this document entitled "Consent Decree," all attachments thereto, and any modification made pursuant to Section XXI (Modification).

D. "CWA" means the Clean Water Act, 33 U.S.C. § 1251 et seq.

E. "Date of Entry" means the date on which either this Consent Decree or an order entering this Consent Decree is filed with the Clerk of Court after the United States

and State of Texas have moved for entry and the District Judge has signed the Consent Decree.

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

G. "Federal Trustees" means DOI and NOAA.

H. "Future Costs" means the reasonable costs which the Trustees have incurred or will incur after September 30, 2003, in connection with planning for restoration actions to compensate for such injuries and losses, and the implementation, monitoring, and completion of the Restoration Projects contemplated by this Consent Decree. 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. Such costs also include administrative costs and other costs or expenses which are incurred to provide for, carry out or support the activities or responsibilities of the Trustees in overseeing implementation of the Restoration Projects.

I. "Implementation Plan" means the Implementation and Monitoring Plan for the Restoration Projects, attached hereto to as Attachment A.

J. "Natural Resource Damages" means the damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss that result from the release of hazardous substances and/or the discharge of hazardous substances and/or oil at the Site, including due to response actions. "Natural Resource Damages" includes, but is not limited to, natural resource damages recoverable under CERCLA Section 107(a)(C), 42 U.S.C. § 9607(a)(C); CWA

Section 311(f), 33 U.S.C. § 1321(f)(4); OPA Section 1002(b)(2)(A), 33 U.S.C. § 2702(b)(2)(A); and OSPRA, Tex. Nat. Res. Code Ann., §§ 40.107(c)(7)(F) and 40.203(b), and common law claims that have been subsumed by those statutes.

K. "Oil" means the definition prescribed by Section 1001(23) of OPA, 33 U.S.C. § 2701(23) and Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

L. "OPA" means the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.

M. "OSPRA" means the Oil Spill Prevention and Response Act, Tex. Nat. Res. Code Ann., § 40.001 *et seq.*

N. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral.

O. "Parties" means the United States of America, the State of Texas, and the Settling Defendants.

P. "Past Costs" means the reasonable 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 and/or discharges of hazardous substances and/or oil at the Site, including due to response actions, and in identifying and planning for restoration actions to compensate for such injuries and losses prior to October 1, 2003.

Q. "Released Parties" means Chevron Environmental Management Company and Chevron Phillips Chemical Company, LP.

R. "Restoration Plan" means the plan entitled Final Restoration Plan and Environmental Assessment for the Old Gulf Oil Refinery, Port Arthur, Jefferson County, Texas, dated September 10, 2004.

S. "Restoration Projects" means the restoration actions comprised of the ORS Water Control Structures Restoration Project, the ORS Marsh Complex and Wet Prairie Restoration Project, and the J.C. Wetlands Restoration Project, as defined and described in Attachment A.

T. "Section" means a portion of this Consent Decree identified by an uppercase Roman numeral.

U. "Settling Defendants" means Chevron U.S.A. Inc.; Chevron Environmental Management Company; and Chevron Phillips Chemical Company, LP.

V. "Site" means the Port Arthur Refinery (formerly owned by Chevron U.S.A. Inc., and currently known as the Chevron Port Arthur Refinery) located at 1801 South Gulfway Drive in Port Arthur, Jefferson County, Texas, and the adjacent areas assessed by the Trustees, as shown on the map attached as Attachment B.

W. "State of Texas" or "State" means the State of Texas, its agencies and instrumentalities, including TCEQ, TPWD, and GLO.

X. "State Trustees" means TCEQ, TPWD, and GLO.

Y. "Trustees" means the Federal Trustees and State Trustees.

V. APPLICABILITY OF CONSENT DECREE

6. This Consent Decree applies to and is binding upon the United States and the State of Texas and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's rights and responsibilities under this Consent Decree.

7. Settling Defendants shall provide written notice of the Consent Decree to each person representing them with respect to the Restoration Project and to all contractors and subcontractors hired to perform any portion of the Restoration Projects required by the Consent Decree. Settling Defendants shall be fully responsible for ensuring that its contractors and subcontractors perform the Restoration Projects contemplated herein in accordance with this Consent Decree.

8. 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.

9. Commitments by Settling Defendants.

A. The obligations of Settling Defendants to implement the requirements of this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

B. Chevron U.S.A. Inc. shall have primary responsibility to fulfill all of the requirements of this Consent Decree including, but not limited to, financing and performing the Restoration Projects in accordance with this Consent Decree and reimbursing the United States and the State of Texas for Past Costs and Future Costs as provided in this Consent Decree. In the event that Chevron U.S.A. Inc. fails to perform

one or more of its obligations under this Consent Decree, the United States and the State of Texas shall give joint notice to all Settling Defendants of their intention to seek performance under the Consent Decree by the Released Parties. The notice shall state the specific requirements under the Consent Decree that Chevron U.S.A. Inc. has failed to perform and the schedule under which such performance must be completed. If Chevron U.S.A. Inc. has not performed the specific requirements within thirty (30) days of such notice, or reached agreement with the Trustees on a schedule for performance, or invoked Dispute Resolution pursuant to Section XI (Dispute Resolution), one or more of the Released Parties shall perform such obligation(s) if the United States and/or the State of Texas so requests in writing. If Chevron U.S.A. Inc. has invoked Dispute Resolution pursuant to Section XI (Dispute Resolution) with regard to the obligation(s) at issue, the Trustees may not seek performance of the obligation(s) by the Released Parties until the dispute resolution process has been completed. In the event that the United States and/or the State of Texas invoke their right to request that the Released Parties perform Chevron U.S.A. Inc.'s obligations under this Consent Decree, the Released Parties shall assume all rights and responsibilities of Chevron U.S.A. Inc. under this Consent Decree. Invocation by the United States and/or the State of Texas of their right to request that the Released Parties perform Chevron U.S.A. Inc.'s obligations under this Consent Decree, shall not excuse performance by Chevron U.S.A. Inc. and shall not waive the United States' and the State of Texas' right to enforce the requirements of this Consent Decree against Chevron U.S.A. Inc.

C. The Released Parties shall have the same rights and protections afforded to Chevron U.S.A. Inc. under this Consent Decree.

10. Responsibility for Compliance. Notwithstanding any action by the United States and the State of Texas, including, without limitation, their issuance of the Restoration Plan or the review and approval of any design, plan, report, and other information or action formulated by the Settling Defendants under this Consent Decree, the Settling Defendants are and shall remain responsible for compliance with all terms and requirements of this Consent Decree, except as this Decree may be modified pursuant to Section XXI (Modification).

11. The United States and the State of Texas may take any and all legal or administrative actions necessary to enforce the terms of this Consent Decree. In the event that the United States and the State of Texas take legal or administrative actions to enforce this Consent Decree and such action is successful, the Settling Defendants shall pay all reasonable costs incurred by the United States and the State of Texas related to this action including, but not limited to, enforcement costs, attorneys fees and, if the action relates to non-payment of past or future costs, interest accruing on any unpaid balance, as computed in Paragraph 18.D below.

VI. NATURAL RESOURCE DAMAGE RESTORATION REQUIREMENTS

12. 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 United States and the State of Texas for Natural Resource Damages which resulted from releases of hazardous substances and/or discharges of hazardous substances and/or oil at the Site.

13. The Settling Defendants shall restore or replace the natural resources and the natural resource services injured or lost by timely completing the Restoration Projects in accordance with the terms of this Consent Decree.

14. Restoration Projects Planning and Implementation – All permits, right-of-ways, 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.

15. Access and Use Agreement – TPWD, Chevron U.S.A. Inc., and Chevron Environmental Management Company have entered into an access agreement in order to facilitate the Settling Defendants' access to property owned by the State of Texas which will be used for the Restoration Projects. This access agreement is attached to this Consent Decree as Attachment C.

16. Project Review Group

A. A Project Review Group, consisting of one representative each from NOAA, DOI, TCEQ, TPWD, and GLO, has been established. The Trustee representatives have been identified in Paragraph 21. In addition, the representative of the Settling Defendants identified in Subparagraph B shall serve as a non-voting, ex-officio member of the Project Review Group. The Project Review Group shall act on behalf of the Trustees on all matters related to the Restoration Projects under the terms of this Decree, including, but not limited to the following:

i. overseeing the implementation of the Restoration Projects pursuant to the Implementation Plan (Attachment A);

ii. certifying that the Restoration Projects are constructed in accordance with the requirements of the Implementation Plan (Attachment A);

iii. monitoring the ORS Marsh Complex and Wet Prairie Restoration Project post-construction in accordance with the requirements of the Implementation Plan (Attachment A);

iv. determining appropriate action(s) to ensure that performance criteria will be met in accordance with the requirements of the Implementation Plan (Attachment A);

v. certifying the completion of the ORS Marsh Complex and Wet Prairie Restoration Project in accordance with the requirements of the Implementation Plan (Attachment A); and

vi. undertaking any other actions necessary to ensure the Settling Defendants' compliance with the restoration activities required by the Consent Decree.

B. Not later than 30 days after the Date of Entry, the Settling Defendants shall designate an individual to serve as a non-voting, ex-officio member of the Project Review Group, 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.

17. Ecological Services Analysis –The Settling Defendants may, if approved by the Executive Director of the Texas Commission on Environmental Quality, utilize the ecological services analysis ("ESA") approach, as provided for under the Texas Risk Reduction Program at 30 Tex. Admin. Code § 350.33(a)(3)(B) to address ecological risks that may exist at the Site through the provision of compensatory restoration. The ESA may include ecological risk management options that consider compensatory ecological restoration ("CER"). The Federal

Trustees have elected not to participate in the review or approval of an ESA and any related CER for the Site. The State Trustees agree that the amount and type of such CER, if any, will not be determined for an area until an ESA for that area has been completed and approved. The State Trustees also agree that the Natural Resource Damage compensation provided under this Consent Decree may be applied toward satisfaction of any CER that may be required in an approved ESA for this Site, subject to the following limitations:

A. Compensation for Natural Resource Damages which may be used to offset the CER required pursuant to an approved ESA will be limited to the areas and amount of compensation as set forth in Attachment D.

B. Compensation for Natural Resource Damages which may be used to offset the requirement for CER required pursuant to an approved ESA will be limited as set forth in Attachment D to the natural resources services losses incurred during the same time period or duration as that of the residual ecological risk specified in the ESA for a given area.

C. In the event that a response action (remove, decontaminate or control) is undertaken in any of the areas listed in Attachment D, the available compensation for that area as of the date the response action is completed may be applied or used as compensation for other listed areas provided that the available compensation exceed any injury that may occur as a result of the response action.

D. Assessment areas eligible for an ESA pursuant to this Paragraph are included as natural resource injury assessment areas in Attachment D to this Consent Decree; and

E. In no event shall the completion and approval of an ESA require a reduction in the total amount of Natural Resource Damage compensation required by this Consent Decree.

VII. PAST COSTS REIMBURSEMENT

18. 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 and/or discharges of hazardous substances and/or oil at the Site. The Settling Defendants shall reimburse each Trustee for its Past Costs and shall reference the "Chevron/Port Arthur Natural Resource Restoration Settlement" as follows:

A. As to NOAA, the Settling Defendants shall make payment in the amount of $111,843.73, which shall be sent by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures within 30 days of receipt of wiring instructions from the United States Attorney's Office for the Eastern District of Texas. 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 "United States and the State of Texas v. Chevron U.S.A. Inc, et al.; USAO File Number 2003V01192; DOJ case number 90-11-2-07542/1; Clark/Chevron Refinery – NOAA's DARRF."

Notice of the payment also 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

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

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Dept. of Justice
P.O. Box 7611
Washington, DC 20044-7611
re: DJ# 90-11-2-07542/1

B. As to DOI, the Settling Defendants shall make payment in the amount of $38,042.08, which shall be sent by FedWire EFT to the U.S. Department of Justice account in accordance with current EFT procedures within 30 days of receipt of wiring instructions from the United States Attorney's Office for the Eastern District of Texas. 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 2003V01192, DOJ case number 90-11-2-07542/1, Clark/Chevron Refinery – DOI." Notice of the payment also 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
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Dept. of Justice
P.O. Box 7611
Washington, DC 20044-7611
re: DJ# 90-11-2-07542/1

C. As to the State of Texas, the Settling Defendants shall pay the State of Texas $62,784.16 in the form of a certified check made payable to the "State of Texas." The check shall bear the identifying number "AG# 01-1467875." 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.

D. In the event that any payments required by this Paragraph are not made by the thirtieth (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 thirty-first (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.

VIII. FUTURE COSTS REIMBURSEMENT

19. The Trustees will continue to incur Future Costs.

20. The Settling Defendants shall reimburse each Trustee for its Future Costs within 90 days of receipt of a cost summary of each Trustee's actual costs and expenses. To the extent that the Lead Administrative Trustee has received the information from the Trustees, the Lead Administrative Trustee shall compile, prepare, and send the cost summary to Chevron U.S.A. Inc. If a Trustee's Future Costs are not included in the Lead Administrative Trustee's cost summary, the excluded Trustee may submit a separate cost summary to Chevron U.S.A. Inc. The cost summary shall provide the hours worked by the Trustees and the expenses incurred. Such Future Costs will be billed periodically, but no more often than once per year for each Trustee, and no longer than once every two (2) years, and shall be paid in the same manner as described in Paragraph 18 above. Settling Defendants shall be responsible for determining the appropriate wiring instructions in order to make the required payments to the Federal Trustees. In the event that payments required by this Paragraph are not made within sixty (60) days of the Settling Defendants' receipt of the cost summary, the Settling Defendants shall pay interest on the unpaid balance. Interest shall accrue at the interest rate specified in Paragraph 18.D commencing on the sixty-first (61st) day after the Settling Defendants' receipt of the cost summary and shall continue to accrue through the date of payment. Settling Defendants shall not be obligated to reimburse the Trustees for any cost or expense incurred over two (2) years prior to the date of receipt of that cost summary.

IX. TRUSTEES' AND SETTLING DEFENDANTS' CONTACT PERSONS

21. Project Review Group: Trustees –Each Trustee hereby respectively designates the following persons 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 NOAA:

Primary Contact:

Ron Gouguet
Chief CRC
NOAA/NOS/OR&R/CPRD
7600 Sand Point Way NE
Seattle, WA 98115

Tel: (206) 526-6938
Fax: (206) 526-6865
Email: Ron.Gouguet@noaa.gov

B. For DOI:

Primary Contact:

Ken Rice
Fish & Wildlife Service
Corpus Christi Ecological Services
C/O TAMU-CC, Campus Box 338
6300 Ocean Drive
Corpus Christi, Texas 78412

Tel: (361) 994-9005
Fax: (361) 994-8262
Email: Kenneth_Rice@fws.gov

Alternate Contact:

Tammy Ash
Fish & Wildlife Service
Corpus Christi Ecological Services
C/O TAMU-CC, Campus Box 338
6300 Ocean Drive
Corpus Christi, Texas 78412

Tel: (361) 994-9005
Fax: (361) 994-8262
Email: Tammy Ash@fws.gov

C. For TCEQ:

Primary Contact:

Richard Seiler, MC-142
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Tel: (512) 239-2523
Fax: (512) 239-4814
Email: RSEILER@tceq.state.tx.us

D. For TPWD:

Primary Contact and Lead Administrative Trustee:

Andy Tirpak
Texas Parks and Wildlife Department
1502 Pine Drive (FM 517)
Dickinson, Texas 77539

Tel: (281) 534-0137
Fax: (281) 534-0122
Email: andy.tirpak@tpwd.state.tx.us

Alternate Contact:

Don Pitts
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Tel: (512) 912-7154
Fax: (512) 912-7160
Email: don.pitts@tpwd.state.tx.us

E. For GLO:

Primary Contact:

Jim Weatherford
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

Tel: (512) 463-2572
Fax: (512) 475-0680
Email: Jim.Weatherford@glo.state.tx.us

22. Project Review Group: Settling Defendants –Settling Defendants hereby respectively designate the following individuals as its representative for receipt of information and notices required or occasioned under this Consent Decree and as its ex-officio, non-voting member of the Project Review Group:

A. For Chevron U.S.A. Inc. and Chevron Env. Mgm't Co.:

Bob Gondek
Site Manager
Chevron Environmental Management Company
5959 Corporate Drive, Suite 3500, Rm 3671
Houston, Texas 77036

Tel: (713) 219-5230
Cell: (713) 899-3930
Fax: (713) 219-5313
Email: GOND@Chevrontexaco.com

Peter Samuels
Ecological Lead
Chevron Environmental Management Company
4800 Fournace Place, Room C-320D
Bellaire, Texas 77401

Tel: (713) 432-6469
Fax: (713) 432-2234
Email: pesa@Chevrontexaco.com

B. For Chevron Phillips Chemical Co.:

Greg Hanggi
General Manager, EH&S
Chevron Phillips Chemical Company, LP
10001 Six Pines Drive
The Woodlands, Texas 777380

Tel: (832) 813-4409
Fax: (832) 813-4680
Email: HANGGIG@cpchem.com

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

24. Other Contacts: State

A. The Settling Defendants shall provide notice of all payments, whether for Past Costs, Future Costs, interest, or stipulated penalties; copies of notice contesting costs; 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 State Trustees at the addresses specified below:

Caroline Sweeney
Litigation Division, MC-175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Tel: (512) 239-0665
Fax: (512) 239-0606
Email: csweeney@tceq.state.tx.us

Raenell Silcox
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Tel: (512) 912-7152
Fax: (512) 912-7160
Email: raenell.silcox@tpwd.state.tx.us

Thomas R. Thompson
Staff Attorney
Texas General Land Office
Legal Services
Stephen F. Austin Bldg. Rm. 630
1700 N. Congress Ave.
Austin, Texas

Tel: 512 475-3786
Fax: 512 463-6311
Email: tr.thompson@glo.state.tx.us

The State Trustees may change the persons designated under this Subparagraph by submitting written notice to all Parties.

B. The Settling Defendants shall provide 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. Other Contacts: Federal. The Settling Defendants shall provide notice of all payments, whether for Past Costs, Future Costs, interest, or stipulated penalties; copies of notice contesting costs; 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
Washington, DC 20044-7611
DJ # 90-11-2-07542/1

B. As to NOAA:

Sheila O'Brien
Office of General Counsel
National Oceanic & Atmospheric Administration
9721 Executive Center Drive–Room 137
St. Petersburg, Florida 33702

C. As to DOI:

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

X. FORCE MAJEURE

27. "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 VII (Past Cost Reimbursement) and VIII (Future Cost Reimbursement) of this Consent Decree. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using the best efforts to anticipate any potential force majeure event and best efforts to address the effects of the potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force majeure," does not include financial inability to complete a Restoration Project, changes in the cost of a Restoration Project, or a failure to satisfy the requirements of the Implementation Plan.

28. 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 (voice mails or messages are not acceptable) the Lead Administrative Trustee identified in Paragraph 21 (or any other Project Review Group Trustee representative if the Lead Administrative Trustee is unavailable) 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 business days thereafter, the Settling Defendants shall provide in writing to the members of the Project Review Group 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 event if it intends 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 and, if so, the basis for that opinion. The Settling Defendants shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. 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. In their unreviewable discretion, the United States and Texas may elect to waive the requirements of this Paragraph. 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.

29. If the United States and the State of Texas agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the United States and the State of Texas for such time as necessary to complete the obligations, and the Trustees will notify the Settling Defendants in writing of the time period to be allowed by the extension. Any extension of the time for performance of the obligations affected by the force majeure event shall only extend the time for those obligations dependent on the delayed obligation. If the United States and the State of Texas do not agree that the delay or anticipated delay has been or will be caused by a force majeure, the United States and the State of Texas will notify the Settling Defendants in writing of their decision, and the rationale for why the delay or anticipated delay was not attributable to force majeure within 15 business days from receipt of Settling Defendants' written notification of the force majeure event.

30. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution) regarding the United States' and the State of Texas' notice under Paragraph 29, it shall do so no later than 15 business days after receipt of the United States' and the State of Texas' 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 27 and 28, 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 obligation of this Consent Decree identified to the United States and the State of Texas and the Court.

XI. DISPUTE RESOLUTION

31. 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 this Consent Decree. 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. The Settling Defendants may initiate dispute resolution under this Section by sending a written notice to the Trustees. The notice shall identify the issue in the dispute and the Settling Defendants' position on the issue.

32. Informal Dispute Resolution. After the dispute resolution process has been initiated pursuant to Paragraph 31, the Parties shall attempt to resolve the dispute by engaging in

good faith, informal 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. In the event that the Parties are unable to reach agreement during such informal negotiation period, the Trustees shall provide the Settling Defendants with a written summary of their position regarding the issues in dispute within 15 business days from the end of the informal negotiations.

33. 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 Settling Defendants receive the Trustees' written summary pursuant to Paragraph 32, the Settling Defendants invoke the formal dispute resolution procedures of this Section by serving the Trustees 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, or the affected Trustee, if the dispute pertains to costs, will serve on the Settling Defendants its 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 business 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. For disputes involving all issues other than Future Costs, a final administrative decision resolving the dispute, based on the administrative record described in Paragraph 33.C, will be issued by the following Trustee representatives, or the designee for that Trustee:

Director, Office of Response and Restoration, NOAA

Regional Director for Region 2, FWS

Commissioner, GLO

Director, Remediation Division, TCEQ

General Counsel, TPWD

E. For disputes involving Future Costs, the Trustee representative whose costs are disputed, or the representative's designee, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 33.C.

F. The final administrative decision shall be binding on the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 33.G.

G. Any final 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 business days of receipt of the Trustees' final 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 United States and the State of

Texas may file a response to the Settling Defendants' motion in compliance with the schedules set forth in the applicable local rules for the United States District Court for the Eastern District of Texas.

H. 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 33.C.

34. 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 United States and the State of Texas or the Court agrees 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 as determined under Section XII (Stipulated Penalties). The Settling Defendants shall not be required to pay any stayed stipulated penalties if it prevails on the disputed issue. 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

35. Chevron U.S.A. Inc. shall be liable to the United States and the State of Texas for stipulated penalties in the amounts set forth in Paragraph 36 for failure to comply with the activities identified in Paragraph 36 within the schedules established in the Implementation Plan

(Attachment A). After receipt of a notice to commence performance pursuant to Paragraph 9.B, the Released Parties shall be liable to the United States and the State of Texas for stipulated penalties identified in Paragraph 36 for their failure to comply with any activities for which they are responsible, within the schedules established in the Implementation Plan or any revised schedule approved by the Trustees.

36. 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 the following documents for Trustee review, in accordance with the deadlines specified in the Implementation Plan: $250/day

i. Construction Certification information for each Restoration Project;

ii. Grow Out Report;

iii. Annual Monitoring Report;

iv. Corrective Action Plan;

v. Corrective Action Report; or

vi. Maintenance Report.

B. Failure to timely submit complete and accurate documentation for the following documents after the Trustees require corrections or additional information: $500/day

i. Construction Certification information for each Restoration Project;

ii. Grow Out Report;

iii. Corrective Action Plan;

iv. Corrective Action Report; or

v. Maintenance Report.

C. Failure to provide to the Trustees proof of timely filing of all required permit applications in accordance with the schedule established in the Implementation Plan: $500/day.

D. Failure to undertake the following actions by the deadlines specified in the Implementation Plan:

i. Provide notice of construction schedule for each Restoration Project;

ii. Completion of construction of the J.C. Wetlands Restoration Project, the ORS Water Control Structures Restoration Project, and ORS Marsh Complex and Wet Prairie Project and submission of all information needed to obtain the Certification of Construction Completion from Trustees for all Restoration Projects; or

iii. Complete activities pursuant to a schedule established in a Corrective Action Plan that has been agreed to by the Parties.

Days of Violation	**Stipulated Penalty Per Day**
1st through 30th	$500
31st through 60th	$750
61st and all subsequent days	$1000

37. Unless excused by force majeure or by an extension of time, all penalties shall begin to accrue on the day after the Settling Defendants should have performed an obligation

specified in Paragraph 36 and shall continue to accrue through the day the Settling Defendants comply with the obligation.

38. All penalties due under this Section shall be due and payable within ninety (90) 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 (Dispute Resolution) of this Consent Decree. If the Settling Defendants invoke dispute resolution under Section XI (Dispute Resolution), then stipulated penalties shall be due at the time specified in Paragraph 34 provided that the Settling Defendants do not prevail on the disputed issue. In the event that payments required by this Paragraph are not made within 90 days, the Settling Defendants shall pay interest on the unpaid balance. 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 sent by FedWire EFT to the U.S. Department of Justice account in accordance with EFT procedures. Settling Defendants shall be responsible for determining the appropriate wiring instructions in order to make the required payments to the United States. 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 "United States and the State of Texas v. Chevron U.S.A. Inc, et al.; USAO File Number 2003V01192; DOJ case number 90-11-2-07542/1, Clark/Chevron Refinery," and the name and address of the party making payment. Notice of the payment shall be sent to the Parties as specified in Section IX (Trustees' and Settling Defendants' Contact Persons).

B. All payments made to the State of Texas under this Section shall be paid by certified check make payable to the "State of Texas." This payment should be mailed to

the Chief, Natural Resources Division, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711. The check shall bear the identifying number "AG# 01-1467875."

39. 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 34, however, stipulated penalties continue to accrue during dispute resolution but are not due and payable until resolution of the dispute.

40. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of the Settling Defendants' violation of this Consent Decree.

41. Notwithstanding any other provision of this Section, the United States and the State of Texas may, in their unreviewable discretion, waive in whole or in part stipulated penalties that have accrued pursuant to this Consent Decree.

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

42. In consideration of the satisfactory performance by Settling Defendants of all their obligations under this Consent Decree, and except as specifically provided in Section XIV (Reservation of Rights by the United States and the State of Texas), the United States and the State of Texas each hereby covenant not to sue or to take civil or administrative action (including, but not limited to, actions based on common law theories) against Settling Defendants for Natural Resource Damages in accordance with the following terms:

A. Costs--With regard to claims for payment of Past 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 due pursuant to Paragraph 18 of this Consent Decree. With regard to claims for payment of Past 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 due pursuant to Paragraph 18 of this Consent Decree. With regard to claims for payment of 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 Future Costs due pursuant to Paragraph 20 of this Consent Decree. With regard to claims for payment of 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 Future Costs due pursuant to Paragraph 20 of this Consent Decree.

B. Other Natural Resource Damage Claims--With regard to all claims for Natural Resource Damages other than claims for Past Costs and claims for Future Costs, these covenants not to sue shall only take effect after all of the following certificates have been issued by the Trustees pursuant to the Implementation Plan:

i. the Certification of Construction Completion for the J.C. Wetlands Restoration Project,

ii. the Certification of Construction Completion for the ORS Water Control Structures Restoration Project, and

iii. the Certification of Construction Completion for the ORS Marsh Complex and Wet Prairie Restoration Project.

These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants and do not extend to any other persons.

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

43. 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 Settling Defendants in this action or in a new action, seeking recovery of additional Natural Resource Damages, based upon the following:

A. Injury to, destruction of, or loss of natural resources resulting from conditions, including future releases of hazardous substances and/or discharges of hazardous substances and/or oil at or from the Site, which were unknown to the Trustees on the Date of Lodging of this Consent Decree ("Unknown Conditions"); or

B. Information received by the Trustees after the Date of Lodging this Consent Decree, which indicates that there is injury to, destruction of, or loss of natural resources of a type unknown to the Trustees as of the Date of Lodging of this Consent Decree ("New Information");

and these previously unknown conditions or this information indicates that there are new or additional injuries to, destruction of, or losses of natural resources or new or additional service losses that were unknown to the Trustees when they issued the Restoration Plan.

44. Information and conditions known to the Trustees with respect to the Site as of the Date of Lodging of this Consent Decree shall include only the information and the conditions set forth in the Administrative Record for the Restoration Plan, as of the Date of Lodging.

45. 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. Settling Defendants' failure to pay the Trustees' Past Costs and their Future Costs, to complete the Restoration Projects and related obligations described in Section VI (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 and/or discharges of hazardous substances and/or oil other than the liability for Natural Resource Damages that is the subject of this Consent Decree;

D. Liability arising from any releases of hazardous substances and/or discharges of hazardous substances and/or oil from any site or location that is not the subject of this Consent Decree, including, but not limited to, any hazardous substance and/or oil transported 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.

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

47. The failure of the United States and the State of Texas 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 United States and the State of Texas' right to insist on prompt compliance in the future with such provision, and shall not prevent a subsequent action by the United States and the State of Texas to enforce such a provision.

48. 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 SETTLING DEFENDANTS

49. 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 the Natural Resource Damages resulting from the release of hazardous substances and/or oil at the Site, pursuant to any Federal, State, or common law, including, but not limited to the following:

A. any direct or indirect claim for reimbursement for Natural Resource Damages 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.

50. 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 it in writing that it no longer supports entry of the Consent Decree.

51. 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).

52. Notwithstanding any other provision of this Consent Decree, this Consent Decree is without prejudice to all rights of Chevron with respect to all matters other than those expressly specified in Paragraphs 49, 50, and 55.

XVI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

53. 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 for in Paragraph 54, 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 the Natural Resource Damages resulting from the releases of hazardous substances and/or discharges of hazardous substances and/or oil at or from the Site against any person not a Party hereto.

54. The Parties agree, and by entering into this Consent Decree this Court finds, that 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.

55. 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, Settling Defendants may contest any claims reserved by the United States and Texas in this Consent Decree, and the Settling Defendants may claim any defense available to them, except they 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 was or should have been brought in the instant 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).

XVII. CERTIFICATION

56. 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 which is currently in the possession of the Settling Defendants' officers, employees, contractors and agents, that relates in any way to the releases of hazardous substances and/or discharges of hazardous substances and/or oil at or from the Site.

57. Each undersigned representative of a Party 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

58. The Settling Defendants agree to provide access in accordance with the following provisions:

A. Access to Restoration Project Properties. The Settling Defendants agree to provide the Trustees and/or their representatives, including contractors, access for the purposes specified in this Paragraph at all reasonable times to enter and move about the property where Restoration Projects are ongoing and which are under the Settling Defendants' control and/or to which the Settling Defendants have access (to the full extent that the Settling Defendants have the right to grant access). The Trustees and/or their representatives shall show due regard for safety of personnel and property and shall comply with the Settling Defendants' normal safety requirements for movement within property boundaries of the Restoration Project(s). The Trustees and/or their representatives shall have access to the Restoration Project properties for any purpose relating to the implementation, monitoring, or enforcement of this Consent Decree, including, without limitation:

i. Interviewing the Settling Defendants' personnel involved in field work conducted pursuant to the Implementation Plan;

ii. Inspecting records, and/or operating logs related to the implementation and monitoring of the Restoration Projects;

iii. Reviewing the progress of the Settling Defendants in performing the Restoration Projects;

iv. Conducting such sampling and tests as the Trustees and/or their representatives deem appropriate for implementation, monitoring or enforcement of this Consent Decree;

v. Using a camera, sound recording, or other documentary equipment to make or preserve observations or measurements (the Settling

Defendants may utilize their own documentary equipment in addition to any documentary equipment utilized by the Trustees or their representatives); and

vi. Verifying the reports and data that the Settling Defendants submit to the Trustees.

The Settling Defendants and/or their representatives may accompany the Trustees and/or their representatives whenever and wherever they are present at the Restoration Projects but may not in any way delay or impede investigative activities authorized under this Section, except as provided above. Upon request at the time of sampling, the Settling Defendants may obtain splits of any samples taken by the Trustees and/or their representatives and upon request shall be provided with copies of the results of analyses or tests made on such samples.

B. Access to Persons. Upon reasonable notice by the Trustees, the Settling Defendants shall also make available to the Trustees at an appropriate location its employees, agents, or representatives with knowledge of material facts concerning the implementation of this Consent Decree for purposes of investigation, information gathering, or interviews.

C. Access to Records. The Settling Defendants shall permit the Trustees and/or their contractors to inspect and copy all non-privileged records that relate to the Settling Defendants' implementation of the Restoration Projects and compliance with their obligations set forth in the Consent Decree.

59. Until three (3) years after the Trustees issue the Certification of Construction Completion for the J.C. Wetlands Restoration Project, Certification of Construction Completion

for the ORS Water Control Features Restoration Project, or the ORS Marsh Complex and Wet Prairie Restoration Project Completion Certification, whichever is later, Settling Defendants shall maintain and provide to the Trustees, upon request and subject to the protections for privileged and/or confidential business information provided by Paragraph 60, copies of all documents and information within its possession or control or that of its contractors or agents including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, correspondence, or other documents or information related to the activities undertaken pursuant to this Consent Decree. This Paragraph shall not be construed as a waiver of any attorney-client, work product, or confidential business information privilege or doctrine that the Settling Defendants might otherwise possess. At least sixty (60) days prior to destruction or disposal of any records covered by this Paragraph, the Settling Defendants shall notify the Trustees and, if the Trustees so request, make such records available to the Trustees for inspection or retention.

60. The Settling Defendants may assert that the documents or information required to be provided to the Trustees pursuant to this Consent Decree are privileged and/or entitled to protection as confidential business information as provided in this Paragraph. In no case shall the Settling Defendants withhold from the Trustees based on a claim of privilege documents, reports, or other factual information required to be created or generated pursuant to this Consent Decree or data, including, but not limited to, all sampling, analytical, monitoring, hydro geologic, scientific, chemical, or engineering data, or any other factual information evidencing conditions at or around any Restoration Project.

A. The Settling Defendants may assert business confidentiality claims covering part or all of the documents or information required to be provided to the Trustees pursuant to this Consent Decree as provided in 40 C.F.R. § 2.203. Information

determined by the Trustees to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to the Trustees, the Trustees may make the information available to the public without further notice to the Settling Defendants. Analytical data generated pursuant to this Consent Decree shall not be claimed as confidential.

B. In the event the Settling Defendants believe that information, data, or other material accessible to the Trustees and/or their representatives under this Consent Decree is privileged, the Settling Defendants may assert that claim by providing to the Trustees within thirty (30) days after the request the following information for each item as to which a privilege is claimed:

i. A description of the information, data, or other material which contains sufficient information to allow the District Court to determine whether the claimed privilege applies; if the material at issue is a document, the Settling Defendants shall, at a minimum, provide the following information in as much detail as possible without revealing any information claimed privileged: (1) the title of the document; (2) the date of the document; (3) the name and title of the author of the document; (4) the name and title of each addressee and recipient; and (5) a description of the contents of the document; and

ii. A statement of the specific privilege(s) claimed and the basis for the claim.

If the Settling Defendants fail without good cause to timely provide the information required by this Subparagraph, it waives any claim of privilege with respect to the specific information, data, or other material for which it failed to timely provide the information. If the Trustees object to the Settling Defendants' claim that the information, data, or other material is privileged, it may file a motion with the Court to compel access to the material.

61. To the extent that activities required by this Consent Decree must be done on property which the Settling Defendants do not currently own, control, or have access to, the Settling Defendants shall use best efforts, including the payment of reasonable sums of money in consideration of access, to obtain property access agreements from the owner(s) of such property for (a) itself and its contractors and (b) the Trustees and/or their authorized representatives and contractors. The Settling Defendants shall seek to obtain such access agreements as expeditiously as practicable in order to prevent any delays in implementation of this Consent Decree. If within thirty (30) days after the Settling Defendants' initial request for access to such property, the Settling Defendants cannot, despite their best efforts, secure access to property where activities are required under this Consent Decree, the Settling Defendants shall within ten (10) business days thereafter again request access in a certified letter, return receipt requested, to the property owner. If an agreement for access to such property is not obtained within sixty (60) days after the Settling Defendants initial request for access, the Settling Defendants shall notify the United States and the State of Texas in writing. This notification shall include a summary of the steps the Settling Defendants have taken in attempting to obtain access and shall request the United States' and the State's assistance in obtaining the required access. The United States and the State may, as they deem appropriate, assist the Settling Defendants in obtaining access. If the United States and/or the State obtain access for the Settling Defendants, the Settling Defendants

shall undertake the activities required under this Consent Decree on such property. If the United States and the State do not obtain access, they shall so notify the Settling Defendants in writing. No less than thirty (30) days after receiving such a notice, the Settling Defendants shall submit to the Trustees an alternate work plan or proposed modification to the applicable work plan which accounts for the inaccessibility of the subject property. Regardless of whether access is obtained, if the United States and/or the State assist the Settling Defendants in its efforts to obtain access, the Settling Defendants shall reimburse the United States and the State for all reasonable costs, direct or indirect, incurred by the United States and the State in their efforts to obtain such access. Such costs include, but are not limited to, the cost of attorney time and the amount of monetary consideration or just compensation paid.

62. Nothing in this Section limits or otherwise affects the United States' and the State's rights of access and entry pursuant to any applicable law including, but not limited to, CWA Sections 308 and 402, 33 U.S.C. §§ 1318 and 1342; TSA Section 11, 15 U.S.C. § 2610; RCRA Section 3007, 42 U.S.C. § 6927, and CERCLA Section 104(e), 42 U.S.C. § 9604(e).

XIX. VOIDABILITY

63. 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 or administrative proceeding.

XX. RETENTION OF JURISDICTION

64. 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.

XXI. MODIFICATION

65. Except as provided for elsewhere in this Consent Decree, the Court must approve any modification that materially alters a Restoration Project.

66. Any modification to the Consent Decree, including the attachments thereto, that does not materially alter a Restoration Project may be made by written agreement between the United States, the State of Texas, and the Settling Defendants.

XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

67. 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 U.S. Department of Justice policy for the United States and Texas Water Code § 7.110 for 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. Settling Defendants consent to the entry of this Consent Decree without further notice.

XXIII. TERMINATION

68. This Consent Decree will terminate automatically after the Settling Defendants have made all payments required by this Consent Decree; the Trustees have issued the Construction Completion Certifications for all Restoration Projects, pursuant to the

Implementation Plan; and the Trustees have issued the ORS Marsh Complex and Wet Prairie Restoration Project Completion Certification, pursuant to the Implementation Plan. Termination of this Consent Decree shall not affect the 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 Settling Defendants); and Section XVI (Effect of Settlement; Contribution Protection).

XXIV. SIGNATORIES/SERVICE

69. 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. 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.

70. 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.

XXV. FINAL JUDGMENT

71. This Consent Decree and its Attachments 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.

72. 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 of Texas, and Settling Defendants.

SO ORDERED THIS _____ DAY OF _____, 2004

_____

United States District Judge
Eastern District of Texas

FOR THE UNITED STATES OF AMERICA:

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_____
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ATTORNEYS FOR THE STATE OF TEXAS

FOR CHEVRON U.S.A. INC.:

_____
[name]
[title]
[company]
[address]
[city, state zip code]
[telephone number]

Designated Agent per Section XXIV:

_____
Name

_____
Address

_____
Telephone Number

FOR CHEVRON ENVIRONMENTAL MANAGEMENT CO.

_____
[name]
[title]
[company]
[address]
[city, state zip code]
[telephone number]

Designated Agent per Section XXIV:

_____
Name

_____
Address

_____
Telephone Number

FOR CHEVRON PHILLIPS CHEMICAL COMPANY, LP:

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