UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

TEX TIN SETTLING DEFENDANTS STEERING COMMITTEE, Plaintiff, v. GREAT LAKES CARBON CORPORATION, et al., Defendants.	Civil Action No. G-96-247
	CONSOLIDATED WITH
AMOCO CHEMICAL CO., Plaintiff, v. UNITED STATES OF AMERICA, et al., Defendants.	Civil Action No. G-96-272
UNITED STATES OF AMERICA, Plaintiff, v. GREAT LAKES CARBON LLC and PHELPS DODGE CORP., Defendants.	Civil Action No. 3:07-cv-476

CONSENT DECREE

TABLE OF CONTENTS

I. BACKGROUND 1

II. JURISDICTION 4

III. PARTIES BOUND 4

IV. DEFINITIONS 4

V. STATEMENT OF PURPOSE 6

VI. PAYMENT OF RESPONSE COSTS 7

VII. FAILURE TO COMPLY WITH CONSENT DECREE 7

VIII. COVENANT NOT TO SUE BY THE UNITED STATES 9

IX. RESERVATION OF RIGHTS BY UNITED STATES 9

X. COVENANT NOT TO SUE BY THE TEX TIN SETTLING DEFENDANTS STEERING COMMITTEE AND BP AMOCO CHEMICAL COMPANY 11

XI. RESERVATION OF RIGHTS BY THE TEX TIN SETTLING DEFENDANTS STEERING COMMITTEE AND BP AMOCO CHEMICAL COMPANY 11

XII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS 12

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION 13

XIV. RETENTION OF RECORDS 14

XV. NOTICES AND SUBMISSIONS 15

XVI. RETENTION OF JURISDICTION 16

XVII. INTEGRATION[/APPENDICES] 16

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 17

XIX. SIGNATORIES/SERVICE 17

XX. FINAL JUDGMENT 17

I. BACKGROUND

A. Plaintiffs represent that the Tex Tin Superfund Site ("the Site") centers on the former location of a tin and copper smelter located in Texas City, Galveston County, Texas at the corner of Farm to Market Road 519 and State Highway146. A map of the Site is included as Appendix A. Metal smelting operations, principally for production of tin but also including other metal smelting and other production operations, occurred at the Site intermittently from approximately 1941 until 1991. The Site included metal smelting facilities and areas where materials resulting from the smelting process were disposed of, including a number of ponds that previously contained acidic wastes and waste waters.

B. Plaintiffs represent that in May of 1996, Amoco Chemical Co. (now known as BP Amoco Chemical Company and hereinafter referred to as "BP ACC") filed a complaint pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, for recovery of and contribution for CERCLA response costs against the United States, various federal agencies, and more than one hundred private parties. Amoco Chemical Co. v. United States of America et al., Civil Action No. G-96-272 ("the Amoco Lawsuit"). Tex Tin Corp. also filed a complaint pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613, for recovery of response costs against the United States and various federal agencies. Tex Tin Corp. et al. v. United States of America, Civil Action No. G-96-247 ("the Tex Tin Lawsuit"). The United States filed a counterclaim against BP ACC and Tex Tin Corp. on October 16, 1996 pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. This Court consolidated the Amoco Lawsuit and the Tex Tin Lawsuit.

C. Plaintiffs represent that on December 1, 1999, the United States filed a complaint (U.S. v. GAF Corp., et al., Civil Action No. G-99-73) and lodged a Consent Decree settling its claims against approximately thirty parties which EPA determined contributed hazardous substances to the Site that were minimal in terms of volume and toxicity in comparison to other hazardous substances at the Site ("the DeMinimus Consent Decree"). With certain modifications specified in the United States May 26, 2000 Motion to Enter, the Court entered the DeMinimus Consent Decree on May 30, 2000.

D. Plaintiffs represent that on March 13, 2000, the United States filed a complaint pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. § 9604 and 9607, for recovery of response costs incurred and to be incurred in connection with the Site against Texas City Refining, Inc., a dissolved Delaware corporation. United States v. Texas City Refining, Inc., Civil Action No. G-00-145 ("the Texas City Refining Lawsuit"). Contemporaneous with the filing of the Texas City Refining Lawsuit, the United States, BP ACC, and various companies related to BP ACC lodged a Consent Decree resolving their claims against Texas City Refining, Inc. ("the Texas City Refining Consent Decree"). The Court entered the Texas City Refining Consent Decree on June 26, 2000.

E. Plaintiffs represent that in May 2000, the United States and the State of Texas lodged a CD resolving the CERCLA liabilities of thirteen companies and ten individuals

connected with Tex Tin Corp. ("the Tex Tin Consent Decree"). The Tex Tin Consent Decree was entered by the Court on October 12, 2000.

F. Plaintiffs represent that in May 2000, the United States and the State of Texas filed a complaint pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. § 9606 and 9607, for injunctive relief and recovery of response costs incurred and to be incurred in connection with the Site against twenty five parties ("the Tex Tin Settling Defendants"). United States and State of Texas v. Alpha metals, Inc. et al., Civil Action No. G-00-250. This Court consolidated United States and State of Texas v. Alpha metals, Inc. et al. with the Amoco Lawsuit and the Tex Tin Lawsuit. Contemporaneously with the filing of the complaint, the United States and the State of Texas lodged a Consent Decree settling claims against the defendants named in the complaint and settling claims against certain settling federal agencies ("the RD/RA Consent Decree"). In the RD/RA Consent Decree, the Tex Tin Settling Defendants agreed to perform the cleanup work at the Site. With modifications specified in the August 3, 2000 Motion to Enter, the Court entered the RD/RA Consent Decree on August 4, 2000. The Court entered an order approving modifications to the RD/RA Consent Decree on March 7, 2003.

G. Plaintiffs represent that in October 2003, the Tex Tin Settling Defendants Steering Committee (a committee made up of some of the Tex Tin Settling Defendants) filed a First Amended Third Party Complaint pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for recovery of response costs against seven parties (Tex Tin Settling Defendants Steering Committee v. Great Lakes Carbon Corp, et al., Civil Action No. G-96-247). Great Lakes Carbon Corp. and Phelps Dodge Corp., inter alia, were named as defendants in this complaint. In 2003, Great Lakes Carbon Corporation converted to a Delaware Limited Liability Company and changed its name to Great Lakes Carbon LLC.

H. Plaintiffs represent that pursuant to the RD/RA Consent Decree, the Tex Tin Settling Defendants performed the cleanup work at the Site. EPA divided the Site into four operable units -numbered 1 through 4.

- Operable Unit 1 ("OU-1") included the main processing area; three major processing buildings and associated structures; storage and disposal areas; waste water treatment ponds; and an acid pond. Pursuant to an administrative order issued by EPA on March 30, 1990, BP ACC conducted a Remedial Investigation to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site. The Remedial Investigation ("RI") Report, prepared for BP ACC by Woodward Clyde associates was approved by EPA and issued in June 1993. EPA selected a remedy for OU-1 in May 1999 and amended the selected remedy on March 7, 2000. Under the RD/RA Consent Decree, the Tex Tin Settling Defendants with partial funding from the Settling Federal Defendants, performed the cleanup work at OU-1. Cleanup of OU-1 is now complete and a Certificate of Completion was issued on September 23, 2005. Operation and maintenance activities necessary to

maintain the effectiveness of the remedial action at OU-1--including long-term groundwater monitoring, maintenance of the on-site landfill cells, and monitoring and maintenance of the soil cover/cap on portions of the property--are ongoing and will be required into the future.

- Operable Unit 2 ("OU-2") is a 27.33-acre property owned by BP ACC which was once part of the smelting operation at the Site. BP ACC completed an early response action on its property at its own expense under the Texas Voluntary Cleanup Program ("VCP") administered by the Texas Natural Resource Conservation Commission ("TNRCC") [the TNRCC is now known as the Texas Commission on Environmental Quality], the state environmental agency. BP ACC submitted the Final Closure Report in June 1998 and TNRCC signed the VCP Conditional Certificate of Completion on August 27, 1999. Finding that the BP ACC VCP response action met the remedial action goals and was consistent with the remedy selected for OU-1, EPA decided that no further action was required at OU-2 on September 27, 2001. OU-2 was deleted from the National Priorities List ("NPL") effective October 15, 2002. As with OU-1, long-term operation and maintenance activities on this property are ongoing and will be required into the future.

- Operable Unit 3 ("OU-3"), a residential area in the neighboring town of LaMarque downwind from the Site, was the subject of a time-critical removal action conducted by EPA beginning in March of 1999. EPA completed the physical removal of contaminated soil in excess of 20 parts per million arsenic in June of 1999. After reviewing the results of the removal action, EPA determined that no further cleanup was required at OU-3 on September 29, 2000. Although OU3 is eligible for deletion from the NPL at this time, area residents requested that OU3 not be removed from the NPL until after completion of the OU1 remedial action. No long term operation and maintenance activities are required on OU-3.

- Operable Unit 4 ("OU-4") consists of the Swan Lake Marsh area, a wetland contaminated by hazardous substances from the Site located between the former smelting operation and Galveston Bay. Remedial Action for OU-4, construction of a segmented breakwater on the footprint of the shell islands located in Swan Lake was completed in 2004. The purpose of the breakwater was to prevent movement of contaminated sediments from the marsh area. No long term operation and maintenance activities are required on OU-4.

I. The United States of America ("United States") represents that contemporaneous with the filing of this Consent Decree, the United States, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint against Great Lakes Carbon LLC and Phelps Dodge Corp. pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, seeking reimbursement of response costs incurred or to be incurred for response actions taken or

to be taken at or in connection with the release or threatened release of hazardous substances at the Site. United States v. Great Lakes Carbon LLC et al., Civil Action No. 3:07-cv-476 (S.D. Tex.).

J. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the United States of America, the Tex Tin Settling Defendants Steering Committee, or BP ACC arising out of the transactions or occurrences alleged in the complaints referred to in Paragraphs G and I above.

K. The United States, the Tex Tin Settling Defendants Steering Committee, BP ACC, and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the Tex Tin Settling Defendants Steering Committee, BP ACC, and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "BP ACC" means BP Amoco Chemical Company, formerly known as Amoco Chemical Company.

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

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

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

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

f. "Effective Date of this Consent Decree shall mean the date of entry of this Consent Decree by the Court after satisfaction of the public notice and comment procedures set forth in Section XVIII (Lodging and Opportunity for Public Comment).

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

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

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

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

k. "Parties" shall mean the United States, the Tex Tin Settling Defendants Steering Committee, BP ACC, and the Settling Defendants.

l. "Plaintiff" shall mean the United States.

m. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq*. (also known as the Resource Conservation and Recovery Act).

n. "RD/RA Consent Decree" shall mean the Consent Decree entered on August 4, 2000 and modified by Order filed March 7, 2003 in the matter of United States and State of Texas v. Alpha metals, Inc. et al., Civil Action No. G-00-250 (S.D. Tex.)..

o. "Remedial Action" shall have the meaning assigned to that term in Paragraph 4 of the RD/RA Consent Decree

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

q. "Settling Defendants" shall mean Great Lakes Carbon LLC and Phelps Dodge Corp.

r. "Site" shall mean the Tex Tin Superfund site located in Texas City, Galveston County, Texas. The Site consists of Operable Units 1 through 4. A description of the geographic boundaries of the site is included as Appendix A.

s. "Tex Tin Settling Defendants" means the parties designated "Settling Defendants" in the RD/RA Consent Decree entered by this Court on August 4, 2000.

t. "Tex Tin Settling Defendants Steering Committee" means the unincorporated association of Tex Tin Settling Defendants defined in Paragraph 9 of the First Amended Third Party Complaint filed in October 2003 in Tex Tin Settling Defendants Steering Committee v. Great Lakes Carbon Corp., et al., Civil Action No. G-96-247.

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

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to address their alleged liability for the Site as provided in the Covenant Not to Sue by the United States in Section VIII and subject to the Reservations of Rights by United States in Section IX and in the Covenant Not to Sue by the Tex Tin Settling Defendants Steering Committee and BP Amoco Chemical Company in Section X subject to the Reservation of Rights by the Tex Tin Settling Defendants Steering Committee and BP Amoco Chemical Company in Section XI.

VI. PAYMENT OF RESPONSE COSTS

5. Within 30 days of entry of this Consent Decree:

A. Great Lakes Carbon LLC shall pay to the EPA $150,000 and to the Tex Tin Settling Defendants Steering Committee and BP ACC $100,000.

B. Phelps Dodge Corp. shall pay to the EPA $93,000 and to the Tex Tin Settling Defendants Steering Committee and BP ACC $62,000.

6. Payment Instructions:

a. Payments to EPA shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2006V1640, the EPA Region and Site Spill ID Number 06-B3, and DOJ Case Number 90-11-3-1669. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Texas following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

b. Payments to the Tex Tin Settling Defendants Steering Committee and BP ACC shall be made to the Schwartz, Junell, Greenberg & Oathout Trust Account.

7. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA, DOJ, the Tex Tin Settling Defendants Steering Committee, and BP ACC in accordance with Section XIII (Notices and Submissions) and to:

Chief
Cost Recovery Section (6SF-AC)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

8. The total amount to be paid to EPA pursuant to Paragraph 5 shall be deposited in the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 5 by the required due date, Interest (as defined in Paragraph 3) shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 5 are not paid by the required due date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 9, $300 per violation per day that such payment is late.

b. Stipulated penalties under Subparagraph 10(a) are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 06-B3, and DOJ Case Number 90-11-3-1669, and shall be sent to:

EPA Superfund
Mellon Bank
U.S. EPA Cincinnati Accounting Operations - Region 6
P.O. Box 371099M
Pittsburgh, PA 15251

c. If any amounts due to the Tex Tin Settling Defendants Steering Committee and BP ACC under Paragraph 5 are not paid by the required due date, Settling Defendants shall be in violation of this Consent Decree and shall pay as a stipulated penalty Interest required by Paragraph 9.

d. Stipulated penalties under Subparagraph 10(c) are due and payable to the Tex Tin Settling Defendants Steering Committee and BP ACC shall be made to the Schwartz, Junell, Greenberg & Oathout Trust Account.

e. At the time of each payment of stipulated penalties, Settling Defendants shall send notice that payment has been made to EPA, DOJ, the Tex Tin Settling Defendants Steering Committee, and BP ACC in accordance with Section XIII (Notices and Submissions) and to:

Chief
Cost Recovery Section (6SF-AC)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

f. Penalties shall accrue as provided in this Paragraph regardless of whether EPA, the Tex Tin Settling Defendants Steering Committee, or BP ACC has notified Settling Defendants of the violation or made a demand for payment, but need only be

paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States, the Tex Tin Settling Defendants Steering Committee, or BP ACC brings an action to enforce this Consent Decree, Settling Defendants shall reimburse such party for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States, the Tex Tin Settling Defendants Steering Committee, or BP ACC by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are individual. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendants shall not be responsible for such payments.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties payable to EPA that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY THE UNITED STATES

15. Covenant Not to Sue by United States. In consideration of the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA, the Tex Tin Settling Defendants Steering Committee, and BP ACC of all payments required to be paid by Section VI (Payment of Response Costs) and Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

16. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling

Defendants to perform further response actions relating to the Site, or to reimburse the United States for additional costs of response if, subsequent to the Effective Date of this Consent Decree:

A. Conditions at the Site, previously unknown to EPA, are discovered, or

B. Information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

17. For purposes of Paragraph 16, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action to be issued pursuant to Section XIV (Certification of Completion) of the RD/RA Consent Decree and set forth in a Record of Decision issued by EPA in connection with this Site, the administrative record supporting a Record of Decision issued by EPA in connection with this Site, the post-ROD administrative record associated with one of the operable units at this Site, or in any information received by EPA pursuant to the requirements of the RD/RA Consent Decree prior to issuance of Certification of Completion of the Remedial Action pursuant to Section XIV (Certification of Completion) of the RD/RA Consent Decree.

18. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 15. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants;

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

X. COVENANT NOT TO SUE BY THE TEX TIN SETTLING DEFENDANTS STEERING COMMITTEE AND BP AMOCO CHEMICAL COMPANY

19. Covenant Not to Sue by the Tex Tin Settling Defendants Steering Committee and BP ACC: In consideration of payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Section XI (Reservation of Rights by the Tex Tin Settling Defendants Steering Committee And BP Amoco Chemical Company), the Tex Tin Settling Defendants Steering Committee and BP ACC covenant not to sue and agree not to assert any claims or causes of action against Settling Defendants with respect to any claims or causes of action against any Settling Defendant:

a. with regard to the Site pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613; and

b. any claim arising out of response activities at the Site.

With respect to present and future liability, this covenant not to sue will take effect for each Settling Defendant upon receipt by the Tex Tin Settling Defendants Steering Committee, BP ACC, and EPA of that Settling Defendant's payments required by Section VI (Payment of Response Costs). As to each Settling Defendant, this covenant not to sue is condition upon the satisfactory performance by Settling Defendant of all obligations to the Tex Tin Settling Defendants Steering Committee and BP ACC under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

20. The Tex Tin Settling Defendants Steering Committee and BP ACC agree, upon the entry of this Consent Decree by the Court, to dismiss with prejudice their claims against Settling Defendants in this action.

XI. RESERVATION OF RIGHTS BY THE TEX TIN SETTLING DEFENDANTS STEERING COMMITTEE AND BP AMOCO CHEMICAL COMPANY

21. The covenant not to sue by the Tex Tin Settling Defendants Steering Committee and BP ACC set forth in Paragraph 19 does not pertain to matters other than those expressly specified in paragraph 19. The Tex Tin Settling Defendants Steering Committee and BP ACC reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants which the Tex Tin Settling Defendants Steering Committee and BP ACC may have with respect to all other matters including, but not limited to, the following:

a. liability for failure to meet a requirement of this Consent Decree;

b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resources, and for the costs of any natural resource damage assessments, to the extent that rights of the United States or others related to such natural resources matters are asserted against the Tex Tin Settling Defendants Steering Committee and BP ACC;

c. liability, based upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants;

d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site, if the United States exercises its right of reopener pursuant to Paragraph 17 against any member of the Tex Tin Settling Defendants Steering Committee or BP ACC under the provisions of the RD/RA Consent Decree; and

e. liability for any claims arising out of any other agreements between the Settling Defendants, BP ACC, the Tex Tin Settling Defendants Steering Committee , or any of them unrelated to the Tex Tin Site.

XII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

22. Covenant Not to Sue by Settling Defendants: Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, the Tex Tin Settling Defendants Steering Committee, BP ACC, or their contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Texas Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 24 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph

18(c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

23. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

24. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against each other, the Tex Tin Settling Defendants Steering Committee, BP ACC, or any other person:

a. with regard to the Site pursuant to Section s107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613; and

b. Any claim arising out of response activities at the Site.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Except as provided in Paragraph 22, 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 Decree may have under applicable law. Except as provided in Paragraph 22, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

26. The Parties agree, and by entering 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 "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

27. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA, DOJ, the Tex Tin Settling Defendants Steering Committee, and BP ACC in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or

claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

28. In any subsequent administrative or judicial proceeding initiated by the United States, the Tex Tin Settling Defendants Steering Committee, or BP ACC for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States, the Tex Tin Settling Defendants Steering Committee, or BP ACC in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by The United States set forth in Section VIII.

XIV. RETENTION OF RECORDS

29. Until five years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide the United States with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

31. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that the Settling Defendant has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. NOTICES AND SUBMISSIONS

32. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Tex Tin Settling Defendants Steering Committee, BP ACC and Settling Defendants, respectively.

As to DOJ:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
re: DJ # 90-11-3-1669

As to EPA:

Carlos Sanchez (Two Copies)
Remedial Project Manager
EPA Region 6 (6SF-AP)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Phone: 214-665-8507
Email: sanchez.carlos@epa.gov

As to the Tex Tin Settling Defendants Steering Committee:

Richard Schwartz
Schwartz, Junell, Greenberg & Oathout, LLP
Two Houston Center
909 Fannin, Ste. 2000
Houston, Texas 77010
Phone: (713) 752-0017
Fax: (713) 752-0327
Email: dschwartz@schwartz-junell.com

As to BP ACC:

Ms. Roberta S. Lewis
BP America Inc., Room 16.114
501 Westlake Park Boulevard
Houston, TX 77079
Phone: (281) 366-2551
Fax: (281) 366-2033
Email: Roberta.Lewis@BP.com

As to Great Lakes Carbon LLC:

Tammie Haynes
General Counsel
Great Lakes Carbon LLC
4 Greenspoint Plaza, Suite 2200
16945 Northchase Drive
Houston, Texas 77060, USA
Phone: (281) 775-4700
Fax: (281) 775-4744

As to Phelps Dodge Corp.:

Gregory Winfree
Chief Litigation Counsel
Phelps Dodge Corporation
One North Central Ave.
Phoenix, AZ 85004
Phone: 602.366.8100

XVI. RETENTION OF JURISDICTION

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

XVII. INTEGRATION/APPENDICES

34. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is a map of the Site.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

35. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Tex Tin Settling Defendants Steering Committee, BP ACC and the Settling Defendants consent to the entry of this Consent Decree without further notice.

36. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

37. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

38. Each Settling Defendant, the Tex Tin Settling Defendants Steering Committee, and BP ACC hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

39. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. FINAL JUDGMENT

40. 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 Tex Tin Settling Defendants Steering Committee, BP ACC, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 2007.

_____
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Great Lakes Carbon LLC (S.D. Tex.) relating to the Tex Tin Superfund Site:

FOR THE UNITED STATES OF AMERICA:

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

MICHAEL T. DONNELLAN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Phone: (202) 514-4226
Fax: (202) 514-0097
Email: michael.donnellan@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Great Lakes Carbon LLC (S.D. Tex.) relating to the Tex Tin Superfund Site:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

SAMUEL COLEMAN, P.E.
Superfund Director
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave, Suite 1200
Dallas, TX 75202-2733

JAMES BOVE
Assistant Regional Counsel (6RC-S)
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave, Suite 1200
Dallas, TX 75202-2733\
(214) 665-2794

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Great Lakes Carbon LLC (S.D. Tex.) relating to the Tex Tin Superfund Site:

FOR THE TEX TIN SETTLING DEFENDANTS STEERING COMMITTEE:

RICHARD SCHWARTZ THE TTSDSC
Schwartz, Junell, Greenberg & Oathout, LLP
Two Houston Center
909 Fannin, Ste. 2000
Houston, Texas 77010
Phone: (713) 752-0017
Fax: (713) 752-0327
Email: dschwartz@schwartz-junell.com

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Great Lakes Carbon LLC (S.D. Tex.) relating to the Tex Tin Superfund Site:

FOR BP AMOCO CHEMICAL COMPANY:

LAWRENCE K. MALNOR
Attorney-in-fact

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Great Lakes Carbon LLC (S.D. Tex.) relating to the Tex Tin Superfund Site:

FOR GREAT LAKES CARBON LLC:

A. FRANK BACA
Senior VP of Operations and Administration
Great Lakes Carbon LLC
4 Greenspoint Plaza, Suite 2200
16945 Northchase Drive
Houston, Texas 77060, USA
Phone (281) 775-4700
Fax (281) 775-4744

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

Name: Tammie Haynes

Title: General Counsel

Address: ~~4 Greenspoint Plaza, Ste. 2200~~
16945 Northchase Drive
Houston, Texas 77060, USA

Telephone: (281) 775-4700

Facsimile (281) 775-4744

Email:

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Great Lakes Carbon LLC (S.D. Tex.) relating to the Tex Tin Superfund Site:

FOR PHELPS DODGE CORP.:

CATHERINE R. HARDWICK
Corporate Secretary
Phelps Dodge Corporation
One North Central
Phoenix, AZ 85004

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

Name: Gregory D. Winfree

Title: Senior Counsel

Address: One North Central Avenue

Phoenix, Arizona 85004

Telephone: (602) 366-8100

Facsimile (602) 366-7312

Email: Gregory_Winfree@FMI.com

APPENDIX A

Geographic Boundaries of the Tex Tin Superfund Site

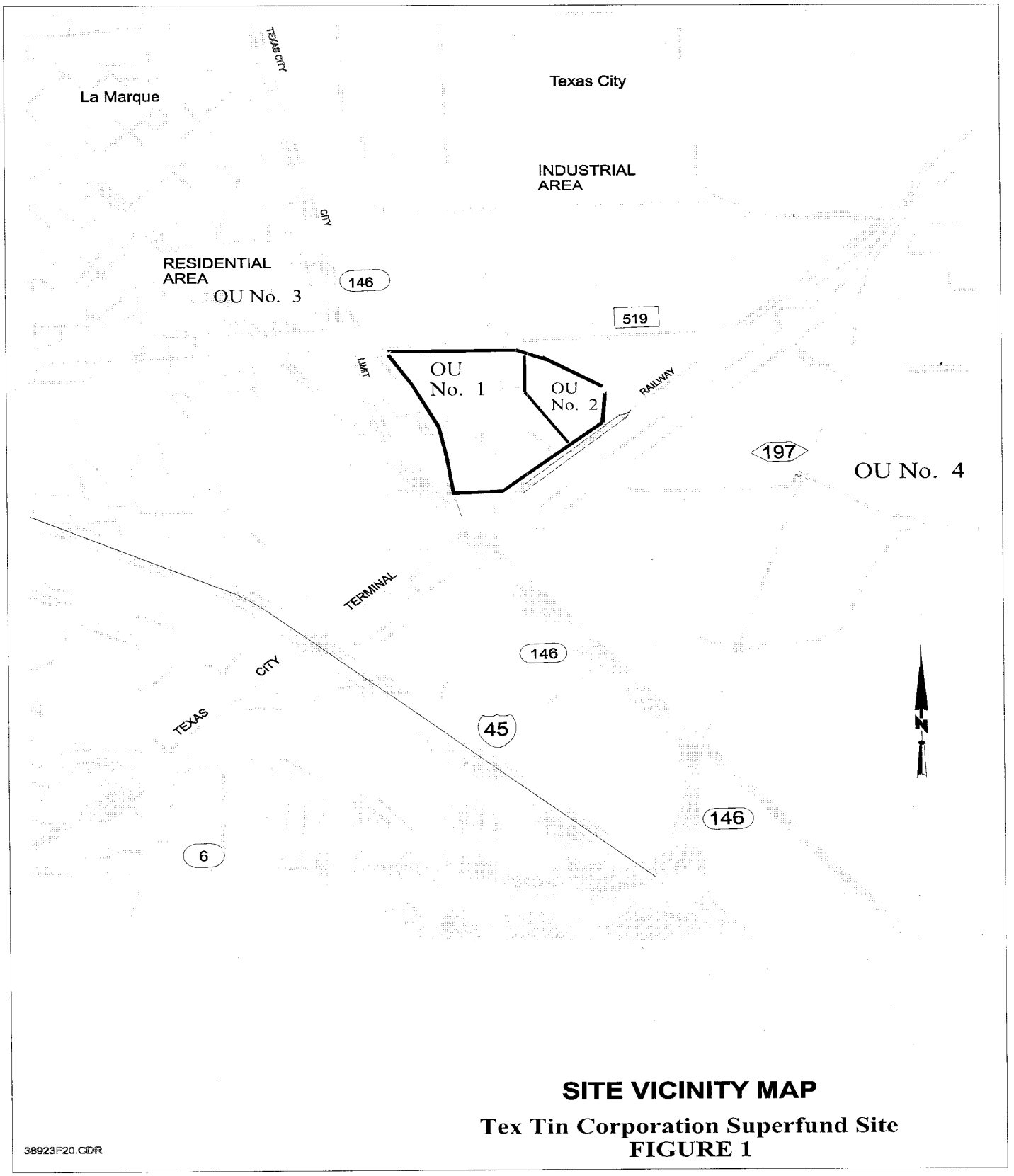
TEX TIN CORPORATION SUPERFUND SITE
TEXAS CITY, TEXAS

Operable Unit 1 of the Tex Tin Corporation Superfund Site encompasses approximately 140 acres in Texas City, Texas. The Site is located approximately 10 miles north of Galveston, in the southeast quadrant of the intersection of Farm-to-Market Road 519 and State Highway 146. The city of La Marque lies 2,000 feet to the west and northwest of the former tin and copper smelting facility. The area north and east of the site are dominated by large petrochemical facilities. A municipal golf course, an industrial waste disposal facility, and marsh areas are located less than 0.5 mile to the south and southwest of the Site. The southern boundary and a portion of the western boundary of the Site are fenced with a 3-strand barbed wire fence of questionable integrity. The remainder of the fence surrounding the Site is a 7-foot chain link fence in varying stages of deterioration.

Tex Tin OU No. 2 includes an area of approximately 27 acres that was part of the Tex Tin smelter facility until 1969, when the property was purchased by Amoco (now BP Amoco). OU No. 2 is referred to in the remedial investigation and other early reports as Area H. Area H included six (6) ponds (Ponds 9 through 14) that at one time were used to dispose of acidic ferrous-chloride waste solution from the tin smelting process. Beginning in 1969, when Amoco bought the property, the ponds were no longer used for disposal of smelter waste. In 1988 they were drained and backfilled by Amoco. OU No. 2 is currently part of Amoco's Plant C property, a total of approximately 71 undeveloped acres situated across FM 519 from the Amoco Refinery and the Amoco Chemical Plant in Texas City.

The La Marque residential area, OU No. 3, is located less than half a mile from the Tex Tin smelter facility, air emissions from which impacted the residential area during the smelter's years of operation. Operable Unit No. 3 addresses only the residential properties in the city of La Marque which are located about 2,000 feet to the west-northwest, and generally downwind of the former Tex Tin smelter facility.

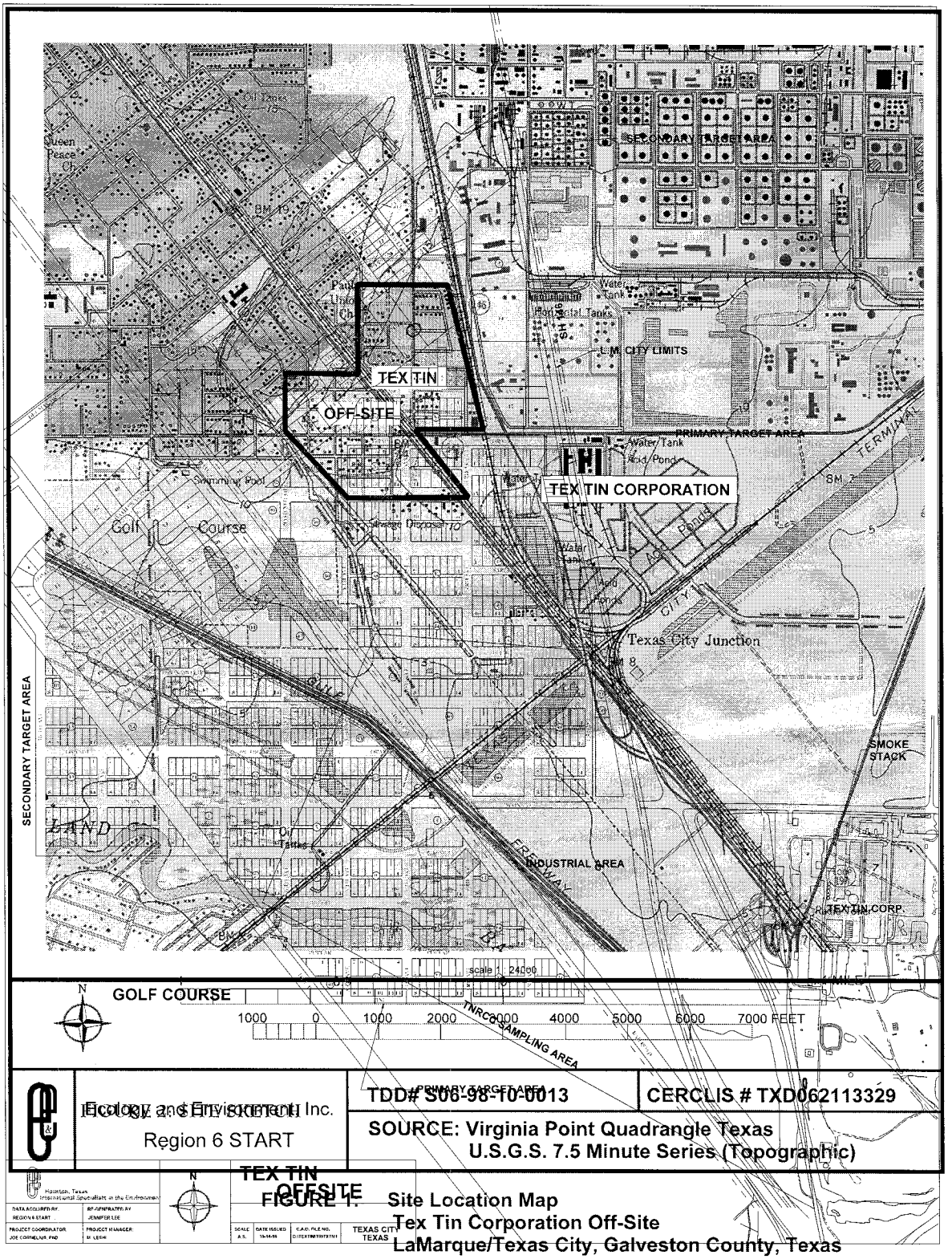
The Swan Lake Salt Marsh area , OU No. 4, is situated west of Swan Lake and is bordered to the north by a hurricane levee and an industrial waste disposal facility; to the east by a hurricane levee, Route 197, large petrochemical and other industrial facilities; and to the south by disturbed uplands and additional industrial and commercial development. Within the marsh are tidal pools which connect to the Wah Chang ditch by tidal creeks. Within the marsh area, the Wah Chang ditch originates along Route 197 and meanders through the Swan Lake Salt Marsh for approximately 1.1 miles to Swan Lake.



SITE VICINITY MAP

Tex Tin Corporation Superfund Site
FIGURE 1

38923F20.CDR


TEX TIN
OFF-SITE
TEX TIN CORPORATION
SECONDARY TARGET AREA
PRIMARY TARGET AREA
L.M. CITY LIMITS
Golf Course
Texas City Junction
SMOKE STACK
INDUSTRIAL AREA
TEX TIN CORP.
TNRCC SAMPLING AREA
GOLF COURSE
scale 1:24000
1000 0 1000 2000 3000 4000 5000 6000 7000 FEET
Ecology and Environment, Inc.
Region 6 START
TDD# S06-98-10-0013
CERCLIS # TXD062113329
SOURCE: Virginia Point Quadrangle Texas
U.S.G.S. 7.5 Minute Series (Topographic)
TEX TIN
OFFSITE
FIGURE 1. Site Location Map
Tex Tin Corporation Off-Site
LaMarque/Texas City, Galveston County, Texas