

FILED

MAR 20 2020

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY set  
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ECTOR DRUM, INC. d/b/a LONESTAR DRUM,  
CARL RANDLE BEARD,  
SANDRA KAY BEARD,  
4.5 ACRES OF LAND, MORE OR LESS,  
LOCATED AT 2604 NORTH MARCO  
AVENUE, ODESSA, ECTOR COUNTY, TEXAS,  
BB CHEMICALS, INC.,  
CONTINENTAL PRODUCTS OF TEXAS,  
ENERGY INTERMEDIATES, INC.  
HESS CORPORATION,  
KEL-TECH, INC.,  
MONACHEM, INC.,  
NOVASTAR L.P.,  
PERFORMANCE CHEMICAL COMPANY  
TETRACO, LLC, and  
WAGNER SUPPLY CO., INC.

Defendants.

Civil Action No. 7:20-cv-00074

Judge

FIRST PARTIAL CONSENT DECREE

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## **I. BACKGROUND**

A. The United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607 ("CERCLA"), seeking reimbursement of response costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Ector Drum Superfund Site in Odessa, Ector County, Texas ("the Site").

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future.

C. In performing response actions at the Site, EPA has incurred response costs and may incur additional response costs in the future.

D. The United States alleges that defendants are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

E. The following defendants enter into this First Partial Consent Decree with the United States: BB Chemicals, Inc.; Continental Products of Texas; Energy Intermediates, Inc.; Hess Corporation; Kel-Tech, Inc.; Monachem, Inc.; Novastar L.P.; Performance Chemical Company; Tetraco, LLC.; and Wagner Supply Corporation ("Settling Defendants").

F. Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

G. The United States 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 without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and 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. Solely for the purposes of this Consent Decree and the underlying Complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### III. PARTIES BOUND

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

### IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that 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 or its appendices, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

b. "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.

c. "Date of Lodging" shall mean the date this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Western District of Texas.

d. "Day" or "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 or State 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 its successor departments, agencies, or instrumentalities.

f. "Effective Date" shall mean the date upon which approval of this Consent Decree is recorded on the Court's docket.

g. "EPA" shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

j. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

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

l. "Parties" shall mean the United States and Settling Defendants.

m. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through February 28, 2018, plus accrued Interest on all such costs through such date.

n. "Plaintiff" shall mean the United States.

o. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, also known as the Resource Conservation and Recovery Act.

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

q. "Settling Defendants" shall mean those defendants that enter into this First Partial Consent Decree with the United States: BB Chemicals, Inc.; Continental Products of Texas; Energy Intermediates, Inc.; Hess Corporation; Kel-Tech, Inc.; Monachem, Inc.; Novastar L.P.; Performance Chemical Company; Tetraco LLC.; and Wagner Supply Corporation.

r. "Site" shall mean the Ector Drum Superfund Site, encompassing approximately 4.5 acres, located at 2604 North Marco Avenue in Odessa, Ector County, Texas, and generally shown on the map included in Appendix A."

s. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

## **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make cash payments to resolve their alleged civil liability with regard to the Site under Sections 107(a) of CERCLA, 42 U.S.C. § 9607(a), as provided in the Covenants by the United States in Section VIII, subject to the Reservations of Rights by United States in Section IX.

## **VI. PAYMENT OF RESPONSE COSTS**

### **5. Payment by Settling Defendants of Past Response Costs.**

a. BB Chemicals, Inc. shall pay to the United States \$266,755 within 30 Days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

b. Continental Products of Texas shall pay to the United States \$37,000 within 30 Days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

c. Energy Intermediates Inc. shall pay to the United States \$180,000 within 30 Days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

d. Hess Corporation shall pay to the United States \$50,000 within 30 Days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

e. Kel-Tech, Inc. shall pay to the United States \$168,640 within 30 Days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

f. Monachem, Inc. shall pay to the United States \$44,175 within 30 Days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

g. Novastar L.P. shall pay to the United States \$218,085 within 30 Days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

h. Performance Chemical Company shall pay to the United States \$169,105 within 30 Days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

i. Tetraco LLC. shall pay to the United States \$397,995 within 30 Days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

j. Wagner Supply Co., Inc. shall pay to the United States \$43,500 within 30 days after the Effective Date, plus an additional sum for Interest on that amount calculated from the Date of Lodging through the date of payment.

6. **Methods of Payment.** Settling Defendants shall make all payments to the United States by using one of the following payment methods:

a. <https://www.pay.gov>

b. Fedwire Electronic Funds Transfer EFT to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the Western District of Texas after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

For BB Chemicals, Inc:

Bruce Babb  
c/o Shafer Davis O'Leary and Stoker  
700 North Grant, suite 201  
Odessa, TX 78701  
(432) 332-0893  
[BruceGBabb@gmail.com](mailto:BruceGBabb@gmail.com)  
[JEssman@shaferfirm.com](mailto:JEssman@shaferfirm.com)

For Continental Products of Texas:

Udat Koya  
P.O. Box 2627  
Odessa, Texas 79760  
(432) 337-4681  
[UKoya@cptonline.com](mailto:UKoya@cptonline.com)

For Energy Intermediates Inc.

Kip Beeson  
P.O. Box 2728  
Midland, Texas 79702  
(432) 238-4061  
[tetraco@aol.com](mailto:tetraco@aol.com)

For Hess Corporation:

Alan Lindsey  
1501 McKinney Street  
Houston, TX 77010  
(713) 496-4438  
[alindsey@hess.com](mailto:alindsey@hess.com)

For Kel-Tech, Inc.:

Elisabetta Zhang  
Arsenal Capital Partners  
100 Park Avenue, 31st Floor  
New York, NY 10017  
(212) 771-1717  
[EZhang@arsenalcapital.com](mailto:EZhang@arsenalcapital.com)

For Monachem, Inc.:

Mike Lamothe, President  
Monachem Inc.  
P.O. Box 1656  
Monahans, Texas 79756  
(432) 943-9593  
[Monachem@sbcglobal.net](mailto:Monachem@sbcglobal.net)

For Novastar L.P.:

Cynthia Bishop  
C Bishop Law PC  
P.O. Box 612994  
Dallas, Texas 75261  
(214) 893-5646

[cbishop@cbishoplaw.com](mailto:cbishop@cbishoplaw.com)

For Performance Chemical Company:

Jerry Fuller  
9105 W. Interstate 20  
Midland, Texas 79706  
(432)332-3059  
[Jerry.Fuller@perf-chem.com](mailto:Jerry.Fuller@perf-chem.com)

Tetraco LLC.

Kip Beeson  
P.O. Box 2728  
Midland, Texas 79702  
(432) 238-4061  
[tetraco@aol.com](mailto:tetraco@aol.com)

For Wagner Supply Co., Inc.:

Brenda L. Clayton  
Kelly Hart & Hallman LLP  
303 Colorado Street, Suite 2000  
Austin, Texas 78701  
(512) 495-6409  
[Brenda.Clayton@kellyhart.com](mailto:Brenda.Clayton@kellyhart.com)

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices and Submissions).

7. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 5 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

8. **Notice of Payment.** At the time of payment, each Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions); and to the EPA Cincinnati Finance Center by email or by regular mail at:

**Email:** [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov)

**Regular mail:** EPA Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number A6KS, and DJ Number 90-11-3-11781/1.

## **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

9. **Interest on Late Payments.** If any Settling Defendant fails to make any payment required by Paragraph 5 (Payment by Settling Defendants for Past Response Costs) by the

required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

**10. Stipulated Penalty**

a. If any amounts due under Paragraph 5 (Payment by Settling Defendants for Response Costs) 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 (Interest on Late Payments), \$1,000 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by the United States. All payments to the United States under this Paragraph shall be identified as "stipulated penalties" and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

and shall reference the CDCS Number, Site/Spill ID Number A6KS, and DJ Number 90-11-3-11781/1.

c. At the time of payment, each Settling Defendant shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 8 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether the United States 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 in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States 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 Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse

Settling Defendants from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

### **VIII. COVENANTS BY UNITED STATES**

14. **Covenants for Settling Defendants by United States.** 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 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon receipt by the United States of all payments required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants extend only to Settling Defendants and do not extend to any other person.

### **IX. RESERVATION OF RIGHTS BY UNITED STATES**

15. 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 Paragraph 14 (Covenants for Settling Defendants by United States). 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 an individual Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability based on the ownership or operation of the Site by Settling Defendants when such ownership or operation commences after signature of this Consent Decree by Settling Defendants;
- g. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or 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; and
- h. 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. COVENANTS BY SETTLING DEFENDANTS**

16. **Covenants by Settling Defendants.** Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

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

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

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.

17. Except as provided in Paragraph 19 (Waiver of Claims by Settling Defendants) and Paragraph 24, the covenants in this Section shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservation of Rights by the United States), other than in Paragraph 15.a (liability for failure to meet a requirement of the Consent Decree) or 15.d (criminal liability), 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.

18. 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).

19. **Waiver of Claims by Settling Defendants.** Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for Past Response Costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

## **XI. EFFECT OF SETTLEMENT/CONTRIBUTION**

20. Except as provided in Paragraph 19 (Waiver of Claims by Settling Defendants), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section X (Covenants by Settling Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3)

of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

21. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendants have, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs; provided, however, that if the United States exercises rights under the reservations in Section IX (Reservation of Rights by United States), other than in Paragraph 15.a. (liability for failure to meet a requirement of the Consent Decree) or 15.d (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

22. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

23. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States 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 in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the United States set forth in Section VIII.

## **XII. RETENTION OF RECORDS**

25. Until 5 years after the Effective Date, each Settling Defendant shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however,

that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

26. After the conclusion of the 5-year 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, except as provided in Paragraph 27 (Privileged and Protected Claims), Settling Defendants shall deliver any such Records to EPA.

**27. Privileged and Protected Claims.**

a. Settling Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 27.b, and except as provided in Paragraph 27.c.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendants shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendants shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendants' favor.

c. Settling Defendants may make no claim of privilege or protection regarding any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site.

28. **Business Confidential Claims.** Settling Defendants may assert that all or part of a Record submitted to the United States under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendants assert a business confidentiality claim. Records that Settling Defendants claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

29. Each Settling Defendant 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 relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all

EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B).

### **XIII. NOTICES AND SUBMISSIONS**

30. 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. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

|                                             |                                                                                                                                                                                                                                                                                       |
|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>As to DOJ by email:</b>                  | <u><a href="mailto:eescasemanagement.enrd@usdoj.gov">eescasemanagement.enrd@usdoj.gov</a></u>                                                                                                                                                                                         |
| <b>As to DOJ by mail:</b>                   | EES Case Management Unit<br>U.S. Department of Justice<br>Environment and Natural Resources Division<br>P.O. Box 7611<br>Washington, D.C. 20044-7611<br>Re: DJ # 90-11-3-11781/1                                                                                                      |
| <b>As to EPA:</b>                           | Lydia Johnson, Chief<br>Enforcement and Cost Recovery Section (SEDAE)<br>Superfund Division<br>United States Environmental Protection Agency, R6<br>1201 Elm Street, Suite 500<br>Dallas, Texas 75270-2102<br><u><a href="mailto:Johnson.Lydia@epa.gov">Johnson.Lydia@epa.gov</a></u> |
| <b>As to BB Chemicals, Inc:</b>             | Bruce Babb<br>c/o Shafer Davis O'Leary and Stoker<br>700 North Grant, Suite 201<br>Odessa, Texas 78701<br><u><a href="mailto:brucegbabb@gmail.com">brucegbabb@gmail.com</a></u><br><u><a href="mailto:jessman@shaferfirm.com">jessman@shaferfirm.com</a></u>                          |
| <b>As to Continental Products of Texas:</b> | Brooks Landgraf<br>3800 East 42 <sup>nd</sup> Street, Suite 409<br>Odessa, Texas 79762<br><u><a href="mailto:BLandgraf@toddlawfirm.com">BLandgraf@toddlawfirm.com</a></u>                                                                                                             |
| <b>As to Energy Intermediates Inc.:</b>     | Louis W. Rose<br>Montgomery & Andrews, PA<br>P.O. Box 2397<br>Santa Fe, New Mexico 87504-2307<br><u><a href="mailto:lrose@montand.com">lrose@montand.com</a></u>                                                                                                                      |

**As to Hess Corporation:**

Alan Lindsey  
1501 McKinney Street  
Houston, TX 77010  
[alindsey@hess.com](mailto:alindsey@hess.com)

**As to Kel-Tech, Inc.:**

Roy Seroussi  
Arsenal Capital Partners  
100 Park Avenue, 31st Floor  
New York, NY 10017  
[RSeroussi@arsenalcapital.com](mailto:RSeroussi@arsenalcapital.com)

**As to Monachem, Inc.:**

Mike Lamothe, President  
P.O. Box 1656  
Monahams, Texas 79756  
[Monachem@sbcglobal.net](mailto:Monachem@sbcglobal.net)

**As to Novastar L.P.:**

Cynthia Bishop  
C Bishop Law PC  
P.O. Box 612994  
Dallas, Texas 75261  
[cbishop@cbishoplaw.com](mailto:cbishop@cbishoplaw.com)

**As to Performance Chemical Company:**

Jerry Fuller  
9105 W. Interstate 20  
Midland, Texas 79706  
[Jerry.Fuller@perf-chem.com](mailto:Jerry.Fuller@perf-chem.com)

**As to Tetraco LLP:**

Louis W. Rose  
Montgomery & Andrews, PA  
P.O. Box 2307  
Santa Fe, New Mexico 87504-2307  
[lrose@montand.com](mailto:lrose@montand.com)

**As to Wagner Supply Co., Inc.:**

Brenda L. Clayton  
Kelly Hart & Hallman LLP  
303 Colorado Street, Suite 300  
Austin, Texas 78701  
[Brenda.Clayton@kellyhart.com](mailto:Brenda.Clayton@kellyhart.com)

#### **XIV. RETENTION OF JURISDICTION**

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

## **XV. INTEGRATION/APPENDICES**

32. 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 appendices are attached to and incorporated into this Consent Decree:

Appendix A is the map of the Site.

## **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

33. This Consent Decree shall be lodged with the Court for a period of at least 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 that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

34. 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.

## **XVII. SIGNATORIES/SERVICE**

35. Each undersigned representative of a Settling Defendant and the Section Chief of the Environmental Enforcement Section 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.

36. Each Settling Defendant 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.

37. 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 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.

### **XVIII. FINAL JUDGMENT**

38. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
United States District Judge

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

**FOR THE UNITED STATES OF AMERICA:**

THOMAS A. MARIANI, JR  
Section Chief  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
Washington, D.C. 20044-7611

03/16/2020  
Dated

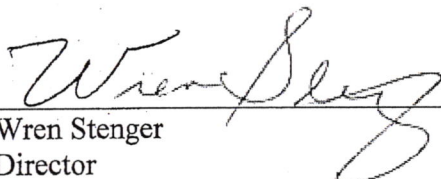
/S/ Asia A. McNeil-Womack  
ASIA A. MCNEIL-WOMACK (GA Bar #821002)  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611

Signature Page for Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*,  
related to the Ector Drum Superfund Site.

**FOR THE US EPA:**

2/25/20

Dated



Wren Stenger

Director

Superfund and Emergency Management Division, Region 6

U.S. Environmental Protection Agency

1201 Elm Street

Dallas, Texas 75270

2/25/20

Dated



James E. Costello

Practice Group Leader

Office of Regional Counsel

U.S. Environmental Protection Agency

1201 Elm Street

Dallas, Texas 75270

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc. et al.*, related to the Ector Drum Superfund Site

FOR BB CHEMICALS, INC:

10-18-2019  
Dated

Bruce Bahh

Bruce Bahh  
c/o Shaffer Davis O'Leary and Stoker  
700 North Grant, suite 201  
Odessa, Texas 78701  
(432) 332-0893  
[brucebahh@gmail.com](mailto:brucebahh@gmail.com)  
[jessman@shalefirm.com](mailto:jessman@shalefirm.com)

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

Name: James W. Essman

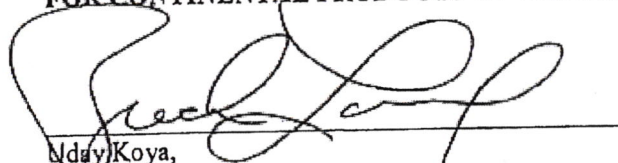
Title: Attorney for BB Chemicals, Inc.

Address: P. O. Box 1552  
Odessa, TX 79760-1552

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

**FOR CONTINENTAL PRODUCTS OF TEXAS:**

Oct. 9, 2019  
Dated

  
Mday Koya,  
President  
Continental Products of Texas  
P.O. Box 3627  
Odessa, Texas 79760

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

Name: Brooks Landgraf

Title: counsel

Address: 3800 E. 42nd St., Suite 409, Odessa, TX 79762

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

**FOR ENERGY INTERMEDIATES INC.:**

10/10/19

Dated

Kip Beeson

Kip Beeson  
P.O. Box 2728  
Midland, Texas 79702

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

Name: Louis W. Rose

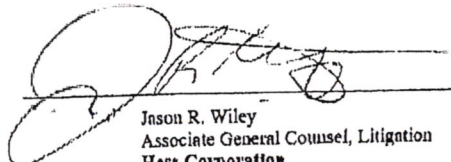
Title: Counsel for Energy Intermediates Inc.

Address: Montgomery & Andrews  
P.O. Box 2307  
Santa Fe, New Mexico 87504-2307

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

FOR HESS CORPORATION:

10-17-19  
Dated

  
Jason R. Wiley  
Associate General Counsel, Litigation  
Hess Corporation  
Hess Tower  
1501 McKinney Street  
Houston, TX 77010

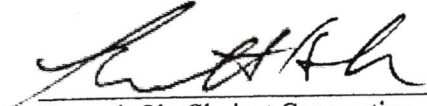
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jason R. Wiley  
Title: Associate General Counsel, Litigation  
Hess Tower  
1501 McKinney Street  
Address: Houston, TX 77010

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

FOR KEL-TECH, INC.:

10 Oct. 2019  
Dated

  
Kenneth Oh, Clariant Corporation

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

Corporation Service Company  
211 E. 7th Street, Suite 620  
Austin, Texas 78701-3218

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

FOR MONACHEM, INC.:

10/18/19  
Dated

  
Mike Lamothe, President

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

Name: Mike Lamothe

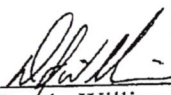
Title: President

Address: Monachem, Inc.  
P.O. Box 1656  
Monahans, Texas 79756  
Attn: Mike Lamothe, President

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

**FOR NOVASTAR L.P.:**

October 11, 2019  
Dated

  
\_\_\_\_\_  
Dustin Williamson  
Chief Financial Officer  
Novastar L.P.

Address: PO Box 252  
Midland, Texas 79702

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

Name: Dustin Williamson

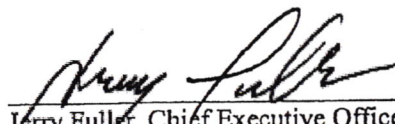
Title: Chief Financial Officer

Address: PO Box 252  
Midland, Texas 79702

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

**FOR PERFORMANCE CHEMICAL COMPANY:**

10/10/2019  
Dated

  
\_\_\_\_\_  
Jerry Fuller, Chief Executive Officer  
9105 W. Interstate 20  
Midland, Texas 79706

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

Name: Jerry Fuller

Title: Chief Executive Officer

Address: 9105 W. Interstate 20  
Midland, Texas 79706

Signature Page for First Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

**FOR TETRACO LLC.:**

10/10/19

Dated

Kip Beeson

Kip Beeson

P.O. Box 2728

Midland, Texas 79702

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

Name: Louis W. Rose

Title: Counsel for Energy Intermediates Inc.

Address: Montgomery & Andrews

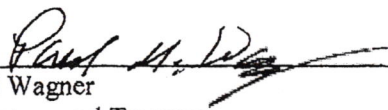
P.O. Box 2307

Santa Fe, New Mexico 87504-2307

Signature Page for Second Partial Consent Decree in the matter of *United States v. Ector Drum Inc., et al.*, related to the Ector Drum Superfund Site.

FOR WAGNER SUPPLY CO., INC.

10-14-19  
Dated

  
\_\_\_\_\_  
Paul Wagner  
Secretary and Treasurer  
P.O. Box 1766  
1349 W. 42<sup>nd</sup> Street  
Odessa, Texas 79760

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

Name: Brenda L. Clayton  
Title: Counsel for Wagner Supply Co., Inc.  
Address: Kelly Hart & Hallman LLP  
303 Colorado Street, Suite 2000  
Austin, Texas 78701

# Appendix A

Map of the Site

