

SETTLEMENT AGREEMENT AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR,
TEXAS GENERAL LAND OFFICE, TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY, TEXAS PARKS AND WILDLIFE DEPARTMENT
AND
AET INC., LTD AND AET SHIP MANAGEMENT PTE., LTD
FOR THE
EAGLE OTOME PORT ARTHUR 2010 OIL SPILL

I. Introduction

A. The Department of the Interior (“DOI”) acting through the Fish and Wildlife Service (“FWS”), and the Texas General Land Office (“GLO”), the Texas Commission on Environmental Quality (“TCEQ”), and the Texas Parks and Wildlife Department (“TPWD”) (collectively referred to as the “Trustees”), and AET Inc., Ltd., and AET Ship Management PTE., LTD (“Settling Defendants”) with the approval of the United States Department of Justice (“DOJ”), enter into this Settlement Agreement (“Agreement”) to resolve, without litigation, the Trustees’ civil claims under the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701 *et seq.*, and the Texas Oil Spill Prevention and Response Act (“OSPRA”), Tex. Nat. Res. Code § 40.001 *et seq.*, for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of Natural Resources, including the reasonable costs of assessing the injuries, resulting from the release of sour crude oil from the Eagle Otome Oil Spill.

B. The Trustees have shared jurisdiction for the Natural Resources and their services injured at or by the discharge from the Eagle Otome Oil Spill, and this Agreement is executed by the governmental agencies in their capacity as Natural Resource Trustees under OPA and the National Contingency Plan, 40 C.F.R. §§ 300.600-300.605.

C. Under OPA, each responsible party for a facility from which oil is discharged into or upon navigable waters is liable for damages for injury to, destruction of, loss of, or loss of use of, Natural Resources, including the reasonable costs of assessing the injuries. 33 U.S.C. § 2702.

D. The execution of this Agreement shall not constitute an admission by Settling Defendants of any liability.

II. Parties Bound

The provisions of this Agreement shall apply to and be binding upon Settling Defendants and each of their successors and assigns, or other entities or persons otherwise bound by law to comply with this Agreement, and upon the Trustees.

III. Definitions

Except as otherwise expressly provided herein, the terms used in this Agreement that are defined in Section 1001 of OPA, 33 U.S.C. § 2701, and in the regulations promulgated under OPA at 15 C.F.R. § 990.30, shall have the meaning assigned to them in OPA or in such regulations.

“Agreement” shall mean this Settlement Agreement among DOI, the State Trustees, and AET Inc., Ltd., and AET Ship Management PTE., LTD.

“Eagle Otome Oil Spill” shall mean the January 23, 2010, discharge of sour crude oil into the Sabine-Neches Waterway in the City of Port Arthur, Jefferson County, Texas at or from the T/V Eagle Otome as a result of the T/V Eagle Otome’s collision with the towboat Dixie Vengeance.

“Effective Date” shall mean the definition provided in Section XIII.

“Natural Resources” shall have the meaning provided in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

“Natural Resource Damages” shall mean the damages described at Sections 1002(b)(2)(A) and 1006(d) of OPA, 33 U.S.C. §§ 2702(b)(2)(A) and 2706(d).

“Parties” shall mean the Trustees and Settling Defendants.

“Site” shall mean the Sabine-Neches Waterway at the location of the collision, and the geographic area where the discharged oil came to be located, including but not limited to the 16-mile stretch of the Sabine-Neches Waterway, the J.D. Murphree Wildlife Management Area, and Texas Point National Wildlife Refuge.

“State Trustees” shall mean the GLO, TCEQ, and TPWD.

IV. Payment of Certain Costs and Stipulated Penalties

A. Within 30 days after the Effective Date, Settling Defendants shall pay the sum of \$400,000 to the Trustees as follows:

1. Within 30 days after the Effective Date, Settling Defendants shall pay \$323,711.63 to the United States for the following:

- a. \$12,219.63 to reimburse DOI for the natural resource damage assessment (“NRDA”) costs which it has incurred related to this Site; and
 - b. \$311,492 for restoration, replacement, rehabilitation, and/or acquisition of the equivalent of Natural Resources and their services injured by the discharge of oil and for the Trustees’ restoration planning and oversight of restoration implementation.
2. Within 30 days after the Effective Date, Settling Defendants shall pay \$76,289.01 to the State Trustees, in the amounts specified in Section IV.D, to reimburse the State Trustees’ assessment costs.

B. The total amount paid pursuant to Section IV.A.1.b shall be deposited into a segregated, case-specific sub-account within the DOI Natural Resource Damage Assessment and Restoration Fund (“NRDAR Fund”) to be managed for the joint benefit and use of Trustees for the purposes described in Section IV.A.1.b.

C. Payment to the United States of the amounts set forth in Section IV.A.1 shall be made by 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 United States Attorney’s Office for the Eastern District of Texas after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Settling Defendants shall use to identify all payments required to be made in accordance with this Agreement. The FLU will provide payment instructions to:

Thomas Nork
Holman Fenwick Willan
5151 San Felipe, Suite 400
Houston, Texas 77056
tom.nork@hfw.com

At the time of payment, Settling Defendants shall send a written notice of payment and a copy of any transmittal documentation to:

Amy Horner Hanley, Senior Attorney
Division of Parks and Wildlife (MS 6316)
Office of the Solicitor
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

With a copy to:

Chief
Environmental Enforcement Section

U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
DJ # 90-5-1-1-12446

D. Payment to the State Trustees of the amount set forth in Section IV.A.2 shall be made as follows:

1. Texas Commission on Environmental Quality: A check for \$12,135.29 payable to “Texas Commission on Environmental Quality” with the notation “Eagle Otome Oil Spill-NRDA, PCA Code 46054” shall be mailed to:

Texas Commission on Environmental Quality
ATTN: Scott Infinger
P.O. Box 13088
Austin, TX 78711-3088

2. Texas Parks and Wildlife Department: A check for \$40,325.71 payable to “Texas Treasury Safekeeping Trust Company” with the notation “TPWD 1908” shall be mailed to:

Texas Treasury Safekeeping Trust Company
ATTN: Settlement & Custody Services Department
P.O. Box 12608
Austin, TX 78711-2608

With a copy to:

Angela Schrift
Natural Resource Damage Assessment Team
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744

3. Texas General Land Office: A check for \$23,828.01 payable to “Texas General Land Office” with the notation “NRDA Trustee cost reimbursement for Eagle Otome Oil Spill” shall be mailed to:

Texas General Land Office
ATTN: Geneva Castro, Financial Management
P.O. Box 12873
Austin, TX 78711-2873

E. If Settling Defendants fail to make any of the payments specified in Section IV.A when due, Settling Defendants shall pay interest on those payments at the rate specified in 33 U.S.C. § 2705(b)(4). Interest shall be calculated from the Effective Date to the date of payment.

F. In addition, if Settling Defendants fail to make the payment specified in Section IV.A when due, they shall pay \$500 as a stipulated penalty for each day or portion thereof that the payment is overdue until all overdue payments (including stipulated penalties) are paid in full.

G. A stipulated penalty for failure to make the payment specified at Section IV.A.1.a shall be made payable to the United States Treasury and paid in accordance with the payment instructions in Section IV.C. The stipulated penalty is due and payable within 30 days of the date of the demand for payment of the stipulated penalty by DOI.

H. A stipulated penalty for failure to make the payment specified at Section IV.A.1.b. shall be due and payable to the United States and the State Trustees as provided in this paragraph within 30 days of the date of the demand for payment of the penalties by any Trustee(s). Payment to the United States shall constitute 50% of the stipulated penalty amount and be payable to the United States Treasury and made in accordance with payment instructions in Section IV.C. Payments to the State Trustees shall constitute 50% of the stipulated penalty amount and shall be paid in equal shares to the State Trustees, with payments made in accordance with the payment instructions in Section IV.D. The Trustee(s) making demand for payment of stipulated penalties shall simultaneously send a copy of the demand to the other Trustee(s).

I. A stipulated penalty for failure to make the payment specified at Section IV.A.2 shall be paid in equal shares to the State Trustees. Payments shall be made in accordance with the payment instructions in Section IV.D. The stipulated penalty is due and payable within 30 days of the date of the demand for payment of the stipulated penalty by the State Trustees.

J. Stipulated penalties shall accrue as provided in Section IV.F. regardless of whether the Trustees have notified Settling Defendants of the violation or made a demand for payment, but stipulated penalties need only be paid upon demand.

K. Payments made under Section IV.F shall be in addition to any other remedies or sanctions available to the Trustees by virtue of Settling Defendants' failure to comply with the requirements of this Agreement. Notwithstanding any other provisions of this Section IV, each Trustee may, in its unreviewable discretion, waive payment of any portion of the stipulated penalty due to that Trustee that has accrued pursuant to this Agreement.

L. Settling Defendants shall be liable for reasonable attorneys' fees and costs incurred by the Trustees to collect any amount due under this Agreement that is not timely paid.

V. Covenant Not to Sue and Reservation of Rights by the Trustees

A. In consideration of the payments made and to be made by Settling Defendants pursuant to Section IV, the Trustees covenant not to sue or maintain any lawsuit, action, administrative proceeding, or

other proceeding pursuant to OPA, 33 U.S.C. § 2702, and OSPRA, Tex. Nat. Res. Code § 40.107, for Natural Resource Damages caused by the Eagle Otome Oil Spill.

B. These covenants not to sue in Section V.A are conditioned upon complete and satisfactory performance by Settling Defendants of their obligations under Section IV of this Agreement. These covenants not to sue extend only to Settling Defendants and do not extend to any other person.

C. General Reservations: Notwithstanding any other provision of this Agreement, the Trustees reserve, and this Agreement is without prejudice to, any claims not expressly included in Section V.A, including, but not limited to:

1. Claims based upon a failure of Settling Defendants to meet a requirement of this Agreement;
2. Claims relating to potential criminal liability;
3. Claims for injury to, destruction of, or loss of Natural Resources that the United States, other than DOI, may have under applicable law;
4. Claims for injury to, destruction of, or loss of Natural Resources that the State of Texas, other than the State Trustees, may have under applicable law; and
5. Claims for injury to, destruction of, or loss of Natural Resources unrelated to the Eagle Otome Oil Spill.

D. Special Reservations Regarding Natural Resource Damages: Notwithstanding any other provision of this Agreement, each of the Trustees reserves the right to file claims against Settling Defendants seeking recovery of Natural Resource Damages caused by the Eagle Otome Oil Spill if conditions are discovered or information is received by the Trustees, not known to the Trustees at the time of execution of this Agreement, that, together with any other relevant information, indicates that there is injury to, impairment of, destruction of, loss of, diminution of value of, or loss of use of Natural Resources of a type unknown or of a magnitude that is substantially greater than was known by the Trustees, as of the date of their execution of this Agreement.

VI. Covenant Not to Sue by Settling Defendants

A. Each Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the Trustees or the State of Texas, including their departments, agencies or instrumentalities, or their employees, agents, experts or contractors, for:

1. Claims related to Natural Resource Damages at the Site;
2. Any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund or any State of Texas fund; and

3. Any claim for costs, attorneys' fees, other fees, or expenses incurred in connection with this Agreement or claims resolved herein.

B. In any subsequent administrative or judicial proceeding initiated by a Trustee or the Trustees related to the Eagle Otome Oil Spill, each Settling Defendant shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the Trustee or Trustees in the subsequent proceeding were or should have been settled in this Agreement; provided, however, that nothing in this Section VI affects the enforceability of the covenants set forth in Section V herein.

VII. 26 U.S.C. Section 162(f)(2)(A)(ii) Identification

For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), the payment required by Section IV.A is restitution, remediation, or required to come into compliance with law.

VIII. Signatories

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such Party to this Agreement.

IX. Entire Agreement

This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Agreement and supersedes all prior agreements and understanding, whether oral or written. No other document, nor any representation, inducement, agreement, understanding or promise constitutes any part of this Agreement or the settlement it represents, nor shall it be used in construing the terms of this Agreement.

X. Modification

The terms of this Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

XI. Execution

This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

XII. Public Comment

Final approval by the United States and the State Trustees, and the effectiveness of this Agreement are subject to public notice and a comment period of not less than 30 days after publication of this Agreement in the Federal Register and the Texas Register. Each Settling Defendant agrees not to withdraw its consent to the Agreement pending consideration of public comments and approval by the United States and the State Trustees. If public comments disclose facts or considerations that indicate that this Agreement is inappropriate, improper, or inadequate, the United States or the State Trustees may withdraw their approval of the Agreement. Should the United States or the State Trustees withdraw their approval, this Agreement shall be null and void.

XIII. Effective Date

The Effective Date of this Agreement shall be the date upon which the United States, in consultation with the State Trustees, issues written notice to each Settling Defendant that the public comment period pursuant to Section XII has closed and that comments received, if any, do not require modification or the United States' or the State Trustees' withdrawal from this agreement.

**Signature page: SETTLEMENT AGREEMENT AMONG THE UNITED STATES
DEPARTMENT OF THE INTERIOR, TEXAS GENERAL LAND OFFICE, TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY, TEXAS PARKS AND WILDLIFE
DEPARTMENT AND AET INC., LTD., AND AET SHIP MANAGEMENT PTE., LTD FOR THE
PORT ARTHUR 2010 EAGLE OTOME OIL SPILL**

AET Inc., Ltd.

By:

[Insert name, title, etc.]

Date:

4/13/23

For AET Inc., Ltd.

Thomas Nork
Holman Fenwick Willan
5151 San Felipe, Suite 400
Houston, Texas 77056
tom.nork@hfw.com

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AET SHIP MANAGEMENT PTE., LTD.

By: 

[Insert name, title, etc.]

Date: 4/13/23

For AET Ship Management Pte., Ltd.

Thomas Nork
Holman Fenwick Willan
5151 San Felipe, Suite
400 Houston, Texas
77056
tom.nork@hfw.com

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**UNITED STATES DEPARTMENT OF THE INTERIOR, ON BEHALF OF U.S. FISH AND
WILDLIFE SERVICE**

By: _____

Peg Romanik
Associate Solicitor
Division of Parks and Wildlife

Date: 17 April 2023

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THE TEXAS GENERAL LAND OFFICE

By: _____ Date: _____

Mark Havens
Chief Clerk/Deputy Land Commissioner

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THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

By: _____ Date: _____

[Insert name, title, etc.]

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THE TEXAS PARKS AND WILDLIFE DEPARTMENT

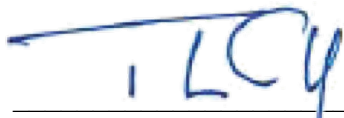
By: _____ Date: _____

[Insert name, title, etc.]

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APPROVED BY: UNITED STATES DEPARTMENT OF JUSTICE

THOMAS A. MARIANI, JR.
Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice



THOMAS P. CARROLL
Assistant Section Chief, D.C. Bar # 388593
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