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(Additional Attorneys Listed on Following Page)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA; PEOPLE OF THE STATE OF CALIFORNIA and PEOPLE OF THE STATE OF CALIFORNIA *ex rel.* DEPARTMENT OF FISH & GAME, DEPARTMENT OF PARKS & RECREATION, STATE LANDS COMMISSION, and REGIONAL WATER QUALITY CONTROL BOARD FOR THE SAN FRANCISCO BAY REGION, | |
| Plaintiffs, | CIVIL ACTION NO. |
| v. | |
| PEARL SHIPPING CORPORATION and ANAX INTERNATIONAL AGENCIES, INC., | CONSENT DECREE |
| Defendants. | |

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Torts Branch, Civil Division
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850 Bryant Street, Suite 300 San Francisco, California 94103

Attorney for the City and County of San Francisco

# CONSENT DECREE

This Consent Decree is entered into between the United States, including on behalf of the United States Department of the Interior, Fish and Wildlife Service; the National Oceanic and Atmospheric Administration; and the Department of Transportation, United States Coast Guard, National Pollution Funds Center; the People of the State of California; and the People of the State of California *ex rel.* California Department of Fish and Game, Office of Spill Prevention and Response, the California Regional Water Quality Control Board - San Francisco Bay Region, the California State Lands Commission, and the California Department of Parks and Recreation ("the State"), hereafter referred to collectively as "the Plaintiffs"; and Pearl Shipping Corporation ("Pearl") and Anax International Agencies, Inc. ("Anax"), hereafter referred to collectively as "the Defendants."

## INTRODUCTION

A. On September 24, 1998, the tanker vessel M/T Command ("the Command") a Liberian-flag vessel owned by Pearl and operated by Anax, spilled approximately 50 gallons of bunker fuel into San Francisco Bay ("the Bay Spill"). The fuel was spilled from a crack in the vessel's starboard fuel tank during a bunkering operation at Anchorage 9 in the San Francisco Bay. The Spill was promptly reported by the Master of the Command. The United States Coast Guard (hereafter the "U.S. Coast Guard"), the California Department of Fish and Game, and the San Francisco Police Department responded. On September 24, 1998, the U.S. Coast Guard Captain of the Port issued an order requiring the Command to remain in San Francisco Bay until the fuel tank repairs and clean-up were completed. Clean-up was completed on September 25, 1998, to the satisfaction of the U.S. Coast Guard. On September 26, 1998, the Captain of the Port received confirmation that vessel repairs were sufficiently completed, and the Command was released to depart San Francisco Bay. The Bay Spill did not cause damage to wildlife, the Bay, or the City or County of San Francisco.

B. On or about September 26, 1998, the Command left the port of San Francisco and sailed south, in the Southern Ship Traffic Lane, heading down the coast of California. Sometime after entering the Southern Ship Traffic Lane, on or about September 26, 1998, the Command discharged bunker fuel into and upon the navigable waters, adjoining shorelines, and exclusive economic zone of the United States, with direct effect upon same, including the waters outside San Francisco Bay and in the Gulf of Farallones and Monterey Bay National Marine Sanctuaries ("the Ocean Spill").

C. On September 27, 1998, an oil slick was observed in the Southern Ship Traffic Lane, outside the mouth of the San Francisco Bay. In the days that followed, the oil slick dispersed in the ocean waters off the coast south of the Golden Gate, where it oiled numerous seabirds, resulting in lethal and sublethal injuries. Some of the oil subsequently washed ashore on beaches in San Mateo County, California, in the form of tarballs.

D. Commencing on or about September 28, 1999, following reports of the Ocean Spill by persons other than the defendants, the U.S. Coast Guard and the California Department of Fish and Game, Office of Spill Prevention and Response ("OSPR") initiated clean-up activities in response to the Ocean Spill. As part of its cleanup and response activities, the U.S. Coast Guard deployed a 378-foot Coast Guard Cutter (USCG BOUTWELL), aircraft, small boats and other equipment, and numerous personnel, and retained the services of private contractor personnel and equipment who were mobilized in response to the Ocean Spill. Wildlife operations were carried out by OSPR, with the assistance of other state and federal agencies.

E. The involved federal and state agencies believe the Ocean Spill impacted thousands of seabirds, including a number of California brown pelicans, which are listed as an Endangered Species under Section 4(c) of the Endangered Species Act, 16 U.S.C. § 1533(c), and the California Endangered Species Act, Fish & Game Code §§ 2050, *et seq.*

F. In addition to causing seabird mortality and other injuries, the involved federal and state agencies believe that the Ocean Spill has impaired habitat and human use along the coast of San Mateo County.

G. The U.S. Fish and Wildlife Service ("USFWS") and the National Oceanic and Atmospheric Administration ("NOAA"), as authorized under Section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), and Section 1006 of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2706, and the California Department of Fish and Game ("CDFG"), the California State Lands

Commission ("CSLC"), and the California Department of Parks and Recreation ("CDPR"), as authorized under Section 311(f)(5) of the CWA, Section 1006 of OPA, and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code §§ 8670.1, *et seq.*, are joint Trustees for natural resources and are authorized to assess injuries to federal and state natural resources caused by releases of oil and hazardous substances and to recover damages for those injuries, to be used to restore, rehabilitate, replace, or acquire the equivalent of the affected natural resources.

H. The state and federal Trustees have preliminarily evaluated the impacts from the Ocean Spill to the affected natural resources and propose to carry out certain kinds of projects to restore such resources or their services injured by the Spill. The Trustees will plan and implement the necessary restoration projects, pursuant to the relevant statutory authorities and regulations.

I. The Parties believe and this Court finds that this Decree has been negotiated by the Parties in good faith and that it is fair, reasonable and in the public interest. The Trustees believe that the Decree will expedite restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources that Plaintiffs assert have ben injured, destroyed or lost and will avoid potentially prolonged, difficult, expensive, and complicated litigation.

J. The United States of America has filed a criminal action as a result of the Spills, United States v. Pearl Shipping Corporation, et al., No. CR-98-00384 MHP, in the United States District Court for the Northern District of California (the "Criminal Case").

K. It is expressly understood and agreed that any monies to be paid by the Defendants in the Criminal Case pursuant to any plea agreement are to be deemed wholly separate, and wholly in addition to, the $5,518,000.00, the payment of which is set forth below and is the subject of this Consent Decree.

NOW, THEREFORE, before the taking of any testimony, before the adjudication of the merits of this case, and without admission of any issue of law, fact, liability or responsibility by Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

## JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1333, 1345, 1355, and 1367; Section 311(n) of the CWA, 33 U.S.C. § 1321(n); Sections 307 and 312 of the National Marine Sanctuaries Act ("NMSA"), as amended, 16 U.S.C. §§ 1437, 1443; and Sections 1006 and 1017(b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. §§ 2706, 2717(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a); and 33 U.S.C. § 2717(b). The Court has personal jurisdiction over the Parties to this Consent Decree, and no Party contests venue or the Court's jurisdiction for purposes of this Decree.

## PARTIES BOUND

2. This Decree shall apply to and be binding upon the United States, the State, and the District Attorneys and upon Pearl, Anax, and their successors.

## DEFINITIONS

3. Whenever the following terms are used in this Decree, they shall have the meanings set forth below:

(a) "Natural Resource" and "Natural Resources" mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including resources of the Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and/or the State of California and/or the services provided by such resources to other resources and/or humans.

(b) "Natural Resource Trustees" or "Trustees" mean those federal and state agencies and/or officials designated or authorized pursuant to the CWA, OPA, the NMSA, and/or state law to act as Trustees for the Natural Resources managed by, controlled by, or appertaining to the United States and/or the State of California. Specifically, as used in this Decree, the Trustees are USFWS, NOAA, CDFG, CSLC, and CDPR.

(c) "Restore" or "Restoration" means any action or combination of actions to restore, rehabilitate, replace, or acquire the equivalent of any Natural Resource or its services injured, lost, or destroyed as a result of the Ocean Spill.

(d) "Unified Command" means the federal On-Scene Coordinator, the state On-Scene Coordinator, and representatives of the responsible party, as described in 40 C.F.R. § 300.135(d).

## SETTLEMENT PAYMENT BY DEFENDANTS

4. On the date this Consent Decree is lodged, defendants shall deposit the sum of FIVE MILLION, FIVE HUNDRED AND EIGHTEEN THOUSAND DOLLARS ($5,518,000.00) into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank. Such monies shall remain in escrow until entry of the Decree (including entry after remand from any appeal of an initial disapproval of the Decree by the District Court). If the Decree is not entered by the District Court, and the time for any appeal of that decision has run, or if the District Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to defendants. If the Decree is entered by the District Court, defendants shall, within 15 days thereof, cause the monies in escrow to be released and disbursed as follows:

(a) $4,007,242.00 (together with accrued interest on the total amount of $5,518,000.00 placed in escrow) to the Department of the Interior, on behalf of the state and federal Trustees for the purposes set forth in Subparagraphs (iii) and (iv), below, by Electronic Funds Transfer ("EFT") in accordance with instructions to be provided to Defendants by the Department of Interior upon lodging of this Decree. A transmittal letter indicating that the EFT has occurred shall be sent to the Parties in accordance with Paragraph 10 ("Notices") and to:

Charles McKinley, Esq.
Assistant Field Solicitor
U.S. Department of the Interior
600 Harrison Street, Suite 545
San Francisco, California 94105

Bruce Nesslage
DOI Restoration Fund Manager
1849 "C" Street, N.W.
Mail Stop 4449
Washington, D.C. 20240

The EFT and transmittal letter shall reflect that the payment is being made to the "Natural

Resources Damage Assessment and Restoration Fund, Account No. 14X5198 B M/T COMMAND Oil Spill." The Department of the Interior will assign these funds a special project number to allow the funds to be maintained as a segregated account within the Department of the Interior Natural Resource Damage Assessment and Restoration Fund, Account No. 14X5198 (the "M/T COMMAND NRD Account").

(i) The Department of the Interior shall, in accordance with law, manage and invest funds in the M/T COMMAND NRD Account and any return on investments or interest accrued on the Account for use by the Natural Resources Trustees in connection with Restoration of Natural Resources impacted by the Ocean Spill. The Department of the Interior shall not make any charge against the M/T COMMAND NRD Account for any investment or management services provided.

(ii) The Department of the Interior shall hold all funds in the M/T COMMAND NRD Account, including return on investments or accrued interest, subject to the provisions of this Decree and any Memorandum of Understanding ("MOU") entered into by the Natural Resource Trustees.

(iii) The Natural Resources Trustees commit to the expenditure of the funds set forth in this subpart "(a)" (after deduction of past federal damage assessment costs) for the design, implementation, permitting (as necessary), monitoring, and oversight of Restoration projects, and for the costs of complying with the requirements of the law to conduct a restoration planning and implementation process.

(iv) The details for specific projects will be contained in a Restoration plan proposal or proposals to be developed jointly by the Natural Resource Trustees. In allocating monies for Restoration projects, the Trustees shall take into consideration their preliminary determination of the injuries caused by the Ocean Spill. The Trustees have determined that seabirds, primarily common murres, suffered the greatest injury as a result of the

Ocean Spill and that, as a result, the restoration money will primarily be used for projects benefitting seabirds. The Trustees are in the process of preparing an MOU that will set forth more precisely the allocation of the restoration monies. The final Restoration plan will be prepared and implemented jointly by the Trustees, after providing public notice, opportunity for public input, and consideration of any public comment. The Trustees jointly retain the ultimate authority and responsibility to use the funds in the M/T COMMAND NRD Account to Restore Natural Resources in accordance with applicable law, this Decree, and any MOU entered into by the Trustees.

(b) $196,200 for a civil penalty pursuant to the NMSA, to be used for purposes consistent with Section 307(e)(1)(C) of the NMSA, 16 U.S.C. § 1437(e)(1)(C), by EFT according to instructions to be provided to Defendants upon lodging of this Decree. A transmittal letter indicating that the above payment has been made pursuant to the terms of this Decree shall be sent to the Parties in accordance with Paragraph 10 ("Notices").

(c) $242,092.38 by trust check, certified check, or money order payable to the Department of Fish and Game, Office of Spill Prevention and Response for response costs. The check or money order shall be sent by certified mail to:

The Department of Fish and Game
Office of Spill Prevention and Response
ATTN: Steven Sawyer and Katherine Verrue-Slater, Staff Counsels
1700 "K" Street, Suite 250
Sacramento, California 95814.

The check shall reflect that it is a payment to the Oil Spill Response Trust Fund created pursuant to Government Code Section 8670.46. Any amount remaining after reimbursement of costs associated with the Bay Spill and the Ocean Spill shall be deposited into the Environmental Enhancement Fund.

(d) $ 36,767.00 by trust check, certified check, or money order payable to the Department of Fish and Game, Office of Spill Prevention and Response, for damage assessment costs. The check or money order shall be sent by certified mail to:

The Department of Fish and Game
Office of Spill Prevention and Response
Attn: Steven Sawyer and Katherine Verrue-Slater
Staff Counsels
1700 "K" Street, Suite 250
Sacramento, California 95814

The check shall reflect that it is a payment to the Oil Spill Response Trust Fund created pursuant to Government Code Section 8670.46.

(e) $324,707.62 by trust check, certified check, or money order payable to the Department of Fish and Game, Office of Spill Prevention and Response for civil penalties. The check or money order shall be sent by certified mail to:

The Department of Fish and Game
Office of Spill Prevention and Response
ATTN: Steven Sawyer and Katherine Verrue-Slater, Staff Counsels
1700 "K" Street, Suite 250
Sacramento, California 95814.

The check shall reflect that it is a payment to the Environmental Enhancement Fund created pursuant to Government Code Section 8670.70.

(f) $ 300,000 by trust check, certified check, or money order payable to the Department of Fish and Game, Office of Spill Prevention and Response. The check or money order shall be sent by certified mail to:

The Department of Fish and Game
Office of Spill Prevention and Response
ATTN: Steven Sawyer and Katherine Verrue-Slater, Staff Counsels
1700 "K" Street, Suite 250
Sacramento, California 95814.

The check shall reflect that it is a payment to the Oil Spill Prevention and Administration Fund created pursuant to Government Code Section 8670.38.

(g) $5991.00 by trust check, certified check, or money order payable to the California State Lands Commission, for damage assessment costs.. The check or money order shall be sent by certified mail to:

The California State Lands Commission
100 Howe Ave., Suite 100-South
Sacramento, California 95825

(h) $90,000 by trust check, certified check, or money order payable to the California State Lands Commission, Trustee for the Kapiloff Land Bank Fund, to be deposited in the Land Bank Fund, Fund 0943 in the State Treasury, as compensation for trespass damages. The check or money order shall be sent by certified mail to:

The California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825.

(i) $5,000 by trust check, certified check, or money order payable to the State Water Resources Control Board Cleanup and Abatement Account for civil liability penalties. The check or money order shall be sent by certified mail to:

State Water Pollution Cleanup and Abatement Account
Water Resources Control Board
901 "P" Street, P.O. Box 100
Sacramento, California 95812,

with a copy of the transmittal letter sent to:

Loretta K. Barsamian
California Regional Water Quality Control Board
for the San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

The check shall reflect that it is for payment of a civil liability penalty for the M/T Command Bay Spill and Ocean Spill.

(j) $70,000 by trust check, certified check, or money order payable to The Estuary Institute for a supplemental environmental project for assessment of on-shore ballast waste treatment. The check or money order shall be sent by certified mail to:

The Estuary Institute
1325 South 46th Street
Richmond, CA 94804

A copy of the check or money order, together with a transmittal letter reflecting that the required payment has been made shall be sent by certified mail to:

California Department of Justice
Attn.: Mary E. Hackenbracht
1515 Clay Street, Suite 2000
Oakland, California 94612

with a copy of the transmittal letter sent to:

Loretta K. Barsamian
California Regional Water Quality Control Board
for the San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

The check shall reflect that it is payment for the M/T Command Bay Spill and Ocean Spill.

(k) $150,000.00 by trust check, certified check, or money order payable to the National Fish and Wildlife Foundation for a supplemental environmental project for wildlife response activities. The check or money order shall be sent by certified mail to:

The National Fish and Wildlife Foundation
c/o Eric Hammerling
116 Montgomery Street, Suite 203
San Francisco, California 94105

The check or money order shall reflect that it is to be deposited into a Trust fund account. The funds are to be used to fund the following activities: 1) the maintenance, training and deployment of an aerial survey team for the documentation of the status of wildlife resources at risk in the area of future spills in order to assist the development of effective and timely response strategies and to document resources at risk; 2) the training and deployment of a wildlife hazing team and purchase of hazing equipment to deter wildlife from utilizing oiled habitat and to reduce spill casualties; and 3) to train and equip a team to process oiled wildlife in order to provide accurate and timely documentation and to keep the Unified Command informed of the status of impacts to wildlife.

(l) $90,000 by trust check, certified check, or money order payable to the District Attorney of the County of San Mateo, as trustee for the funds. The check or money order shall be sent by certified mail to:

Parker S. Kelly
Deputy District Attorney
400 County Center, Fourth Floor
Redwood City, California 94063

The check or money order shall reflect that $60,000 of said sum shall be paid to the San Mateo County Health Services Agency, Public Health & Environmental Protection Division, for the cost of training hazardous materials specialists concerning the recognition, identification, and sampling of suspected hazardous materials, for the costs of acquisition of an emergency response trailer, and for a digital camera and related attachments, and that $30,000 shall be paid to the account of the San Mateo County District Attorney in the San Mateo County general fund.

5. (a) Subject to Paragraph 5(b), below, the receipt of the payments as specified in Paragraph 4 of this Decree is in full satisfaction of all civil claims of the United States, both judicial and administrative, under the CWA, OPA, the NMSA, and the Endangered Species Act, 16 U.S.C. § 1538 *et seq.,* and all admiralty and maritime claims, arising out of the Bay Spill and Ocean Spill, and all claims of the State, the City and County of San Francisco, and the County of San Mateo for response costs, natural resource damages, civil penalties, and other damages arising out of the Bay Spill and Ocean Spill as alleged in the Complaint filed in this action or as could be brought. The benefits of this Paragraph extend to Defendants Pearl and Anax; to Aran Shipping and Trading, S.A. ("ARAN"); and to Pegasus Shipping (Hellas), Ltd., to the extent of liability that could be asserted as to that corporation based upon its status as a parent of Pearl, Anax, and/or Aran. The benefits of this Paragraph also extend to officers, directors, and employees of the corporate entities named in this Paragraph, but only to the extent that any obligations of, or liability that might be asserted against, such officers, directors, or employees is based upon their status as officers, directors, or employees of any such corporate entity and upon actions or omissions in such capacity, and not to the extent that any obligations or liability arises independently of the liability of any such corporate entity.

(b) As part of the Plea Agreement in the Criminal Case, defendants therein have agreed to pay restitution to the United States in the amount of $1,231,737.76, said restitution representing the response costs otherwise recoverable by the United States pursuant to 33 U.S.C. § 2702(b)(1) as a result of the matters alleged in the Complaint in this action. It is expressly understood and agreed, without limitation, that any and all releases of civil liability for such response costs provided to defendants or to any other person or entity, whether or not referred to in this Consent Decree herein, and whether or not made a party or a signatory to this Consent Decree herein, shall be, and hereby are, expressly conditioned upon, and shall not be effective until, the final, unconditional, and irrevocable disbursement of the full amount of said restitution monies to the United States, by and through the National Pollution Funds Center. It is further expressly understood and agreed, without limitation, that unless and until plaintiff United States' foregoing response costs have been paid pursuant to the final, unconditional, and irrevocable disbursement of the full amount of said restitution monies to the National Pollution Funds Center, this Consent Decree, whether entered and approved or not entered and approved, shall be, and hereby is, wholly and unconditionally without prejudice to any and all of the United States' rights, demands, and causes of action to recover said response costs against defendants or any other person or entity, whether or not referred to in this Consent Decree herein, and whether or not made a party or a signatory to this Consent Decree herein.

6. The Defendants and Pegasus Shipping (Hellas), Ltd. and Aran Shipping and Trading, S.A. hereby release all claims that they have or may have against the Plaintiffs, including their current and successor officers, employees, and agents under federal, state, or local law.

## RESERVATION OF RIGHTS

7. Subject to the express provisions of Paragraphs 5 and 6 of this Decree, each Party reserves against any person not a Party to this Decree all rights, claims, or defenses available to it arising from or relating to the Bay Spill and Ocean Spill.

8. Nothing in this Decree creates, nor shall it be construed as creating, any claim in favor of any person not a Party to this Decree. Nothing in this Decree shall be construed as limiting, barring, or otherwise prejudicing claims for contribution and indemnification arising from this settlement against any person or entity not a Party to this Decree.

9. The resolution of claims pursuant to this Decree shall not apply to claims for criminal liability brought by the United States, which may be addressed in a separate plea agreement taken by this Court in the Criminal Case.

## NOTICES

10. If written notice is required to be given by one Party to another for any reason, it shall be directed to the individuals and addresses specified below, unless the individuals specified or their successors give notice, in writing, to the other Parties that notices should be directed to a different individual or address. All notices shall reference the civil action settled through this Decree, and the United States Department of Justice file number, ENRD 90-5-1-1-06455.

Notice to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611

David B. Glazer
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 870
San Francisco, California 94105

Philip A. Berns
Attorney in Charge, West Coast Office
Torts Branch, Civil Division
Michael Underhill
Trial Attorney
Torts Branch, Civil Division
United States Department of Justice
10-4640 Federal Bldg., P.O. Box 36028
450 Golden Gate Avenue
San Francisco, California 94102-3463

Notice to the State:

Administrator, California Office of
Spill Prevention and Response
1700 "K" Street, Suite 250
Sacramento, California 95814

Executive Officer
California Regional Water Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1500
Oakland, California 94612

Executive Officer
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825

California Department of Parks and Recreation
Attn: Laura Reimche
1416 9th Street
Sacramento, California 95814

Ken Alex
Supervising Deputy Attorney General
California Attorney General's Office
1515 Clay Street, Suite 2000
Oakland, California 94612-1413

Notice to the San Francisco District Attorney:

Judy Lee
Deputy District Attorney
San Francisco District Attorneys Office
425 Brannan Street, Second Floor
San Francisco, California 94107

Notice to the San Mateo County District Attorney:

Parker S. Kelly
Deputy District Attorney
400 County Center, Fourth Floor
Redwood City, California 94063

Notice to Pearl Shipping Company:

Faith E. Gay
Sidley & Austin
875 Third Avenue
New York, New York 10022

Notice to Anax International Agencies, Inc.:

John M. Hogan
Holland & Knight, LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131

## REPRESENTATIVES

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

## MODIFICATION

12. Minor modifications not materially altering this Decree may be effected by the written agreement of the Parties. No other modifications to this Decree may be made unless the Parties agree in writing to the modification and the Court approves of the requested modification.

## PUBLIC COMMENT AFTER LODGING

13. Final approval of this Consent Decree by the United States and the State will be subject to the public notice and comment procedures of 28 U.S.C. § 50.7 and applicable provisions of State law. The United States and the State may withdraw or withhold their consent to the entry of the Decree if public comments establish, in the view of either, that entry of this

Consent Decree would be inappropriate, improper, or inadequate. After reviewing the public comments, if any, the United States and the State shall advise the Court and the other Parties whether the United States and the State seek entry of this Consent Decree. The other Parties agree to the entry of this Consent Decree without further notice and agree not to withdraw their consent to entry of the Decree pending consideration of public comments and approval by the Court. Should the United States or the State withdraw its consent to the entry of this Consent Decree, the Decree shall be null and void.

## CONTINUING JURISDICTION

14. The Court retains jurisdiction to enforce the terms of this Consent Decree and to resolve any disputes arising hereunder.

## ENTIRE AGREEMENT

15. Except as to any separate plea agreement in the Criminal Case, this Consent Decree contains the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written.

## COSTS

16. Subject to Paragraph 4, each Party shall bear its own attorneys fees and costs in this action.

## COUNTERPARTS

17. The Parties agree that this Decree may be executed in counterparts.

APPROVED AND ENTERED:

Dated: ________________

MARILYN HALL PATEL
Chief United States District Judge

WE HEREBY CONSENT to the entry of this Decree (subject to the public comment provisions of 28 C.F.R. § 50.7):

**FOR THE UNITED STATES OF AMERICA:**

By: ______________________
LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural resources Division
United States Department of Justice
Washington, D.C. 20530

Dated: Sept. 22, 1999

ROBERT S. MUELLER, III, State Bar No. 59775
United States Attorney
GAIL KILLEFER, State Bar No. 157248
Assistant United States Attorney
Northern District of California
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7180

By: ______________________
DAVID B. GLAZER
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 870
San Francisco, California 94105
(415) 744-6491

Dated: ______________________

Of Counsel:

Charles McKinley, Esq.
Office of the Solicitor
U.S. Department of Interior
San Francisco, California

Katherine A. Pease, Esq.
NOAA Office of General Counsel
Long Beach, California

WE HEREBY CONSENT to the entry of this Decree:

**FOR THE UNITED STATES OF AMERICA:**

FRANK W. HUNGER
Assistant Attorney General
Civil Division
United States Department of Justice
Washington, D.C. 20530

By: PHILIP A. BERNS
Attorney in Charge, West Coast Office
Torts Branch, Civil Division

MICHAEL UNDERHILL
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice

Dated: ________________

WE HEREBY CONSENT to the entry of this Decree (subject to the public comment provisions of Paragraph 13 of this Decree):

**FOR THE STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME**

By: ______________________
GARY GREGORY
Office of Spill Prevention and Response
California Department of Fish and Game

Dated: __________________

Of Counsel:

Ken Alex
Mary Hackenbracht
Supervising Deputy Attorneys General
Oakland, California

Steven Sawyer, Esq.
Katherine Verrue-Slater, Esq.
California Department of Fish and Game
Office of Spill Prevention and Response
Sacramento, California

WE HEREBY CONSENT to the entry of this Decree (subject to the public comment provisions of Paragraph 13 of this Decree):

**FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD FOR THE SAN FRANCISCO BAY REGION**

By:

LORETTA K. BARSAMIAN
Executive Officer
California Regional Water Quality Control Board B San Francisco Bay Region

Dated: ____________________

Of Counsel:

Mary Hackenbracht
Supervising Deputy Attorney General
Oakland, California

WE HEREBY CONSENT to the entry of this Decree (subject to the public comment provisions of Paragraph 13 of this Decree):

**FOR THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION**

By: ______________________

RUSTY AREIAS, Director
California Department of Parks
And Recreation

Dated: ______________________

WE HEREBY CONSENT to the entry of this Decree (subject to the public comment provisions of Paragraph 13 of this Decree):

**FOR THE CALIFORNIA STATE LANDS COMMISSION**

By: ______________________
PAUL THAYER
Executive Officer
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825

Dated: __________________

Of Counsel:

Dennis Eagan
Supervising Deputy Attorney General
Oakland, California

Mark Meier
Staff Counsel
California State Lands Commission
Sacramento, California

WE HEREBY CONSENT to the entry of this Decree:

**FOR THE DISTRICT ATTORNEY'S OFFICE FOR THE CITY AND COUNTY OF SAN FRANCISCO:**

By: ____________________

RICHARD D. IGELHART
Chief Deputy District Attorney
San Francisco District Attorney's Office
850 Bryant Street, Suite 300
San Francisco, California 94103
(415) 553-1752

Dated: ____________________

WE HEREBY CONSENT to the entry of this Decree:

**FOR THE DISTRICT ATTORNEY'S OFFICE FOR THE COUNTY OF SAN MATEO:**

By: ______________________________

JAMES P. FOX
District Attorney
County of San Mateo
400 County Center, Fourth Floor
Redwood City, California 94063
(650) 363-4877

Dated: ____________________

WE HEREBY CONSENT to the entry of this Decree:

**FOR PEARL SHIPPING COMPANY**

By: ______________________

Dated: ________________

WE HEREBY CONSENT to the entry of this Decree:

**FOR ANAX INTERNATIONAL AGENCIES, INC.**

By: ______________________

Dated: ________________

______________________
JOHN M. HOGAN
Holland & Knight, LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131

Dated: ________________

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA and the STATE OF LOUISIANA, | § | |
| Plaintiffs, | § | Civil Action No. |
| v. | § | Judge |
| EQUILON PIPELINE COMPANY LLC, | § | Mag. 99-2961 |
| Defendant. | § | |

**CONSENT DECREE**

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| Defendant. | § | |
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## CONSENT DECREE

This Consent Decree is made and entered into by and between the Plaintiff United States of America ("United States"), on behalf of the Fish and Wildlife Service, acting on behalf of the Department of the Interior ("DOI"), the National Oceanic and Atmospheric Administration ("NOAA"), acting on behalf of the Department of Commerce, and the Coast Guard, acting on behalf of the Secretary of the Department of Transportation; Plaintiff State of Louisiana ("State") through the Louisiana Oil Spill Coordinator's Office ("LOSCO"), the Louisiana Department of Environmental Quality ("LDEQ"), the Louisiana Department of Wildlife and Fisheries ("LDWF"), and the Department of Natural Resources ("LDNR"); and Defendant Equilon Pipeline Company LLC ("Equilon") successor by way of merger to Texaco Pipeline Inc. ("Texaco").

## BACKGROUND

A. On May 16, 1997, a pipeline operated by Texaco ruptured and discharged at least 275,000 gallons of crude oil into Lake Barre, Terrebonne Parish, Louisiana. The Oil Spill spread over open water, beach, reef, and marsh habitats and caused injury to natural resources, including but not limited to marsh, intertidal, subtidal, and water column habitats and to the plant, fish, shellfish, and wildlife species that use those habitats. Approximately 4,327 acres of marsh were exposed to oil as a result of the Oil Spill, and oyster harvesting was closed in Lake Barre for 74 days.

B. Texaco removed the oil from the affected area. The United States Coast Guard directed and monitored removal activities that were financed by Texaco. State agencies also participated in the removal activities and incurred response costs. The removal did not provide compensation for the natural resources or the natural resources services injured or lost as a result of the Oil Spill. Texaco paid response costs of $40,630.49 that were incurred by the Coast Guard, NOAA, and the Department of Interior when those federal agencies responded to the Oil Spill.

C. In order to protect the public health and welfare and the environment, the discharge of harmful amounts of oil is prohibited pursuant to Section 311 of the CWA, 33 U.S.C. § 1321.

D. The NOAA, DOI, LOSCO, LDEQ, LDNR, and LDWF, have been designated, pursuant to Section 1006(b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2706(b), and the National Contingency Plan, 40 C.F.R. Part 300, Subpart G, to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the United States and the State of Louisiana.

E. The United States, through NOAA and DOI ("Federal Trustees"), is authorized to seek natural resource damages, including the reasonable costs to assess the damages, pursuant to Section 1002 of OPA, 33 U.S.C. § 2702.

F. The State, through LOSCO, LDEQ, LDNR, and LDWF ("State Trustees"), is authorized to seek natural resource damages, including the reasonable costs to assess the damages, pursuant to Section 1002 of OPA, 33 U.S.C. § 2702. The State is further authorized, pursuant to the Louisiana Constitution, article IX, sections 1 and 7, L.R.S. 36:601, et seq., L.R.S. 56:1, et seq., Louisiana Environmental Quality Act, L.R.S. 30:2001 et seq., the Louisiana Coastal Wetlands Conservation, Restoration, and Management Act, L.R.S. 49:213.1 et seq., and the Louisiana Oil Spill Prevention and Response Act, L.R.S. 30:2431 et seq., to recover damages for injury to natural resources caused by the Oil Spill.

G. The Federal Trustees and the State Trustees ("Trustees") have undertaken a natural resource damage assessment in accordance with NOAA's Natural Resource Damage Assessment rule, promulgated at 15 C.F.R. Part 990.

H. Pursuant to Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5), 15 C.F.R. 990.14(c), L.R.S. 30:2480(C)(6)(b) and (c), and LAC 43:XXIX.115, the Trustees invited Texaco to participate in the natural resource damage assessment process.

I. Subsequent to the Oil Spill, Equilon succeeded to the liabilities of Texaco, and both Texaco and Equilon participated in the natural resource damage assessment process.

J. The Trustees, Texaco, and subsequently Equilon, using assumptions protective of natural resources, have assessed the injuries to the natural resources and/or their services resulting from the Oil Spill, and they agree that the Oil Spill has or will result in 75.6 discounted acre-years of lost marsh services, over time.

K. The Trustees, Texaco, and subsequently Equilon, further agreed that 4 acres of marsh creation, or the ecological equivalent, would compensate for the injured birds and aquatic fauna.

L. Pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., 40 C.F.R. Ch. V, and 15 C.F.R. § 990.55, the Trustees prepared a Draft Assessment and Restoration Plan and Environmental Assessment ("Draft DARP/EA"), which evaluated a reasonable range of restoration alternatives to restore, replace, or acquire the equivalent of the natural resources and services injured or lost as a result of the Oil Spill. The Trustees selected a preferred restoration alternative that is not expected to have any significant adverse environmental or economic impact, but instead is expected to have positive environmental and economic benefits.

M. The preferred alternative involves the planting of salt marsh vegetation on East Timbalier Island, where a Coastal Wetlands Planning, Protection, and Restoration Act ("CWPPRA") project is being undertaken to restore the island.

N. Pursuant to 15 C.F.R. §§ 990.23 and 990.55, the Draft DARP/EA was made available for public review, as provided in public notices published in the Federal Register on July 15, 1999, in the Baton Rouge Advocate and the Houma Courier on July 19, 1999, and in the Louisiana State Register on July 20, 1999. The Trustees received no comments on the environmental assessment provided in the Draft DARP/EA in response to the public notice. Comments on the preferred alternative were received in response to the public notice. After considering the comments, the Trustees concluded that the preferred alternative should be retained and issued the Final Restoration Plan on (date), 1999.

O. The Trustees and Equilon agree that, based on currently known information, the Final Restoration Plan is the appropriate restoration project to address the injury to natural resources and services resulting from the Oil Spill.

P. The United States filed a Complaint in this matter pursuant to Section 1002 of OPA, 33 U.S.C. § 2702. The United States in its Complaint seeks (1) natural resource damages for injuries to and loss of use of natural resources resulting from the Oil Spill, (2) past costs incurred by the Coast Guard, NOAA, and DOI in responding to and assessing the damage of the Oil Spill, and (3) future costs to be incurred by NOAA and DOI in implementing, overseeing, and monitoring the Restoration Project to be undertaken by Equilon.

Q. The State filed a Complaint in this matter pursuant to Section 1002 of OPA, 33 U.S.C. § 2702, L.R.S. 30:2025(A) and (B), and L.R.S. 30:2480(A) and (B). The State in its Complaint seeks (1) natural resource damages for injuries to and loss of use of natural resources resulting from the Oil Spill, (2) past costs incurred by the State Trustees in responding to and assessing the damage of the Oil Spill, and (3) future costs to be incurred by the State Trustees in implementing, overseeing, and monitoring the Restoration Project to be undertaken by Equilon.

R. The Trustees and Equilon recognize that this Consent Decree is a settlement of a contested matter and that neither this Decree nor payment or the acceptance of any consideration represents an admission of fact, liability, or responsibility by any Party, except where an agreement as to a fact or conclusion is expressly recited in this Decree at Paragraphs J, K, and O, above.

S. The Trustees and Equilon recognize, and this Court finds, that the Parties have negotiated this Consent Decree in good faith, that implementation of this Decree will expedite the restoration of natural resources and avoid lengthy and protracted litigation, and that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

## I. JURISDICTION

1. This Court has jurisdiction over the subject matter and of this action pursuant to 28 U.S.C. §§1331 and 1345 and Section 1017(b) of OPA, 33 U.S. C. § 2717(b). This Court also has supplemental jurisdiction over the state law claims in the action pursuant to 28 U.S.C. § 1367. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and Section 1017(b) of OPA, 33 U.S.C. § 2717(b). Defendant has voluntarily appeared, and, solely for the purposes of this Decree, it waives all objections and defense it may have to the personal and subject matter jurisdiction of this Court or to venue in this District.

## II. PARTIES BOUND

2. This Consent Decree shall apply to and be binding upon and inure to the benefit of the United States, the State of Louisiana, Equilon, and Equilon's predecessor Texaco, and as applicable, the present and former officers, directors, employees, and agents of each of the aforenamed entities.

3. Equilon shall provide a copy of this Consent Decree to its Supervising Contractor, to each contractor hired to perform the Work required by this Consent Decree, ~~and~~ to each person representing Equilon with respect to the Work, and it shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Equilon or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Equilon shall

nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

4. This Consent Decree shall apply to Equilon and to its successors and assigns, and a copy of this Consent Decree shall be provided to any successor in interest. Any change in ownership or corporate status of Equilon including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Equilon's responsibilities under this Consent Decree, absent the prior written consent of the Project Manager. If the Project Manager approves, the grantee may perform some or all of the Work under this Consent Decree.

## III. DEFINITIONS

5. Unless, otherwise expressly provided herein, terms used in this Consent Decree that are defined in Section 101, et seq. of the Clean Water Act, 33 U.S. C. § 1251 et seq., including 1001 et seq. of OPA, 33 U.S.C. 2701, et seq., or in regulations promulgated under the CWA, including 15 C.F.R. Part 990, shall have the meaning assigned to them in such statutes and regulations. Whenever terms listed below are used in this Consent Decree, or in the exhibits attached hereto and incorporated herein, the following definitions shall apply:

(a) "Assessment Costs" means the reasonable costs incurred by the Trustees in assessing the natural resource damages and in planning the Restoration Project, including but not limited to administrative and legal costs and costs associated with public participation.

(b) "Day" means a calendar day.

(c) "Federal Trustees" means the United States Fish and Wildlife Service (FWS) of the United States Department of the Interior (DOI) and the

National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA).

(d) "Final Approval of this Decree" means the later of (1) the date on which the District Court has approved and entered this Decree as a judgment and all applicable appeal periods have expired without an appeal being filed, or (2) if an appeal is taken, the date on which the District Court's judgment is affirmed and there is no further right to appellate review.

(e) "Final Restoration Plan" means the Final Restoration Plan attached to this Consent Decree as Exhibit 1, and incorporated herein as a part of this Consent Decree, and any modifications to that Plan.

(f) "Monitoring Plan" means the Monitoring Plan attached to this Consent Decree as Exhibit 3, and incorporated herein as a part of this Consent Decree, and any modifications to that Plan.

(g) "Natural Resource" or "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State of Louisiana or any of its parishes or by the United States.

(h) "Natural Resource Damages" means civil compensatory relief, including Assessment Costs and Restoration Costs, recoverable by the Trustees on behalf of the public for injury to, destruction of, loss of, or loss of use of any or all Natural Resources or services provided by the Natural Resources resulting from the Oil Spill.

(i) "Oil Spill" means the discharge of crude oil from a ruptured Texaco pipeline on May 16,1997, in Lake Barre, Louisiana, and the resulting Oil Spill onto lands, marsh, and navigable waters.

(j) "Party" or "Parties" means Equilon, the United States, and the State of Louisiana.

(k) "Project Manager" or "Alternate Project Manager" means the individual who has been designated as the representative of the lead Trustee for purposes of coordinating the review and approval of specified activities on behalf of the United States and the State. For purposes of this Consent Decree, the Project Manager is the Natural Resource Specialist at LOSCO assigned to this Restoration Project and the Alternate Project Manager is the Deputy Oil Spill Coordinator, LOSCO.

(l) "Response Costs" means all costs, including, but not limited to, direct and indirect costs, that (i) the Coast Guard paid for costs incurred by the Coast Guard, NOAA, and DOI, and (ii) the State incurred in connection with the removal of oil as a result of the Oil Spill.

(m) "Restoration Costs" means the reasonable costs to implement the Restoration Project, including monitoring and oversight costs.

(n) "Restoration Project(s)" means those activities that will restore natural resources and/or services injured as a result of the Oil Spill, as described in the Final Restoration Plan, or any modification to the Plan.

(o) "Restoration Property" means East Timbalier Island, Lafourche Parish, Louisiana, or any other property selected for the Restoration Project.

(p) "State" means the State of Louisiana, and its departments and agencies.

(q) "State Trustees" means the Louisiana Oil Spill Coordinator's Office (LOSCO), the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Natural Resources (LDNR), and the Louisiana Department of Wildlife and Fisheries (LDWF).

(r) "Supervising Contractor" means the principal contractor retained by Equilon to supervise and direct the implementation of the Work under this Consent Decree.

(s) "Trustees" means those federal and state agencies designated or authorized pursuant to OPA and/or state law to act on behalf of the public as Trustees for the natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State of Louisiana. Specifically, as used in this Decree, the Federal Trustees are the United States Fish and Wildlife Service (FWS) of the United States Department of the Interior (DOI), the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA), and the State Trustees are the

Louisiana Oil Spill Coordinator's Office (LOSCO), the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Natural Resources (LDNR), and the Louisiana Department of Wildlife and Fisheries (LDWF).

(t) "Work" means all activities that Equilon is required to perform under the Consent Decree, including the activities described in the Final Restoration Plan, and all other plans and reports required by this Consent Decree.

IV. GENERAL PROVISIONS

6. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to restore natural resources and services, to reimburse the Trustees for unreimbursed costs incurred in undertaking a natural resource damages assessment, and to resolve the natural resource damage claims of Plaintiffs against Defendant Equilon as provided in this Consent Decree.

7. Commitments by Equilon. Equilon shall finance and perform the Work required by this Consent Decree, including the Final Restoration Plan, the Monitoring Plan, and all designs, reports, plans, standards, specifications, schedules, and other information set forth herein or developed by Equilon and approved by the Project Manager pursuant to this Consent Decree and any modification thereto. For all payments, except where lump sum payments for future costs are specifically allowed at Paragraph 37(b) of this Decree, Equilon also shall reimburse the United States and the State for past unreimbursed documented Assessment Costs

and for future documented Assessment Costs and Restoration Costs that the Trustees will incur for planning, oversight, monitoring, and, if necessary, implementing the Restoration Project.

8. Compliance With Applicable Law. All Work and other activities undertaken by Equilon pursuant to this Consent Decree, shall be performed in accordance with the requirements of all applicable federal, state, and local laws and regulations. Where any portion of the Work requires a federal, state, or local permit or approval, Equilon shall submit a timely and complete application and take all other actions necessary to obtain all such permits and/or approvals.

9. Consent Decree Not a Permit. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation. The United States and the State do not, by their consent to this Decree, warrant or aver in any manner that Equilon's compliance with this Decree will constitute or result in compliance with any federal or state law or regulation.

10. Failure of Compliance with Performance Criteria. The Trustees do not, by consenting to the entry of this Consent Decree, warrant or aver in any manner that actions taken by Equilon pursuant to this Consent Decree will result in satisfaction of the Performance Criteria specified in the Monitoring Plan. Notwithstanding the Trustees' issuance of the Final Restoration Plan and the Trustees' approval and/or review of any designs, plans, reports, and other information formulated pursuant to this Consent Decree, Equilon shall remain solely responsible for compliance with the Performance Criteria specified in the Monitoring Plan in accordance with the terms of this Decree.

## V. STATE REAL PROPERTY ISSUES

11. Equilon has procured a Grant of Particular Use for Construction related to the Restoration Property from the State Land Office, Division of Administration, in accordance with the conditions established by Exhibit 2, attached hereto and incorporated into this Consent Decree.

## VI. NATURAL RESOURCE RESTORATION REQUIREMENTS

12. Supervising Contractor.

(a) Equilon has selected ENTRIX as its Supervising Contractor. If Equilon subsequently proposes to change its Supervising Contractor, it shall give written notice to the Trustees, and it must obtain authorization to proceed from the Project Manager, after obtaining approval from all Trustees, before the new Supervising Contractor may perform, direct, or supervise any Work under this Consent Decree.

(b) If the Project Manager disapproves a proposed Supervising Contractor, the Project Manager will notify Equilon in writing. Equilon shall submit to the Trustees a list of proposed Supervising Contractors, including the qualifications of each contractor, that would be acceptable to it within 30 days of receipt of the disapproval of the Supervising Contractor previously proposed. The Project Manager, after obtaining consensus among the Trustees, will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Equilon may select any Supervising Contractor from the list that is not disapproved and shall notify the Trustees of the name of the Supervising Contractor selected within 14 days of receipt of the authorization to proceed.

13. Implementation Schedule.

(a) If this Decree has been lodged with the Court by September 30, 1999, Equilon shall undertake the Work in accordance with the following schedule:

(i) Equilon shall order plantings, and shall notify the Trustees that the plantings have been ordered within 5 days thereafter;

(ii) If Equilon has received notice from the Project Manager by December 9, 1999, that the East Timbalier Island platform has been built in accordance with the specifications and approved by CWPPRA and Equilon has received the as-built survey or comparable information, Equilon shall arrange a pre-design inspection by Equilon and the Trustees to view the platform on East Timbalier Island, with transportation to be provided by Equilon, and Equilon shall provide notice to the Trustees of the inspection date at least 10 days in advance of the scheduled date so that the Trustees' representatives may accompany Equilon;

(iii) If the schedule specified in subparagraph (ii) has been met, Equilon shall submit a Draft Planting Design no later than February 15, 2000. The Draft Planting Design shall include, at a minimum, the following information:

a. a substrate analysis that determines nutrient levels and contamination in the proposed planting area;

b. surveys, maps, and other information describing elevations and other site-specific information required by the Monitoring Plan;

c. a planting configuration that satisfies the planting requirements in the Final Restoration Plan;

d. any permit requirements.

The Trustees shall comment on the Draft Planting Design by February 28, 2000. Equilon shall make any recommended revisions to the Draft Planting Design and shall submit a Final Planting Design by March 15, 2000. The Trustees shall review the Final Planting Design in accordance with Section X (Trustees' Review of Submittals and Corrective Action).

(iv) If the Trustees approve the Final Planting Design by March 31, 2000, then Equilon shall commence planting at the Restoration Property. Equilon shall provide notice to the Trustees of the commencement of planting at the Restoration Project at least 14 days prior to the commencement date.

(v) Within 120 days of receiving notice of approval of the Final Planting Design, Equilon shall complete the planting on East Timbalier Island in accordance with the terms of this Consent Decree, including but not limited to the Final Restoration Plan, and the approved Final Planting Design.

(vi) Equilon shall notify the Trustees of completion of the planting in accordance with the Final Restoration Plan and the Final Planting Design and shall arrange for an inspection of the Restoration Project to be conducted with the Trustees' representatives, with transportation to be provided by Equilon, during the planting process and within seven (7) days after Equilon has finished planting at the Restoration Property.

b. If this Decree has been lodged with the Court later than September 30, 1999, or Equilon receives notice from the Project Manager later than December 9, 1999, that the East Timbalier Island platform has been built in accordance with the specifications and approved by CWPPRA, or if Equilon receives the as-built survey or comparable information after December 9, 1999, and the Trustees and Equilon determine that the proposed Restoration Project is still viable:

(i) Equilon shall arrange a pre-design inspection by Equilon and the Trustees to view the platform on East Timbalier Island, with transportation to be provided by Equilon. Equilon shall provide notice to the Trustees of the inspection date at least 10 days in advance of the scheduled date so that the Trustees' representatives may accompany Equilon;

(ii) The Trustees shall rescale the Restoration Project to account for the delay in implementation, and not later than September 1, 2000, the Project Manager, after obtaining concurrence from the Trustees, shall provide notice to Equilon of the revised scaling for the proposed Restoration Project;

(iii) If the schedule specified in subparagraph (ii) has been met, Equilon shall order plantings, and shall notify the Trustees that the plantings have been ordered within 5 days thereafter, and Equilon shall submit a Draft Planting Design by the later of December 1, 2000, or within 60 days of receiving the notice of completion of the platform, the as-built survey or comparable information, and notice of the rescaled Restoration Project. The Draft Planting Design shall include, at a minimum, the following information:

a. a substrate analysis that determines nutrient levels and contamination in the proposed planting area;

b. surveys, maps, and other information describing elevations and other site-specific information required by the Monitoring Plan;

c. a planting configuration that satisfies the planting requirements in the Final Restoration Plan;

d. any permit requirements.

The Trustees shall comment on the Draft Planting Design by December 15, 2000. Equilon shall make any recommended revisions to the Draft Planting Design and shall submit a Final Planting Design by January 17, 2001. The Trustees shall review the Final Planting Design in accordance with Section X (Trustees' Review of Submittals and Corrective Action).

(iv) If the Trustees approve the Final Planting Design by February 18, 2001, then Equilon shall complete the planting on East Timbalier Island in accordance with the terms of this Consent Decree, including but not limited to the Final Restoration Plan and the approved Final Planting Design in accordance with the schedule specified by the Trustees which shall allow not less than160 days for implementation.

(v) Equilon shall notify the Trustees of completion of the planting in accordance with the Final Restoration Plan and the Final Planting Design and shall arrange for an inspection of the Restoration Project to be conducted with the Trustees' representatives, with transportation to be provided by Equilon, during the planting process and within seven (7) days after Equilon has finished planting at the Restoration Property.

(c) The schedule described in subparagraphs (a) and (b), above, may be revised by agreement of the Project Manager, after obtaining the concurrence of the Trustees, and the Supervising Contractor or Equilon representative, as designated in Paragraph 21.

14. Planting Completion Date. The date upon which Equilon notifies the Trustees that the planting has been completed in accordance with the requirements of the Final Restoration Plan and the Final Planting Design shall be deemed the "Planting Completion Date." The Planting Completion Date must meet the applicable due date from Paragraph 13(a)(v), (b)(iv), or (c).

## VII. MONITORING AND COMPLIANCE WITH PERFORMANCE CRITERIA

15. Initial Monitoring and Report.

(a) Equilon shall monitor the progress of the planting within 60 days of the Planting Completion Date ("the Initial Monitoring"), provided however that the actual site visit to conduct the Initial Monitoring shall take place within 50-70 days of the Planting Completion Date. Equilon shall give notice of the Initial Monitoring to the Trustees 21 days in advance and arrange transportation so that the Trustees' representatives may accompany Equilon on the Initial Monitoring visit to East Timbalier Island. The date of the Initial Monitoring visit may be revised upon agreement of the Parties if weather conditions justify rescheduling.

(b) The Performance Criteria and monitoring requirements specified in the Monitoring Plan shall apply to the Initial Monitoring for the Restoration Project.

(c) Equilon shall submit a written report regarding the Initial Monitoring within 30 days of the Initial Monitoring site visit. The Initial Monitoring Report shall document compliance with the Final Restoration Plan, the Planting Design and the Monitoring Plan, including the Initial Performance Criteria. Documentation shall include maps showing the location of the plantings, elevations, and other relevant data as well as a narrative description of compliance with the requirements. The Trustees shall review the Report, and Equilon shall undertake any further actions in accordance with Section X (Trustees' Review of Submittals and Corrective Action) of this Decree.

16. Interim Monitoring. Equilon shall monitor the East Timbalier Island planting at intervals of (1) one year and sixty days, and (2) two years and sixty days following the Planting Completion Date, provided however that the actual site visit to conduct the Interim Monitoring shall take place within a three-week period more or less than the prescribed times. Equilon shall give notice of the Interim Monitoring to the Trustees 21 days in advance and provide transportation so that the Trustees' representatives may accompany Equilon on the Interim Monitoring visit to East Timbalier Island. The date of the monitoring visit may be revised upon agreement of the Parties if weather conditions justify rescheduling. Within 60 days after the site visit, Equilon shall provide to the Trustees a report describing the condition of the plantings compared to the Final Performance Criteria. After consulting with the Project Manager about the Trustees' written comments and any written recommended corrective action(s), Equilon shall take such corrective actions as are appropriate as a result of the Interim Monitoring in order to be

in a position to achieve compliance with the Performance Criteria for the Final Monitoring specified in the Monitoring Plan.

17. Final Monitoring and Report.

(a) Equilon shall monitor the progress of the planting within three years plus 60 days of the Planting Completion Date ("the Final Monitoring"), provided however that the actual site visit to conduct the Final Monitoring may take place within a three-week period more or less than the prescribed time. Equilon shall give notice of the Final Monitoring to the Trustees 21 days in advance so that the Trustee representatives may accompany Equilon on the Final Monitoring visit to East Timbalier Island. The date of the monitoring visit may be revised upon agreement of the Parties if weather conditions justify rescheduling.

(b) The Performance Criteria and monitoring requirements specified in the Monitoring Plan shall apply to the Final Monitoring for the Restoration Project.

(c) Equilon shall submit a written report regarding the Final Monitoring within 60 days of the Final Monitoring site visit. The Final Monitoring Report shall document compliance with the Performance Criteria in the Monitoring Plan. The Trustees shall review the Report, and Equilon shall undertake any further actions in accordance with Section X (Trustees' Review of Submittals and Corrective Action) of this Decree.

18. Excused Performance.

(a) The Parties recognize that the risk of a named storm, drought, and/or disease exists and that, should such circumstances arise subsequent to the lodging of this Consent Decree, to the extent that Equilon demonstrates by a preponderance of the evidence that one or more of these circumstances affected Equilon's ability to perform or to meet the Final

Performance Plan and/or Monitoring Plan requirements, then Equilon's performance obligations will be excused or altered to the extent specified below:

(i) if a named storm results in Equilon being unable to plant at the Restoration Property, the Project Manager, after consulting with Equilon and the Trustees, shall designate another area for planting;

(ii) if a named storm destroys the platform after planting has been completed, Equilon will be completely excused from future performance under this Decree after Equilon has paid all State Response Costs, Assessment Costs and Restoration Costs, and any penalty required by this Decree;

(iii) if, after a named storm that adversely affects plantings at the Restoration Property or after a drought event or disease outbreak that adversely affects vegetation similarly at the Restoration Property and on other barrier islands included in the Barataria/Terrebonne National Estuary Program, more than 50% of the plantings do not survive at the Restoration Property, Equilon shall for the plantings in the remaining area, continue monitoring in accordance with the Monitoring Plan and meet the Performance Criteria for the Final Monitoring specified in the Monitoring Plan with respect to the remaining area.

(iv) if, after a named storm that adversely affects plantings at the Restoration Property or after a drought event or disease outbreak that adversely affects vegetation similarly at the Restoration Property and on other barrier islands included in the Barataria/Terrebonne National Estuary Program, 25-50% of the plantings do not survive at the Restoration Property, then Equilon shall either:

a. implement physical improvements to stabilize the remaining plants, or

b. if more cost effective and technically feasible, replant equivalent acreage in the same or another area of the island.

In the replanted areas, Equilon shall conduct Initial Monitoring and meet the Initial Monitoring Performance Criteria, and shall conduct Final Monitoring and meet the Excused Performance Criteria, specified in the Monitoring Plan; and for the plantings in the remaining area, continue monitoring the plantings and meet the Performance Criteria for the Final Monitoring specified in the Monitoring Plan.

(v) if, after a named storm that adversely affects plantings at the Restoration Property or after a drought event or disease outbreak that adversely affects vegetation similarly at the Restoration Property and on other barrier islands included in the Barataria/Terrebonne National Estuary Program, less than 25% of the plantings do not survive at the Restoration Property, Equilon shall:

a. replant the affected acres. In the replanted areas, Equilon shall conduct Initial Monitoring and meet the Performance Criteria for Initial Monitoring with respect to the replanted areas, and shall conduct Final Monitoring and meet the Excused Performance Criteria, specified in the Monitoring Plan; and

b. for the plantings in the remaining area, continue monitoring the the plantings and shall meet the Performance Criteria for the Final Monitoring specified in the Monitoring Plan.

(b) If one of the foregoing circumstances occur, Equilon shall notify orally the Project Manager or, in his or her absence, the Alternate Project Manager within 10 days of the date that Equilon, its contractors, or any entity controlled by Equilon first knew or should have known that the circumstances might justify excused or modified performance. For purposes of this Paragraph, Equilon or its contractors or any entity controlled by Equilon knew or should have known that circumstances might justify excused or modified performance based on information available upon request by Equilon or its contractors or agents from the National Weather Service and the Project Manager, East Timbalier Project, LDNR, Office of Coastal Restoration. Within 21 days thereafter, Equilon shall submit to the Trustees an Excused Performance Report describing the circumstances, the effect of the circumstances on the platform and the plantings at the Restoration Project, and the basis for Equilon's claim that the circumstances justify an excused performance pursuant to Paragraph 18(a). The Trustees shall review such Report in accordance with Paragraphs 22-29. The Project Manager, after consultation with the Trustees, shall notify Equilon whether the circumstances justify excusing Equilon's performance of the Restoration Project, and if so, the extent to which performance will be excused in accordance with Paragraph 18(a). The Project Manager will direct Equilon to submit an Excused Performance Plan for any actions required under Paragraph 18(a). Equilon shall submit an

Excused Performance Plan, in accordance with Paragraphs 24-26. Equilon will not be required to perform any additional corrective action or monitoring of the Restoration Project for more than two additional years after implementation of the first Excused Performance Plan.

(c) If Equilon elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of the Project Manager's notice regarding the excused performance claim. In any such proceeding, Equilon shall have the burden of demonstrating by a preponderance of the evidence that the circumstances described in Paragraph 18(a) occurred and justify Equilon's excused or mitigated performance. If Equilon carries this burden, Equilon's performance requirements under this Consent Decree will be modified and no stipulated penalty will accrue for the delay in submitting an Excused Performance Plan.

(d) Events that only delay rather than prevent or impede performance in whole or in part shall be dealt with under Section XIV (Force Majeure).

19. Certification of Completion. The Project Manager, after obtaining concurrence from the Trustees, shall issue a Certification of Completion after the Trustees have determined that Equilon 1) has satisfied the Performance Criteria for the Final Monitoring specified in the Monitoring Plan, 2) has been excused from the performance obligations in accordance with Paragraph 18, or 3) has satisfied the requirements of any Excused Performance Plan.

## VIII. REPORTING

20. All plans and reports required to be submitted by the terms of this Consent Decree shall contain a certification signed by the Supervising Contractor or Equilon's representative, as designated in Paragraph 21. The certification shall read as follows:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this (submission/document) is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

## IX. NOTICE

21. Whenever under the terms of this Decree, written notice is required to be given or a report or other document is required to be forwarded by one Party to another Party or Parties, 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. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Parties:

As to the United States:

NOAA

Jed Brown
NOAA/NMFS/RC
Room 15245
1315 East West Highway
Silver Spring, MD 20910-3282

Linda Burlington, NOAA/GCNR
1315 East West Highway
SSMC3, Rm. 15132
Silver Spring, MD 20910-3282

DOI

Sam D. Hamilton
Authorized Official
U.S. Fish and Wildlife Service
1875 Century Blvd.
Atlanta, GA 30345

Field Supervisor
Attention: Buddy Goatcher
U.S. Fish & Wildlife Service
646 Cajundome Blvd., Suite 400
Lafayette, LA 70506

Department of Justice ("DOJ")

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
DJ # 90-5-1-1-06628

As to the State:

LDEQ

Bruce Hammatt, Administrator
Office of Environmental Compliance
P.O. Box 82215 street: 7290 Bluebonnet Road
Baton Rouge, LA 70884-2215

LDWF

Louisiana Department of Wildlife and Fisheries
Attention: Heather Finley
P.O. Box 98000 street: 2000 Quail Drive
Baton Rouge, LA 70898-9000

LDNR

Louisiana Department of Natural Resources
Attention: Dr. Terry Howey
P.O. Box 94396 street: 625 North Fourth St.; 13th Floor
Baton Rouge, LA 70804-9396

LOSCO

Warren Lorentz
Natural Resource Specialist
LOSCO
625 North 4th Street, Suite 800
Baton Rouge, Louisiana 70802

Attorney General

Ian Lindsay
Assistant Attorney General
State of Louisiana
P.O. Box 94005 street: 301 Main Street, Suite 1250
Baton Rouge, LA 70804 Baton Rouge, LA 70801

As to Equilon:

James B. Merrell (Representative for all purposes, including fiscal representative.)
Senior Attorney
Legal Department
Texaco Group Inc.
1111 Bagby
Suite 2764
Houston, Texas 77002

Jerry F. Hall (Representative for all purposes except fiscal.)
Sr. Scientist
TWEPSHE
1111 Bagby
Houston, Texas 77002

Michael O. Clement
Environmental Coordinator
Equilon Pipeline Company LLC
P.O. Box 52163 street: 701 Poydras St., Rm 4138
New Orleans, LA 70152 New Orleans, LA 70139

Van Williams
Senior Attorney
Equiva Services LLC Legal Department
P.O. Box 4254 street: 910 Louisiana St., Room 706
Houston, Texas 77210 Houston, Texas 77002

## X. TRUSTEES' REVIEW OF SUBMITTALS AND CORRECTIVE ACTION

22. The Project Manager, after obtaining concurrence from the other Trustees, shall with respect to any submission received: (1) approve the complete submission; (2) approve reasonably discrete components of the submission; (3) approve the complete submission or reasonably discrete components upon specified conditions; and/or (4) disapprove, in whole or in part, the submission for insufficiency or inaccuracy of information, and direct that Equilon modify the submission.

23. In the event of (1) approval of reasonably discrete components; (2) approval of the complete submission or reasonably discrete components upon condition; or (3) disapproval of part or all of a submission, Equilon shall address all of the Project Manager's written comments and make revisions, as necessary. The revised document shall be resubmitted to the Trustees within 14 days of receipt of written comments from the Project Manager on the initial submission, unless the term period is extended in writing by the Project Manager. Equilon shall be deemed to have failed to submit a timely plan, report or other document if any such revised document is determined by the Trustees to be deficient in whole or in part, and stipulated

penalties shall accrue from the date that an adequate submittal should have been provided to the Trustees.

24. In the event that Equilon does not demonstrate compliance with the planting requirements of the Final Restoration Plan and the Final Planting Design and/or the Performance Criteria for the Initial Monitoring or Equilon does not demonstrate compliance with the Performance Criteria for the Final Monitoring as specified in the Monitoring Plan, and if performance has not been excused in accordance with Paragraph 18 (a)(ii) (Excused Performance), Section XIV (Force Majeure), or Section XV (Dispute Resolution), then Equilon shall, after consulting with the Trustees, submit a Corrective Action Plan or, if applicable, an Excused Performance Plan.

25. Equilon shall include the following information, at a minimum, in any Corrective Action Plan or Excused Performance Plan required pursuant to this Decree:

(a) a description of the nature of the non-compliance with the Final Restoration Plan, Final Planting Design, and/or Monitoring Plan;

(b) an analysis of the cause(s) for the non-compliance;

(c) proposed corrective actions and/or monitoring activities;

(d) an analysis of site conditions that relate to the proposed corrective actions;

(e) a Design Plan for the corrective action(s);

(f) any aerial photographs;

(g) an implementation and/or monitoring schedule.

Corrective actions may include replanting to original stocking density, replanting the same species in the same area, replanting the same species in different areas, replanting different species, fertilization, sand fencing, allowing additional time for the plantings at the Restoration Property to develop (no action), or other actions.

26. Unless otherwise specified herein, the Corrective Action Plan or Excused Performance Plan shall be submitted within 60 days of Equilon's receipt of notice from the Trustees that a Plan is required unless Equilon proceeds under Section XIV (Force Majeure) or Section XV (Dispute Resolution), in which case the Plan, if required, is due 60 days from the final determination regarding the issue.

27. The Trustees shall review the Corrective Action Plan or the Excused Performance Plan for sufficiency in accordance with Paragraphs 22 and 23. The Trustees also may modify the Plan to require changes in the Work required therein and/or the proposed schedule. If corrective action is required in connection with the Initial Monitoring, the Trustees shall determine whether the Interim and Final Monitoring dates shall be extended commensurate with the time needed to implement and monitor the Corrective Action Plan.

28. Following the Trustees' approval of the Corrective Action Plan or the Excused Performance Plan, Equilon shall implement the Plan, including any revisions made by the Trustees, in accordance with the schedule approved by the Trustees. Equilon shall give notice of the implementation schedule 21 days before commencement of implementation, and shall provide transportation to the Trustee so that the Trustees' representatives may accompany Equilon during the implementation of the corrective action. Within 60 days following implementation of the Plan, Equilon shall monitor the corrective action by visiting the Restoration Property. Equilon shall give notice of the monitoring visit to the Trustees 21 days in advance, and provide transportation so that the Trustees' representatives may accompany

Equilon on the visit to East Timbalier Island. The date of the visits may be revised upon agreement of the Parties if weather conditions justify rescheduling.

29. Within 30 days after the monitoring site visit required by Paragraph 28, Equilon shall submit a Corrective Action Report describing compliance with the Corrective Action Plan or Excused Performance Plan and compliance with the applicable Performance Criteria. The Trustees shall review such Report in accordance with this Section. Equilon also shall conduct any additional monitoring required by the Trustees, and shall submit a Corrective Action Report within 30 days of the deadline for the additional monitoring, if any; except that any additional corrective action and monitoring shall be limited after the Final Monitoring Report in accordance with Paragraph 30.

30. If Equilon fails to meet the Performance Criteria for the Final Monitoring, and the Trustees determine that Equilon exercised best efforts to correct planting deficiencies during the interim monitoring period, the Trustees may require Equilon to submit one Corrective Action Plan within 60 days of the Trustees' written notice that further corrective action must be taken, and to implement the Plan, as approved by the Trustees, and to conduct one additional year of monitoring after implementation of the corrective action. If the Trustees determine that Equilon failed to exercise best efforts to correct planting deficiencies during the interim monitoring period and that the Performance Criteria for the Final Monitoring still have not been met after the fourth monitoring year, the Trustees may require Equilon to prepare one additional Corrective Action Plan within 60 days of the Trustees' written notice that further corrective action must be taken and to implement the Plan, as approved by the Trustees, and conduct a fifth monitoring year after implementation of the corrective action, provided that after the fifth monitoring year,

Equilon will not be required to perform any additional corrective action or monitoring of the Restoration Project. Any determination by the Trustees that Equilon has not exercised best efforts shall be subject to formal dispute resolution, pursuant to Paragraph 49. Best efforts includes best efforts to anticipate any potential failure to meet the Performance Criteria for the Final Monitoring, as specified in the Monitoring Plan, and best efforts to address the effects of a potential failure as it is occurring and after the failure to meet the Performance Criteria has been discovered. Best efforts also includes, but is not limited to, actions taken by Equilon in response to the Trustees' written recommendations during the Interim Monitoring period.

## XI. ASSURANCE OF ABILITY TO COMPLETE WORK

31. Within 30 days of entry of this Consent Decree, Equilon shall establish and maintain financial security in the amount of $750,000 in one or more of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equaling the total estimated cost of the Work;

(c) A trust fund; or

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Equilon;

Within 14 days thereafter, Equilon shall provide notice to the Trustees of the financial security maintained for this Restoration Project.

32. If Equilon can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 31 above after entry of this Consent Decree,

Equilon may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Equilon shall submit a proposal for such reduction to the Trustees, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by the Project Manager. In the event of a dispute, Equilon may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

33. Equilon may change the form of financial assurance provided under this Section at any time, upon notice to and approval by the Trustees, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Equilon may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

## XII. REIMBURSEMENT OF RESPONSE COSTS, ASSESSMENT COSTS, AND RESTORATION COSTS

34. Past State Response Costs and Assessment Costs. Within 30 days after lodging of this Consent Decree, Equilon shall pay the following amounts as reimbursement of the following State Trustees' unreimbursed documented past Response Costs and Assessment Costs for the period through June 30, 1999:

LDWF: $ 21,136.31

LDNR: $ 13,195.40

LOSCO: $ 10,434.22

Within 30 days after lodging of this Consent Decree, Equilon also shall pay $19,490.06 as reimbursement of LDEQ's unreimbursed documented past Assessment Costs for the period through August 27, 1999. The past State Assessment Costs shall be paid by separate check made payable to each State Trustee as follows:

LDWF, to the attention of James Patton, Undersecretary, Office of Management and Finance

LDEQ, to the attention of Darryl Serio, Fiscal Director Office of Management and Finance;

LDNR, to the attention of Robert D. Harper, Undersecretary;

LOSCO, to the attention of the Oil Spill Coordinator, LOSCO.

Each check shall reference the Lake Barre Natural Resource Damage Assessment and state that payment is for past Assessment Costs. All checks shall be sent to LOSCO to be forwarded to each State Trustee. Equilon shall send notice that such payment has been made to LDWF, LOSCO, LDNR, and LDEQ to the persons listed in Section IX (Notice).

35. Past Federal Assessment Costs. Within 30 days after lodging of this Consent Decree, Equilon shall pay the documented Assessment Costs incurred by the Federal Trustees in conjunction with the Oil Spill in the following amounts and shall include the following additional information:

(a) Past Assessment Costs of DOI. Equilon shall pay $18,673.87, as past Assessment Costs incurred by DOI on or before June 30, 1999, and also shall reference Account Number 14X5198 (NRDAR). The DOI Past Assessment Costs shall be paid in the form of a certified or cashier's check made payable to the "Treasurer, the United States of America" and tendered to the U.S. Attorney's Office, Eastern District of Louisiana, 501 Magazine Street, New Orleans, Louisiana 70130. Equilon shall send notice that such payment has been made to the

DOJ and DOI persons listed in Section IX (Notice) for notice to the United States and shall enclose a copy of the check, if applicable. Notice to DOI that such payment has been made, with a copy of the check, also shall be sent to:

Bruce Nesslage
DOI Restoration Fund
NBC/Division of Financial Management Services
Branch of Accounting Operations
Mail Stop 1313
1849 C St. NW
Washington, D.C. 20240

Regional Solicitor
U.S. Department of the Interior
75 Spring Street, Room 304
Atlanta, GA 30303

and shall reference Account Number 14X5198 (NRDAR), and state that the payment is for reimbursement of past Assessment Costs for the natural resource damage assessment with respect to the Lake Barre Oil Spill in Lake Barre, Terrebonne Parish, Louisiana, and is being paid by Equilon.

(b) Past Assessment Costs of NOAA. Equilon shall pay $385,228.52, as past Assessment Costs incurred by NOAA on or before May 22, 1999, and also state that the payment is for reimbursement of past Assessment Costs for the natural resource damage assessment with respect to the Lake Barre Oil Spill in Lake Barre, Terrebonne Parish, Louisiana, and shall reference "Lake Barre, Account # RK3EA2." The NOAA past Assessment Costs shall be paid by Fedwire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing USAO File Number 1999V00279, and DOJ Case Number 90-5-1-1-06628. Unless otherwise specified in this Decree, payment shall be made in accordance with instructions provided to Equilon by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Louisiana, following entry of the Decree. Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day. Equilon shall send notice that such payment has been made to the DOJ and NOAA persons listed in Section IX (Notice) for notice to the United States. Notice to NOAA that such payment has been made also shall be sent to:

NOAA/NOS/OR&R
ATTN: Kathy Salter, DARRF MANAGER
1305 East West Highway
SSMC4 Room 9331
Silver Spring, MD 20910-3281

36. Future State Assessment Costs and Restoration Costs. The State Trustees, through LOSCO, shall notify Equilon of documented Assessment Costs and Restoration Costs incurred by the State Trustees after June 30, 1999, except that LDEQ's future Assessment Costs and Restoration Costs shall pertain to costs incurred after August 27, 1999. Equilon shall pay the State Trustees' future Assessment Costs and Restoration Costs within 30 days after receiving notice of the amount due and the documentation to support the claim. Invoicing for reimbursement of costs incurred by each State Trustee shall be made quarterly according to the following schedule each year: First quarter ends September 30; Second quarter ends December 31; Third quarter ends March 31; Fourth quarter ends June 30. Each State Trustee shall utilize state and agency travel policies and procedures, including Division of Administration PPM 49 and LDEQ PPM 3001-88 (to the extent applicable). Each State Trustee shall provide LOSCO with a quarterly statement and a copy of all cost documentation. LOSCO shall forward a consolidated quarterly statement and a copy of all cost documentation to Equilon's fiscal contact.

Equilon shall pay future Assessment Costs and Restoration Costs by separate check made payable to each State Trustee, as follows:

> LDWF, to the attention of James Patton, Undersecretary, Office of Management and Finance;
>
> LDEQ, to the attention of Darryl Serio, Fiscal Director Office of Management and Finance;
>
> LDNR, to the attention of Robert D. Harper, Undersecretary;
>
> LOSCO, to the attention of the Oil Spill Coordinator, LOSCO.

Each check shall reference the Lake Barre Natural Resource Damage Assessment and state that payment is for future Assessment Costs and Restoration Costs. All checks shall be forwarded to LOSCO to be disbursed to each State Trustee. Equilon shall send notice that such payment has been made to LDWF, LOSCO, LDNR, and LDEQ to the persons listed in Section IX (Notice).

37. <u>Future Federal Assessment and Restoration Costs.</u>
   (a) <u>Payment Procedure for Future Assessment Costs Incurred Before Final Approval of the Decree.</u>

(i) <u>DOI.</u> Equilon shall reimburse DOI for all documented Future Assessment Costs incurred during the period from July 1, 1999, to the Final Approval of the Decree. Within 30 days after Final Approval of the Decree, DOI will send a bill, documenting all such costs. Equilon shall pay all documented future Assessment Costs for the period from July 1, 1999, to the date of Final Approval of the Decree within 30 days of receipt of the bill requiring payment. Equilon shall make the payment required by this subparagraph in the form of a certified or cashier's check made payable to the "Treasurer, the United States of America" and tendered to the U.S. Attorney's Office, Eastern District of Louisiana, 501 Magazine Street, New Orleans, Louisiana 70130. Equilon shall state that it is paying for reimbursement of future Assessment

Costs for the natural resource damage assessment with respect to the Lake Barre Oil Spill in Lake Barre, Terrebonne Parish, Louisiana, and it shall reference USAO File Number 1999V00279, DOJ Case Number 90-5-1-1-06628, DOI Account Number 14X5198 (NRDAR). Copies of the check to the United States shall be sent to the persons specified in Paragraph 35(a).

(ii) NOAA. Equilon shall reimburse NOAA for all documented future Assessment Costs incurred during the period from May 23, 1999, to the Final Approval of the Decree. Within 30 days after Final Approval of the Decree, NOAA will send a bill, documenting all such costs. Equilon shall pay all documented future Assessment Costs for the period from May 23, 1999, to the date of Final Approval of the Decree within 30 days of receipt of the bill requiring payment. Equilon shall make the payment required by this subparagraph by Fedwire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with electronic funds transfer procedures. Payment shall be made in accordance with instructions provided to Equilon by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Louisiana, following Final Approval of the Decree. Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day. Equilon shall state that it is paying for reimbursement of future Assessment Costs for the natural resource damage assessment with respect to the Lake Barre Oil Spill in Lake Barre, Terrebonne Parish, Louisiana, and it shall reference USAO File Number 1999V00279, DOJ Case Number 90-5-1-1-06628, and "Lake Barre, Account # RK3EA2." Notice of the payment should be sent to the persons specified in Paragraph 35(b).

(b) <u>Payment Procedure for Future Assessment and Restoration Costs Incurred for Monitoring and Oversight of the Restoration Project After Final Approval of the Decree.</u>

(i) <u>DOI.</u> Within 30 days after Final Approval of this Decree, Equilon shall pay $10,000 to compensate DOI for its participation in monitoring and oversight of Equilon's implementation and monitoring of the Restoration Project pursuant to the terms of this Decree. This payment shall reimburse DOI for all monitoring and oversight costs incurred during the period after the date of Final Approval of this Consent Decree until the issuance of the Certificate of Compliance to Equilon, except as provided in subparagraph (c). Equilon shall note that payment pertains to future Assessment Costs and Restoration Costs for the natural resource damage assessment with respect to the Lake Barre Oil Spill in Lake Barre, Terrebonne Parish, Louisiana, and it shall reference USAO File Number 1999V00279, DOJ Case Number 90-5-1-1-06628, DOI Account Number 14X5198 (NRDAR). Payment shall be made in accordance with the procedure specified in Paragraph 37(a)(i). Notice shall be provided to the persons specified in Paragraph 35(a).

(ii) <u>NOAA.</u> Within 30 days after Final Approval of this Decree, Equilon shall pay $30,000 to compensate NOAA for its participation in monitoring and oversight of Equilon's implementation and monitoring of the Restoration Project pursuant to the terms of this Decree. This payment shall reimburse NOAA for all monitoring and oversight costs incurred during the period after the date of Final Approval of this Consent Decree until the issuance of the Certificate of Compliance to Equilon, except as provided in subparagraph (c). Equilon shall make the payment required by this subparagraph in the form of a certified or cashier's check made payable to the "Treasurer, the United States of America" and tendered to the U.S. Attorney's Office, Eastern District of Louisiana, 501 Magazine Street, New Orleans, Louisiana 70130. Equilon shall state that it is paying for reimbursement of Future Assessment Costs and Restoration Costs for the natural resource damage assessment with respect to the Lake Barre Oil Spill in Lake Barre, Terrebonne Parish, Louisiana, and it shall reference USAO File Number 1999V00279, DOJ Case Number 90-5-1-1-06628, "Lake Barre, Account # RK3EA2." Copies of the check to the United States shall be sent to the persons specified in Paragraph 35(b).

(c) Payment Procedure for Future Restoration Costs Incurred by the Federal Trustees as a Result of a Work Takeover.

Equilon also shall reimburse the Federal Trustees for future Restoration Costs incurred by any Federal Trustee as a result of a Work takeover pursuant to Paragraph 71 (Work Takeover). The Federal Trustee(s) will periodically bill Equilon and its guarantor, as maintained pursuant to Paragraph 31, for any such costs if the Trustees take over the Restoration Project in accordance with Paragraph 71 (Work Takeover). Equilon shall pay the Restoration Costs for implementing the Restoration Project within 30 days of receipt of a bill with the documentation for any such costs. Payment shall be made in accordance with procedures provided to Equilon by the United States Attorney's Office at the time of the billing. Notice of the payment shall be provided to the persons specified in Paragraph 35.

## XIII INDEMNIFICATION AND INSURANCE

38. The United States and the State do not assume any liability by entering into this Consent Decree. Equilon shall indemnify, save, and hold harmless the United States and the State and their officers, officials, agents, employees, contractors, subcontractors, volunteers, or representatives for or from any and all claims or causes of action arising from, or on account of,

negligent or other wrongful acts or omissions of Equilon, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree and/or in using and/or occupying premises owned by the State. Further, Equilon agrees to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Equilon, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into, by, or on behalf of Equilon in carrying out activities pursuant to this Consent Decree. Neither Equilon nor any such contractor shall be considered an agent of the United States or the State.

39. The United States and the State shall give Equilon notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 38, and shall consult with Equilon prior to settling such claim.

40. Equilon waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State arising from or on account of any contract, agreement, or arrangement between Equilon and any person for performance of Work on or relating to the Restoration Project, including, but not limited to, claims on account of construction delays. In addition, Equilon shall indemnify, save, and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or

arrangement between Equilon and any person for performance of Work on or relating to the Restoration Project, including, but not limited to, claims on account of construction delays.

41. No later than October 1, 1999, Equilon shall secure, and shall maintain in full force and effect until the first anniversary of the Certification of Completion, pursuant to Paragraph 19 of Section VII (Monitoring and Compliance with Performance Criteria), the following insurance for the Restoration Project : (1) comprehensive general liability insurance with limits of one million dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage; and (2) automobile liability insurance with limits of one million dollars ($1,000,000) combined single limit, per accident, for bodily injury and property damage.

42. At all applicable times, Equilon also shall arrange for the following additional insurance: (1) aircraft liability insurance with limits of five million dollars ($5,000,000) combined single limit, per accident, for bodily injury and property damage; and (2) watercraft liability insurance with limits of two million dollars ($2,000,000) combined single limit, per accident, for bodily injury and property damage.

43. In addition, for the duration of this Consent Decree, Equilon shall satisfy, and shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing ~~the~~ Work on behalf of Equilon in furtherance of this Consent Decree including, but not limited to, Workers' Compensation insurance limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage, except that the Employers Liability limit shall be one million dollars ($1,000,000) when work is to be over water and involves maritime exposure. The insurer

shall agree to waive all rights of subrogation against the United States and the State for losses arising from work performed by Equilon for the United States and/or the State.

44. Each policy shall name the United States, the State, and all contractors and subcontractors as additional insureds. All insurance must be provided by insurers authorized in Louisiana, with a Best's rating of no less than "A-:V." Prior to commencement of the Work under this Consent Decree, Equilon shall provide to the Trustees certificates of the general liability insurance and automobile liability insurance that include the policy contract number, and a copy of each insurance policy. Equilon shall resubmit such certificates and copies of policies each year on the anniversary of the Final Approval of this Decree. If Equilon demonstrates by evidence satisfactory to the Trustees that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Equilon need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

## XIV. FORCE MAJEURE

45. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Equilon, of any entity controlled by Equilon, or of Equilon's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Equilon's best efforts to fulfill the obligation. The requirement that Equilon exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include

financial inability to complete the Work or a failure to attain the performance standards specified in the Final Restoration Plan and/or the Monitoring Plan.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Equilon shall notify orally the Project Manager or, in his or her absence, the Alternate Project Manager within 72 hours of when Equilon first knew that the event might cause a delay. Within 5 days thereafter, Equilon shall provide in writing to the Trustees an explanation and description of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay, Equilon's rationale for attributing such delay to a force majeure event if it intends to assert such a claim, and a statement as to whether, in the opinion of Equilon, such event may cause or contribute to an endangerment to public health, welfare or the environment. Equilon shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Equilon from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Equilon shall be deemed to know of any circumstances of which Equilon, any entity controlled by Equilon, or Equilon's contractors knew or should have known.

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

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

48. If Equilon elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of the Project Manager's notice. In any such proceeding, Equilon shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Equilon complied with the requirements of Paragraphs 45 and 46 above. If Equilon carries this burden, the delay at issue shall be deemed not to be a violation by Equilon of the affected obligation of this Consent Decree.

## XV. DISPUTE RESOLUTION

49. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the Trustees to enforce obligations of Equilon that have not been disputed in accordance with this Section.

50. Any dispute that arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed 21 days from the time the dispute arises, unless it is modified by written agreement of the Parties to the dispute. The dispute shall be considered to have arisen when one Party sends the other Parties a written Notice of Dispute.

51. (a) In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustees shall be considered binding unless, within 21 days after the conclusion of the informal negotiation period, Equilon invokes the formal dispute resolution procedures of this Section by serving on the Trustees a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position, and any supporting documentation relied upon by Equilon. The Statement of Position shall specify Equilon's position as to whether formal dispute resolution should proceed under Paragraph 52 or Paragraph 53.

(b) Within 21 days after receipt of Equilon's Statement of Position, the Project Manager will serve on Equilon the Trustees' Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position, and all supporting documentation relied upon by the Trustees. The Trustees' Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 52 or Paragraph 53. Within14 days after receipt of Trustees' Statement of Position, Equilon may submit a Reply.

(c) If there is disagreement between the Parties as to whether dispute resolution should proceed under Paragraph 52 or Paragraph 53 the Parties shall follow the procedures set forth in the paragraph determined by the Trustees to be applicable. However, if Equilon ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 52 and 53.

52. Formal dispute resolution for disputes pertaining to the selection or adequacy of the Restoration Project and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of the Restoration Project includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by the Trustees under this Consent Decree; and (2) the adequacy of the performance of the Work taken pursuant to this Consent Decree.

(a) An administrative record of the dispute shall be maintained by the Project Manager and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Trustees may allow submission of supplemental statements of position.

(b) The Director of the Office of Response and Restoration at NOAA and the Oil Spill Coordinator of LOSCO will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 52(a), after providing a hearing if requested in the Statement of Position. This decision shall be binding upon Equilon, subject only to the right to seek judicial review pursuant to Paragraph 52 (c) and (d).

(c) Any administrative decision made by the Director of the Office of Response and Restoration at NOAA and the Oil Spill Coordinator of LOSCO pursuant to Paragraph 52(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by

Equilon with the Court and served on the Trustees within 21 days of receipt of the final administrative decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The Trustees may file a response to Equilon's motion.

(d) In proceedings on any dispute governed by this Paragraph, Equilon shall have the burden of demonstrating that the final administrative decision is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the final administrative decision shall be on the administrative record compiled pursuant to Paragraph 52(a).

53. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of the Restoration Project nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph. Following receipt of Equilon's Statement of Position submitted pursuant to Paragraph 51, the Director of the Office of Response and Restoration at NOAA and the Oil Spill Coordinator of LOSCO will issue a final decision resolving the dispute, after providing a hearing, if requested in the Statement of Position. This decision shall be binding on Equilon unless, within 21 days of receipt of the decision, Equilon files with the Court and serves on the Trustees a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The Trustees may file a response to Equilon's motion.

54. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Equilon under this Consent Decree, not directly in dispute, unless the Trustees or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 63. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Equilon does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

## XVI. STIPULATED PENALTIES

55. Equilon shall be liable for stipulated penalties to the United States and the State for failure to comply with the requirements of this Consent Decree, unless excused under Paragraph 18 (Excused Performance) or Section XIV (Force Majeure). "Compliance" by Equilon shall mean completion of the activities specified in Paragraph 56 of this Consent Decree.

56. Stipulated penalties shall accrue in the following amount per day for each violation for the following violations:

(a) failure to submit the following plans and reports by the applicable deadlines: Final Planting Design; Initial Monitoring Report; Final Monitoring Report; Corrective Action Plan; Excused Performance Plan; or Corrective Action Report, if required following submittal of Initial Monitoring Report or Final Monitoring Report; and

(b) failure to complete planting by the Planting Completion Date, or to complete each corrective action in accordance with the applicable requirements by the applicable deadlines:

| Penalty Per Day | Period of Noncompliance |
|---|---|
| $ 500 | 1st through 30th day |
| $1,000 | 31st day and beyond |

57. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, subject to Paragraph 23, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (Trustees' Review of Submittals and Corrective Action), during the period, if any, beginning on the 31st day after the Trustee's receipt of such submission until the date that the Project Manager notifies Equilon of any deficiency; (2) with respect to a decision by the Director of the Office of Response and Restoration at NOAA and the Oil Spill Coordinator of LOSCO under Paragraph 52(b) or 53 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Equilon's Reply to the Trustees' Statement of Position is received until the date that the final administrative decision regarding such dispute has been issued; or (3) with respect to judicial review by this Court of any dispute under Section XV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

58. Following the Trustee's determination that Equilon has failed to comply with a requirement of this Consent Decree, the Project Manager may give Equilon written notification of the same and describe the noncompliance. The Project Manager may send Equilon a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Project Manager has notified Equilon of a violation.

59. All penalties accruing under this Section shall be due and payable to the Trustees within 30 days after Equilon receives from the Project Manager a demand for payment of stipulated penalties unless Equilon invokes the Dispute Resolution procedures under Section XV (Dispute Resolution).

60. The payment of penalties shall not alter in any way Equilon's obligation to complete the performance of the Work required under this Consent Decree unless the Trustees assume responsibility for the Restoration Project pursuant to Paragraph 71, and Equilon pays the stipulated penalties specified at Paragraph 56 during the period from the deadline until the Trustees complete the Work at the Restoration Project, provided that in no event shall stipulated penalties exceed $150,000 if the Trustees must take over implementation and monitoring or $50,000 if the Trustees must take over monitoring of the Restoration Project.

61. Equilon shall pay one-half of the total of all stipulated penalties to the State Trustees by check payable to the Treasurer of the State of Louisiana for deposit in the Louisiana Oil Spill Contingency Fund for allocation to the State Trustees in equal shares for natural resources restoration projects only. The check shall be sent to LOSCO and shall state that payment is for stipulated penalties related to the Lake Barre Restoration Project.

62. Equilon shall pay one-half of the total of all stipulated penalties to the United States either by (a) certified or cashier's check if less than $50,000, or (b) Electronic Fund Transfer ("EFT") if more than $50,000. Payments made by certified or cashier's check shall be payable to "Treasurer, the United States of America" and tendered to the U.S. Attorney's Office, Eastern District of Louisiana, 501 Magazine Street, New Orleans, Louisiana 70130. Payment of stipulated penalties must be made by the 15th day of the month following the month in which Equilon first has notice that the violations occurred. At the time of payment, Equilon must send a letter to the United States representatives listed in Section IX (Notice) referring to the name, caption, and docket number of this case and describing the basis for the penalties.

63. Penalties shall continue to accrue as provided in Paragraph 57 during any dispute resolution period, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of the Trustees or the Director of the Office of Response and Restoration at NOAA and the Oil Spill Coordinator of LOSCO, that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the Trustees within 15 days of the agreement or the receipt of final administrative decision;

(b) If the dispute is appealed to this Court and the Trustees prevail in whole or in part, Equilon shall pay all accrued penalties determined by the Court to be owed to the Trustees within 60 days of receipt of the Court's decision or order, except as provided in subparagraph (c) below;

(c) If the District Court's decision is appealed by any Party, Equilon shall pay all accrued penalties determined by the District Court to be owing to the Trustees into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the Trustees or to Equilon to the extent that they prevail.

64. If Equilon fails to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as interest, which shall be charged in accordance with 28 U.S.C. § 1961, from the time payment is due until such payment is made. Equilon shall pay interest on the unpaid balance, which shall begin to accrue on the date that the penalty is due.

65. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Equilon's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to the CWA, except as to matters covered by stipulated penalties at Paragraphs 56 and 60.

66. Notwithstanding any other provision of this Section, the Trustees may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

## XVII. <u>COVENANTS NOT TO SUE BY THE TRUSTEES</u>

67. <u>United States' Covenants Not to Sue</u>. In consideration of the actions that will be performed and the payments that will be made by Equilon under the terms of the Consent

Decree, and except as specifically provided in Paragraph 68 of this Section, the United States covenants not to sue or to take administrative action against Equilon or its predecessor Texaco for Natural Resource Damages and for recovery of Response Costs that resulted from the Oil Spill. These covenants not to sue shall take effect as follows:

(a) For the payment of Response Costs incurred by the Coast Guard and the Federal Trustees, the covenant shall take effect upon lodging of this Consent Decree.

(b) For the payment of Assessment Costs, the covenant shall take effect upon receipt by the Federal Trustees of the payments required by Paragraphs 35 and 37 of Section XII (Reimbursement of Response Costs, Assessment Costs, and Restoration Costs).

(c) For the payment of Restoration Costs, the covenant shall take effect upon receipt by the Federal Trustees of the payments required by Paragraph 37 of Section XII (Reimbursement of Response Costs, Assessment Costs, and Restoration Costs).

(d) For performance of the injury quantification (debit), the covenant shall take effect upon Final Approval of this Decree.

(e) With respect to the performance of all other Work, these covenants not to sue shall take effect upon Certification of Completion by the Trustees in accordance with Paragraph 19 of this Decree.

These covenants not to sue are conditioned upon the satisfactory performance by Equilon of its obligations under this Consent Decree. These covenants not to sue extend only to Equilon and its predecessor Texaco and do not extend to any other person.

68. United States' Reservation of Rights.

(a) 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 Equilon to reimburse the United States for additional natural resource damages if :

(i) conditions pertaining to the Oil Spill, previously unknown to the Trustees, are discovered; or

(ii) information about the Oil Spill, previously unknown to the Trustees, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Final Restoration Plan is not protective of human health or the environment. For purposes of this provision, the information and conditions known to the Trustees shall include only the information and conditions set forth in the administrative record supporting the Final Restoration Plan;

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

(i) Equilon's failure to pay the Trustees' past and future Assessment Costs and Restoration Costs or its failure to satisfactorily complete the Final Restoration Plan;

(ii) Equilon's failure to satisfy any other requirement of this Consent Decree;

(iii) claims brought on behalf of the United States, the United States Coast Guard, and the Oil Spill Liability Trust Fund, pursuant to Section 1012(f) of OPA, 33 U.S.C. § 2712(f) for costs, damages, and expenses of any sort, other than for injuries to natural resources under Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), payment of the Coast Guard's Response Costs in responding to the Oil Spill, and payment of the Federal Trustees' response costs in responding to the Oil Spill.;

(iv) liability arising from any past, present, or future oil discharges other than the Oil Spill that is the subject of this Consent Decree;

(v) criminal liability; and

(vi) liability for violations of federal or state law that occur during or after implementation of the Final Restoration Plan.

69. State Covenant Not to Sue. In consideration of the actions that will be performed and the payments that will be made by Equilon under the terms of the Consent Decree, and except as specifically provided in Paragraph 70 of this Section, the State covenants not to sue or to take administrative action against Equilon or its predecessor Texaco for Natural Resource Damages that resulted from the Oil Spill. These covenants not to sue shall take effect as follows:

(a) For the payment of Response Costs and Assessment Costs, the covenant shall take effect upon receipt by the State Trustees of the payments required by Paragraphs 34 and 36 of Section XII (Reimbursement of Response Costs, Assessment Costs, and Restoration Costs).

(b) For the payment of Restoration Costs, the covenant shall take effect upon receipt by the State Trustees of the payments required by Paragraph 36 of Section XII (Reimbursement of Response Costs, Assessment Costs, and Restoration Costs).

(c) For performance of the injury quantification (debit), the covenant shall take effect upon Final Approval of this Decree.

(d) With respect to the performance of all other Work, these covenants not to sue shall take effect upon Certification of Completion by the Trustees in accordance with Paragraph 19 of this Decree.

These covenants not to sue are conditioned upon the satisfactory performance by Equilon of its obligations under this Consent Decree. These covenants not to sue extend only to Equilon and its predecessor Texaco and do not extend to any other person.

70. State Reservation of Rights The State of Louisiana specifically reserves, and this Consent Decree is executed without prejudice to, all rights against Equilon with respect to any matter outside the scope of this Consent Decree, including but not limited to the following:

(a) claims based on a failure by Equilon to timely and satisfactorily fulfill any obligation set forth in this consent decree;

(b) liability arising from any past, present, or future unauthorized discharge of oil event outside the scope of this Consent Decree;

(c) criminal liability;

(d) liability for violations of federal or state law that occur during performance of any obligation under this Consent Decree; and

(e) liability for surface damages, as specified in the Grant of Particular Use for Construction, attached hereto as Exhibit 3.

Notwithstanding any other provision of this Consent Decree, the LDEQ retains all authority and reserves all rights to take any and all actions allowed by law to prevent and to remedy conditions that endanger human health or the environment.

71. Work Takeover. In the event the Trustees determine that Equilon has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner that may cause an endangerment to human health or the environment, the Trustees may assume the performance of all or any portions of the Work as they determine necessary. Equilon may invoke the procedures set forth in Section XV (Dispute Resolution), to dispute the Trustees' determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the Trustees in performing the Work pursuant to this Paragraph shall be considered future Restoration Costs that Equilon shall pay pursuant to Section XII (Reimbursement of Response Costs, Assessment Costs and Restoration Costs).

72. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Restoration Project, Equilon 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 or the State 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 not to sue set forth in this Section (Covenants Not to Sue by the Trustees).

73. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all action authorized by law.

## XVIII. COVENANT NOT TO SUE BY EQUILON

74. Equilon hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State for any claims arising from or relating to the Oil Spill, pursuant to any federal, state, or common law, including, but not limited to:

(a) any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund; or

(b) any claims arising out of activities related to the Restoration Project, including claims based on the Trustees' selection of the Restoration Project, oversight of the Restoration Project, and/or approval of plans for such activities.

75. Equilon reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim

based on the Trustees selection of the Restoration Project, or the oversight of the Restoration Project, and/or approval of Equilon's plans or activities associated with the Restoration Project. The foregoing applies only to claims that are brought pursuant to any statute other than the Clean Water Act and the Oil Pollution Act and for which the waiver of sovereign immunity is found in a statute other than the Clean Water Act and the Oil Pollution Act.

## XIX. EFFECT OF SETTLEMENT

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

## XX. RETENTION OF JURISDICTION

77. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XV (Dispute Resolution) hereof.

## XXI. MODIFICATION

78. Schedules for completion of the Work, as specified in this Consent Decree and other documents required pursuant to this Decree, may be modified by agreement of the Parties. All such modifications shall be made in writing.

79. Except as to matters covered in Paragraph 78, no material modifications shall be made to the Consent Decree, including the attachments thereto, without written notification to and written approval of the Parties and the Court.

80. Modifications to the Consent Decree, including the attachments thereto, that do not materially alter the Restoration Project may be made by written agreement between the Trustees and Equilon.

81. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

## XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

82. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. 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 the Consent Decree is inappropriate, improper, or inadequate. Equilon consents to the entry of this Consent Decree without further notice.

83. If for any reason the 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.

## XXIII. TERMINATION

84. Either Party may apply to the Court to terminate this Decree after Equilon has paid all Assessment Costs and Restoration Costs and penalties due and the Trustees have issued the Certification of Completion, pursuant to Paragraph 19.

## XXIV. SIGNATORIES/SERVICE

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

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

87. Equilon shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Equilon hereby agrees 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.

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

SO ORDERED THIS _____ DAY OF ____________, 1999.

______________________________

United States District Judge

We hereby consent to the entry of this Consent Decree:

FOR THE UNITED STATES OF AMERICA:

Sept 24, 1999
Date

Joel M. Gross
Chief
Environmental Enforcement Section
U.S. Department of Justice

September 20, 1999
Date

Elizabeth A. Edmonds
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20530-7611
(202) 514-1032

Eddie J. Jordan Jr.
United States Attorney
Eastern District of Louisiana

Sandra E. Gutierrez
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Eastern District of Louisiana
501 Magazine Street
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NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SEP 20 1999

Date

Craig O'Connor
Acting General Counsel
National Oceanic and Atmospheric Administration
1315 East West Highway
Silver Spring, MD 20910-3282

FOR THE STATE OF LOUISIANA:

LOUISIANA DEPARTMENT OF JUSTICE

9-23-99
Date

Richard P. Ieyoub
Attorney General
P.O. Box 94005
Baton Rouge, LA 70804

Ian Douglas Lindsey
Assistant Attorney General
State of Louisiana
P.O. Box 94005
Baton Rouge, LA 70804

9/22/95
Date

LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

J. Dale Givens
Secretary
P.O. Box 82263
Baton Rouge, LA 70884-2263

9/23/99
Date

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

John E. Roussel for James H. Jenkins
Secretary
P.O. Box 98000
Baton Rouge, LA 70898-9000

ASSISTANT SECRETARY
OFFICE OF FISHERIES

9/22/99
Date

LOUISIANA DEPARTMENT OF NATURAL RESOURCES

Jack C. Caldwell
Secretary
P.O. Box 94396
Baton Rouge, LA 70804-9396

9-20-99
Date

LOUISIANA OIL SPILL COORDINATOR'S OFFICE

Roland J. Guidry

Roland J. Guidry
Louisiana Oil Spill Coordinator
LOSCO/Office of the Governor
625 North 4th Street, Suite 800
Baton Rouge, LA 70802

FOR EQUILON COMPANY:

September 21, 1999
Date

Signature: [signature]
Name (print): G. M. Rootes
Title: President
Address: 777 Walker
Houston, Texas 77002

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

Name (print): CT Corporation
Title:
Address: 8550 United Plaza Blvd.
Baton Rouge, Louisiana 70809

Ph. Number: 225-922-4490