

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA,
LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY and
LOUISIANA DEPARTMENT OF
WILDLIFE AND FISHERIES for the
STATE OF LOUISIANA,

Plaintiffs,

v.

CITGO PETROLEUM
CORPORATION, OCCIDENTAL
CHEMICAL CORPORATION, OXY
USA INC. and PPG INDUSTRIES,
INC.,

Defendants.

CIVIL ACTION NO. 2:18-cv-00402

JUDGE

MAGISTRATE JUDGE

CONSENT DECREE FOR NATURAL RESOURCE DAMAGES

This Consent Decree is made and entered into by and among the United States of America (“United States”), on behalf of the United States Department of the Interior, acting through the United States Fish and Wildlife Service (“DOI/FWS”), and the National Oceanic and Atmospheric Administration (“NOAA”) of the United States Department of Commerce, and the Louisiana Department of Environmental Quality (“LDEQ”) and the Louisiana Department of

Wildlife and Fisheries (“LDWF”) for the State of Louisiana (collectively “Plaintiffs”), and defendants CITGO Petroleum Corporation, Occidental Chemical Corporation, OXY USA Inc. and PPG Industries, Inc. (collectively the “Settling Defendants”).

I. BACKGROUND

A. Contemporaneously with the lodging of this Consent Decree, the United States, on behalf of NOAA and DOI/FWS, and LDEQ and LDWF for the State, have filed a Complaint in this matter against Settling Defendants pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a), and Section 311(f) of the Federal Water Pollution Control Act (also known as the Clean Water Act or “CWA”), 33 U.S.C. § 1321(f).

B. In the Complaint, the United States and the State seek compensation for Natural Resource Damages pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), and Section 311(f) of the CWA, 33 U.S.C. § 1321(f), for the injury to, destruction of or loss of Natural Resources, and related resource service losses, under the trusteeship of the federal and state natural resource trustee agencies which include NOAA, DOI/FWS, LDEQ and LDWF. The State also asserts claims against Settling Defendants under the Louisiana Environmental Quality Act, La. R.S. § 30:2025.

C. In the Complaint, the Plaintiffs assert, *inter alia*, that Settling Defendants, or their legal predecessors in interest, discharged and disposed of hazardous substances into Bayou d’Inde in the Calcasieu Estuary from their facilities, that such hazardous substances were released into the environment and have caused injury to, destruction of, or loss of Natural Resources, including ecological service losses, within Bayou d’Inde and the Calcasieu Estuary,

and that Settling Defendants are liable for Natural Resource Damages, including the costs of assessment of damages.

D. NOAA, DOI/FWS, LDWF and LDEQ (collectively, “the Trustees”) have each been designated a natural resource trustee pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f); Section 311 of the CWA, 33 U.S.C. § 1321; Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 C.F.R. §§ 300.600 - 300.615; Executive Order 12580, and LAC 43:XXIX.109.A, and, under these authorities, act on behalf of the public to seek damages for the injury to, destruction of, or loss of Natural Resources resulting from releases of hazardous substances into the environment.

E. On March 31, 1999, the United States Environmental Protection Agency (“EPA”) commenced a Remedial Investigation of the Calcasieu Estuary including Bayou d’Inde and areas in the northern portion of the Calcasieu Estuary, pursuant to 40 C.F.R. § 300.430. *Calcasieu Estuary Remedial Investigation, Lake Charles Louisiana*, EPA 2002 (“RI”). The RI identified four Areas of Concern (“AOC”) within the Calcasieu Estuary. *Id.* at Section 2.6. *See also Calcasieu Estuary Remedial Investigation/Feasibility Study (RI/FS): Baseline Ecological Risk Assessment (BERA)*, MESL 2002.

F. The RI identified the following hazardous substances, among others, in the surface waters of Bayou d’Inde: various metals and polychlorinated biphenyls (“PCBs”). The RI also identified the following hazardous substances, among others, in the sediments of Bayou d’Inde: various metals, polycyclic aromatic hydrocarbons (“PAHs”), PCBs, dioxin/furans, bis (2-ethylhexyl) phthalate (“BEHP”) and organochlorine pesticides. Finally, the RI identified the following hazardous substances, among others, in biota in Bayou d’Inde: various metals, PAHs,

PCBs, BEHP and dioxin/furans.

G. In accordance with 40 C.F.R. § 300.5, EPA entered into a Superfund Memorandum of Agreement (“MOA”) with LDEQ in May 2003 under which EPA became Lead Agency for the Bayou Verdine AOC, and LDEQ became Lead Agency for the Bayou d’Inde AOC (hereafter “BDAOC”). The MOA provides that for each Area of Concern there would be a Lead Agency and Support Agency.

H. Pursuant to a Cooperative Agreement between LDEQ and certain potentially responsible parties (“PRPs”) (namely PPG Industries, Inc., CITGO Petroleum Corporation, Occidental Chemical Corporation, OXY USA Inc., Equistar Chemicals LLP and Westlake Polymers LP), these PRPs performed a Corrective Action Study for the BDAOC. The Corrective Action Study Report was finalized on August 27, 2009, and it documented the development and evaluation of remedial action alternatives for the BDAOC.

I. On March 26, 2011, LDEQ issued its Decision Document for the Final Remedy of Bayou d’Inde Site, Calcasieu Parish. The selected remedial action for Bayou d’Inde requires actions in four areas of the Bayou, consisting of *in situ* capping of sediments in certain areas of the upper main channel (“Area 1”), removal of sediments in the main channel between the PPG Canal and the mouth of Bayou d’Inde (“Area 2”), capping of sediments in certain of the fringe marshes (“Area 3”), and capping of sediments in a portion of Lockport Marsh (“Area 4”). Pursuant to a Cooperative Agreement signed in 2013 by LDEQ and certain PRPs (namely PPG Industries, Inc., Axiall Corporation, CITGO Petroleum Corporation, Occidental Chemical Corporation, and OXY USA Inc.), these PRPs agreed to undertake LDEQ’s selected remedial action for Bayou d’Inde (“2013 Cooperative Agreement”).

J. The Trustees initiated a Natural Resources Damage Assessment (“NRDA”) using the data provided by EPA’s RI for the Calcasieu Estuary and through additional investigations conducted by the Trustees to evaluate the injury, loss or destruction of Natural Resources in aquatic and riparian areas, and related resource service losses, within Bayou d’Inde and the Calcasieu Estuary due to releases of hazardous substances at or from the Settling Defendants’ facilities.

K. During the NRDA process, the Trustees also consulted with the Louisiana Department of Natural Resources (“LDNR”), another designated resource trustee in Louisiana. LDNR participated in meetings and discussions periodically throughout the assessment and negotiation process, was aware of the scope of the assessment, and supported the settlement.

L. The Settling Defendants cooperated with the Trustees in the NRDA process pursuant to 43 C.F.R. § 11.32(a)(2)(iii) to assess injuries and quantify damages as well as to identify potential Natural Resource Restoration Actions to compensate the public for injuries to Natural Resources and related resource service losses.

M. This Consent Decree provides the terms under which Settling Defendants shall compensate the Trustees for Natural Resource Damages and provides for payments by Settling Defendants to the Trustees in the total amount of eleven million dollars (\$11,000,000.00) that will be utilized to: 1) reimburse the Trustees for Past Assessment Costs; 2) fund restoration planning; and 3) fund compensatory Natural Resource Restoration Actions to address the injured Natural Resources and resource service losses.

N. The Trustees will conduct restoration planning in accordance with 43 C.F.R. § 11.81, 42 U.S.C. §§ 9607(f) and 9611(i), and the National Environmental Policy Act

("NEPA"), 42 U.S.C. § 4321 *et seq.*

O. Each Trustee has incurred assessment costs in connection with carrying out this NRDA process.

P. The Settling Defendants that have entered into this Consent Decree do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaint. By entering into this Consent Decree and making the payments required by its terms, Settling Defendants do not expressly or by implication admit liability for damages for injury to, destruction of, or loss of Natural Resources relating to the Site as alleged in the Complaint or otherwise.

Q. The United States, the State, and Settling Defendants recognize, and this Court finds, that the Parties have negotiated this Consent Decree in good faith, that implementation of this Consent Decree will expedite the restoration of Natural Resources and avoid lengthy and protracted litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and Section 311(n) of the CWA, 33 U.S.C. § 1321(n). This Court also has personal jurisdiction over the Settling Defendants. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b). Solely for the purpose of this Consent Decree and the underlying Complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling

Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State, and the Settling Defendants and their respective successors and assigns. Any change in ownership or corporate status of a Settling Defendant, including any transfer of assets or real or personal property, shall in no way alter Settling Defendants' responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA and the CWA, and in regulations promulgated under CERCLA and the CWA, including 43 C.F.R. § 11.14, shall have the meanings assigned to them in such statutes and regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Bayou d’Inde Area of Concern” or “BDAOC” shall mean the upper, middle, and lower portions of Bayou d’Inde, including its fringe marshes and Lockport Marsh, PPG Canal, and the Coon Island Loop.

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

“CWA” shall mean the Clean Water Act or Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*

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

“2013 Cooperative Agreement” shall mean the Cooperative Agreement signed in 2013 by LDEQ and PPG Industries, Inc., Axiall Corporation, CITGO Petroleum Corporation, Occidental Chemical Corporation, and OXY USA Inc. under which these PRPs agreed to implement the remedial action for Bayou d’Inde selected by LDEQ on March 26, 2011 in its Decision Document for the Final Remedy of Bayou d’Inde Site, Calcasieu Parish.

“Day” shall mean a calendar day unless expressly stated to be a business or working day. “Business or working day” shall mean a day other than a Saturday, Sunday, or Federal or State of Louisiana State holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal or State of Louisiana holiday, the period shall run until the close of business of the next business or working day.

“Date of Lodging” shall mean the date this Consent Decree is lodged with the Clerk of Court.

“Effective Date” shall mean the effective date of this Consent Decree as provided by Section XV of this Consent Decree (Effective Date and Retention of Jurisdiction).

“Federal Trustees” shall mean NOAA and DOI/FWS.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate

of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Natural Resource Damages” shall mean any compensatory relief or damages, including the reasonable costs of assessing such damages (including but not limited to Past Assessment Costs), that are recoverable pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), Section 311(f) of the CWA, 33 U.S.C. § 1321(f), 43 C.F.R. § 11.15, La. R.S. 30:2451 et seq., or LAC 43:XXIX, or state or federal common law, by the Trustees on behalf of the public for injury to, destruction of, loss of, or loss of use of Natural Resources or resource services resulting from releases or threatened release of hazardous substances to, at, or from the Site.

“Natural Resources” shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), and, when referring to the State, shall also include all uses of the term under La. R.S. 30:2454(17).

“Natural Resource Restoration Actions” shall mean projects selected by the Trustees to restore, rehabilitate, replace and/or acquire the equivalent of the Natural Resources alleged to be injured as a result of releases or the threat of releases to, at, or from the Site, in accordance with Section VII.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

“Parties” means the United States, on behalf of the Federal Trustees, LDEQ and LDWF for the State, CITGO Petroleum Corporation, Occidental Chemical Corporation, OXY USA Inc. and PPG Industries, Inc.; and each shall be a “Party.”

“Past Assessment Costs” means the reasonable costs of the natural resource damage assessment for the Site incurred by NOAA and by DOI/FWS prior to May 1, 2016, and by LDEQ, and by LDWF prior to [the Date of Lodging] that are recoverable pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607 (a)(4)(C) and 43 C.F.R. § 11.15(a)(3), or state law.

“Plaintiffs” means the United States, on behalf of NOAA and DOI/FWS, and LDEQ and LDWF for the State.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean CITGO Petroleum Corporation, Occidental Chemical Corporation, OXY USA Inc. and PPG Industries, Inc.

“Site” shall mean the waters, sediments, riparian areas, connected wetlands, and associated habitats of the Bayou d’Inde Area of Concern or BDAOC and any waters, sediments, riparian areas, connected wetlands, and associated habitats in the Calcasieu Estuary where Waste Material released to, at, or from the BDAOC came to be located or where Natural Resources or resource services are or were allegedly affected or impaired by such releases.

“State” shall mean LDEQ, LDWF and LDNR for the State of Louisiana, and its political subdivisions, departments and agencies.

“State Trustees” shall mean LDEQ and LDWF.

“Trustees” shall mean the Federal Trustees and the State Trustees collectively.

“United States” means the United States of America and its departments, agencies, and instrumentalities.

“Waste Material” shall mean: (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and any hazardous waste material under La. R.S. 30:2173(2).

V. GENERAL PROVISIONS

4. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are: (i) to provide funding by the Settling Defendants to the Trustees to restore Natural Resources and resource services to compensate the public for Natural Resource Damages attributable to past releases of hazardous substances at or from the Settling Defendants’ facilities into Bayou d’Inde and the Calcasieu Estuary; (ii) to provide for payments to each Trustee of Past Assessment Costs by the Settling Defendants; and (iii) to resolve the Plaintiffs’ claims for Natural Resource Damages against the Settling Defendants.

5. Responsibility for Compliance. The obligations of Settling Defendants to make the payments required under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one Settling Defendant to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

VI. PAYMENTS BY SETTLING DEFENDANTS

6. Within 30 days of the Effective Date of this Decree, the Settling Defendants shall pay a total of eleven million dollars (\$11,000,000.00) to reimburse the Federal and State Trustees for their Past Assessment Costs and to fund Natural Resource Restoration Actions to be selected

and conducted by Trustees in accordance with Section VII (Natural Resource Restoration Actions), in the manner and amounts set forth in Paragraphs 7-9 below.

7. Past Assessment Costs Incurred by Federal Trustees. Settling Defendants shall pay Past Assessment Costs incurred by NOAA and DOI/FWS in the manner and amounts described herein. The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Western District of Louisiana shall provide Settling Defendants, in accordance with Section XII (Notice), with instructions regarding making payments to the United States on behalf of the Federal Trustees. The instructions must include a Consolidated Debt Collection System (“CDCS”) number to identify payments made under this Consent Decree. For all payments subject to this paragraph, Settling Defendants shall make such payment by Fedwire Electronic Funds Transfer (“EFT”) (at <https://www.pay.gov>) to the U.S. DOJ account, in accordance with the instructions provided under this paragraph, and including references to the CDCS Number, and DJ Number 90-11-2-1284/3.

a. FOR DOI/FWS: The Settling Defendants shall pay \$1,317,993.85 to reimburse Past Assessment Costs incurred by DOI/FWS. Settling Defendants shall make this payment in accordance with the instructions provided by the FLU of the United States Attorney’s Office pursuant to Paragraph 7, and the payment shall also reference NRDAR Account Number 14X5198, and “CALCASIEU Bayou d’Inde Natural Resource Damages Settlement, Louisiana.” The Settling Defendants shall send notice that such payment has been made to the United States in accordance with Section XII (Notice), as well as to:

U.S. Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attention: Restoration Fund Manager
1849 C Street, NW
Mail Stop 5538
Washington, DC 20240; and

b. FOR NOAA: The Settling Defendants shall pay \$1,663,848.00 to reimburse Past Assessment Costs incurred by NOAA. Settling Defendants shall make this payment in accordance with the instructions provided by the FLU of the United States Attorney's Office pursuant to Paragraph 7, and the payment shall also reference and "CALCASIEU Bayou d'Inde Natural Resource Damages Settlement, Louisiana - NOAA's DARRF." The Settling Defendants shall send notice that such payment has been made to the United States in accordance with Section XII (Notice), as well as to:

NOAA/NOS/OR&R
ATTN: Donna Roberts, DARRF Manager
1305 East West Highway
SSMC4, Room 10139
Silver Spring, MD 20910-3281

8. Past Assessment Costs Incurred by the State Trustees

a. Past Assessment Costs Incurred by LDEQ. Settling Defendants shall pay \$62,914.00 to LDEQ to reimburse Past Assessment Costs incurred for the Site. Payment to LDEQ shall be made by certified check payable to the "Louisiana Department of Environmental Quality" or by EFT in accordance with instructions to be provided to Settling Defendants by LDEQ upon request. If by check, the check shall reference this action and be mailed to Fiscal Director, Office of Management and Finance, P.O. Box 4303, Baton Rouge LA 70821. Settling Defendants shall provide written notice of this payment to LDEQ in accordance with Section XII

(Notice).

b. Past Assessment Costs Incurred by LDWF. Settling Defendants shall pay \$290.00 to LDWF to reimburse Past Assessment Costs incurred for the Site. Payment to LDWF shall be made by certified check payable to the “Louisiana Department of Wildlife and Fisheries” and sent to Attn: Yolanda Martin, General Counsel, P.O. Box 98000, Baton Rouge, LA 70898-9000. Settling Defendants shall provide written notice of this payment to LDWF in accordance with Section XII (Notice).

9. Funding of Trustees’ Natural Resource Restoration Actions. Settling Defendants shall pay \$7,954,954.15, for deposit into a segregated sub-account within the NRDAR Fund known as the “Bayou d’Inde Area of Concern Site Restoration Account,” to be managed by DOI/FWS for the joint use of the Trustees to pay for Trustee-sponsored Natural Resource Restoration Actions in accordance with Section VII (Natural Resource Restoration Actions). Settling Defendants shall make this payment in accordance with the instructions provided by the FLU of the United States Attorney’s Office for the Western District of Louisiana pursuant to Paragraph 7 and shall reference NRDAR Account Number 14X5198, and “Bayou d’Inde Area of Concern Site Restoration Account.” Settling Defendants shall provide written notice of this payment to all Federal and State Parties in accordance with Section XII (Notice), as well as to:

U.S. Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attention: Restoration Fund Manager
1849 C Street, NW
Mail Stop 5538
Washington, DC 20240.

10. Interest. In the event any payment required by this Section is not made when due, the Settling Defendants shall pay Interest on the unpaid balance. The Interest shall begin to accrue from the Effective Date through the date of full payment. Interest payments shall be paid in the same manner as the overdue principal amount, and shall be directed to the same fund or account as the overdue principal amount. Interest is in addition to any Stipulated Penalties accruing for late payments under Section VIII (“Stipulated Penalties”). Payments of Interest made under this paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of the Settling Defendants’ failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section VIII.

VII. NATURAL RESOURCE RESTORATION ACTIONS

11. All funds deposited in the segregated sub-account within the NRDAR Fund under Paragraph 9 shall be managed by DOI/FWS for the joint use of the Trustees to pay for the costs of projects that restore, rehabilitate, replace and/or acquire the equivalent of the Natural Resources alleged to be injured as a result of releases or the threat of release of Waste Material to, at, or from the Site (“Trustee-sponsored Natural Resource Restoration Actions”) in accordance with this Consent Decree. All such funds shall be applied toward the costs of: (a) planning Trustee-sponsored Natural Resource Restoration Actions; (b) administrative expenses necessary for, and incidental to, Trustee-sponsored Natural Resource Restoration Actions; (c) implementation of Trustee-sponsored Natural Resource Restoration Actions, and (d) monitoring of Trustee-sponsored Natural Resource Restoration Actions in accordance with 43 C.F.R. § 11.81, 42 U.S.C. §§ 9607(f) and 9611(i), and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*

12. Restoration Planning. In accordance with CERCLA, the Trustees will prepare a Restoration Plan describing how the funds dedicated for Trustee-sponsored Natural Resource Restoration Actions under this Section will be used. As provided by 43 C.F.R. § 11.93, the Plan will identify how funds will be used for restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the Natural Resources and resource services that were alleged to be injured or lost due to the release or threatened release of hazardous substances to, at, or from the Site. The Plan will also include public notice and comment requirements for the proposed Restoration Actions.

13. Decisions regarding any use or expenditure of funds under this Section shall be made by the agreement of the Trustees, acting through the Trustee Council established by the Trustees. In light of the nature and extent of alleged injuries to Natural Resources under the trusteeship of NOAA, the Trustees have determined that NOAA will be the Lead Administrative Trustee.

VIII. STIPULATED PENALTIES

14. Settling Defendants shall be liable for the stipulated penalties set forth below, which shall accrue per violation per day, for the failure to make the payments to the United States or to the State required by Paragraphs 7-9:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,500	1st through 14th day
\$ 2,500	15th through 30th day
\$ 3,500	31st day and beyond

15. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

16. Following the determination by the United States as to Paragraph 7 or the State as to Paragraph 8, or jointly by the United States and the State as to Paragraph 9, that the Settling Defendants have failed to comply with one of the requirements of this Consent Decree listed above, the United States and/or the State, as appropriate, may give the Settling Defendants written notice of same and describe the noncompliance. The United States and/or the State, as appropriate, may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in this Section regardless of whether Plaintiff(s) have notified the Settling Defendants of a violation.

17. All penalties accruing under this Section shall be due and payable to the United States and/or the State, as appropriate, within 30 days of the Settling Defendants' receipt of a demand for payment of the penalties.

18. Stipulated penalties accruing and owed for Settling Defendants' failure to timely pay the identified Past Assessment Costs will be payable to the appropriate Plaintiff. Penalties for violations of Paragraph 7 (Past Assessment Costs Incurred by NOAA and DOI/FWS) shall be paid to the United States in accordance with procedures set forth in Paragraph 7 and shall reference DOJ Number 90-11-2-1284/3, the CDCS Number, "Stipulated Penalties," and "CALCASIEU Bayou d'Inde Natural Resource Damages Settlement, Louisiana." Penalties for violations of Paragraph 8 (Past Assessment Costs Incurred by the State Trustees) shall be paid to

the State Trustees in accordance with Paragraph 8 and shall reference “Stipulated Penalties.” Penalties for violations of Paragraph 9 shall be paid equally (50/50) to the United States and to the State Trustees in accordance with the applicable provisions above in this paragraph.

19. If Settling Defendants fail to pay stipulated penalties when due, Settling Defendants shall pay Interest on the unpaid stipulated penalties. Interest shall accrue from the date stipulated penalties are due until the date of payment. Additionally, in the event the Settling Defendants fail to pay stipulated penalties when due, the United States and/or the State, as appropriate, may institute a legal proceeding to collect such penalties, as well as Interest accruing on any unpaid balance, as provided by law.

20. 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 a violation of this Consent Decree by Settling Defendants. If Defendant(s) fail to comply with the Decree, Plaintiff(s) shall be entitled to collect the costs (including attorney’s fees) incurred in any judicial action to enforce the terms of this Decree.

21. Notwithstanding any other provision of this Section, the United States and/or the State may, in their unreviewable discretion, waive any portion of stipulated penalties owed to that respective sovereign pursuant to this Consent Decree.

IX. COVENANTS NOT TO SUE BY PLAINTIFFS

22. In consideration of the payments to be made by Settling Defendants under Section VI in accordance with the terms of this Consent Decree, and except as specifically provided in Paragraph 23 (Reservations of Rights by Plaintiffs):

a. The United States hereby covenants not to sue or take any civil judicial or

administrative action against Settling Defendants to recover Natural Resource Damages. This covenant not to sue shall take effect upon the Effective Date of this Consent Decree. These covenants are conditioned upon the satisfactory performance by Settling Defendants of all of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and to Settling Defendants' successors, assigns, officers, and employees (but only to the extent that the alleged liability of the successor, assign, officer, or employee is based on the alleged liability of Settling Defendants), and does not extend to any other person.

b. The State hereby covenants not to sue or take any civil judicial or administrative action against Settling Defendants to recover Natural Resource Damages. This covenant not to sue shall take effect upon the Effective Date of this Consent Decree. These covenants are conditioned upon the satisfactory performance by Settling Defendants of all of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and to Settling Defendants' successors, assigns, officers, and employees (but only to the extent that the alleged liability of the successor, assign, officer, or employee is based on the alleged liability of Settling Defendants), and does not extend to any other person.

23. Reservation of Rights by Plaintiffs.

a. Notwithstanding any other provision of this Consent Decree, the United States and the State Trustees reserve the right to institute proceedings against Settling Defendants in this action or in a new action, seeking recovery of Natural Resource Damages, if:

(i) conditions at the Site, unknown to the Trustees as of the Date of Lodging ("Unknown Conditions"), are discovered, or

(ii) information regarding the Site, unknown to the Trustees as of the

Date of Lodging (“New Information”), is received, and the Unknown Conditions or New Information, together with any other relevant information, indicates that the releases of hazardous substances to Bayou d’Inde have resulted in new or additional injury to, loss of, or destruction of Natural Resources of a type or future persistence that was unknown to the Trustees as of the date of the lodging of this Consent Decree. The following shall not be considered Unknown Conditions or New Information for the purpose of this paragraph: (i) an increase solely in the Trustees’ assessment of a known injury to, destruction of, or loss of Natural Resources at the Site; or (ii) injury to, destruction of, or loss of Natural Resources at the Site arising from the re-exposure, resuspension, or migration of Waste Material known to be present at the Site by natural causes, by causes other than the Settling Defendants, or by the Settling Defendants’ performance of the LDEQ-selected Remedy in accordance with the 2013 Cooperative Agreement.

b. For purposes of subparagraph 23.a, the information and the conditions known to the Trustees shall include any information and conditions related to the Site identified or referenced in records in the possession or under the control of, or that otherwise were known to, any one of the Trustees as of the Date of Lodging of this Consent Decree, including but not limited to the EPA Remedial Investigation Report and Baseline Ecological Risk Assessment.

c. 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 of the United States or the State Trustees based on:

(i) Settling Defendants’ failure to comply with any obligation or requirement of this Consent Decree;

(ii) liability for any relief other than for Natural Resource Damages as

defined in this Decree;

(iii) liability for any matter not expressly included in the Covenants Not to Sue by Plaintiffs;

(iv) liability arising from any releases of Waste Material from a facility owned or operated by a Settling Defendant to the Site that occurs after the date of signature by Settling Defendants on this Consent Decree;

(v) liability arising from any releases of Waste Material from any site or location that is not the subject of this Consent Decree, including but not limited to, any Waste Material taken from the Site and disposed of at another site or location;

(vi) liability based upon the ownership or operation of any portion of the Site by Settling Defendants when such ownership or operation commences after signature of this Consent Decree by Settling Defendants, and does not arise solely from Settling Defendants' performance of the LDEQ selected Remedy in accordance with the 2013 Cooperative Agreement;

(vii) liability based upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than in performance of the LDEQ selected Remedy in accordance with the 2013 Cooperative Agreement, after signature of this Consent Decree by the Settling Defendants;

(viii) liability based on violations of Federal or State law that occur after the Date of Lodging of this Consent Decree;

(ix) criminal liability; and

(ix) liability to reimburse response costs or to implement response actions under CERCLA with respect to the Site, except as resolved with respect to the State Trustees in the 2013 Cooperative Agreement.

X. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS

24. Subject to the reservations in Paragraphs 25-26, Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State Trustees with respect to Natural Resource Damages and this Consent Decree pursuant to any federal, state, or common law, including but not limited to:

a. any direct or indirect claim for reimbursement of Natural Resource Damages from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law; and

b. any claims against the United States or the State Trustees under CERCLA §§ 107 or 113, or state law, regarding Natural Resource Damages and this Consent Decree.

25. Except as provided in Paragraph 33 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Covenants Not to Sue by Plaintiffs), other than claims for failure to meet a requirement of this Consent Decree, but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

26. Settling Defendants' Federal Reservation of Rights. Settling Defendants reserve, and this Consent Decree is without prejudice to, their rights against the United States for the recovery of costs incurred for response actions taken with respect to the Site under Sections 107 or

113 of CERCLA, 42 U.S.C. §§ 9607 or 9613 (excluding Natural Resource Damages), and all rights with respect to matters not expressly included in the covenant not to sue in Paragraph 24.

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

XI. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION

28. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section X (Covenants by Settling Defendants), each of the Parties expressly reserves any and all rights (including but not limited to any right of contribution pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), 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 Natural Resource Damages against any person not a Party hereto.

29. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved its liability to the United States and to the State within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for the “matters addressed.” The “matters addressed” in this Consent Decree are Natural Resource Damages. Provided, however, that if the United States or the State Trustees exercise rights under the reservations in Section IX (Covenants Not to Sue by

Plaintiffs), other than the reservation in Paragraph 23(c)(ix) (criminal liability), the “matters addressed” in this Consent Decree will no longer include those Natural Resource Damages that are within the scope of the exercised reservation.

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

31. Each Settling Defendant shall, with respect to any suit or claim brought by it for “matters addressed” in this Consent Decree, notify the United States and the State Trustees in writing no later than 60 days prior to the initiation of such suit or claim.

32. Each Settling Defendant shall, with respect to any suit or claim brought against it for “matters addressed” in this Consent Decree, notify in writing the United States and the State Trustees within 10 days after service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify the United States and the State Trustees within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

33. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs with respect to the Site, Settling Defendants shall not assert, and may not maintain any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or any other defenses based upon the

contention that the claims raised by the Plaintiffs 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 Section IX (Covenants Not to Sue by Plaintiffs).

34. The failure of any of the Plaintiffs to insist upon strict and prompt performance of any provision of this Consent Decree shall not operate as a waiver of any requirement of this Consent Decree or of the Plaintiff(s)' right to insist on prompt compliance in the future with such provision, and shall not prevent a subsequent action by any of the Plaintiffs to enforce such a provision.

XII. NOTICE

35. Whenever, under the terms of this Consent Decree, a notice, report or other document is required to be sent by one Party to another, it shall be made electronically or by mailing, unless otherwise requested. It shall be directed to the individuals at the addresses set forth 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 United States and the State Trustees, and the Settling Defendants, respectively.

As to the United States:

By email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-2-1284/3

By Mail:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1284/3

and to NOAA and DOI/FWS as provided below

As to NOAA:

NOAA Office of General Counsel
Attn: Kimberly Katzenbarger
1315 East West Hwy; Room 15104
Silver Spring, MD 20910
Kimberly.katzenbarger@noaa.gov

NOAA Restoration Center
Attn: John Barco
263 13th Ave South
St. Petersburg, FL 33701
John.Barco@noaa.gov

As to DOI/FWS:

US DOI/FWS
Solicitor's Office
Division of Parks and Wildlife
Environmental Restoration
Attn: Lisa Stevens
1849 C Street NW MS 6313
Washington, DC 20240
lisa.stevens@sol.doi.gov

US DOI/FWS
Louisiana Ecological Services Office
Attn: Brigitte Firmin
646 Cajundome Blvd., Suite 400
Lafayette, LA 70506
Brigitte_Firmin@fws.gov

As to LDEQ:

Celena Cage, Administrator
LDEQ/OEC/Enforcement
P.O. Box 4312
Baton Rouge, LA 70821-4302
celena.cage@la.gov

Stephanie Braden
Louisiana Department of Environmental Quality
P.O. Box 4314
Baton Rouge, LA 70821-4314
Steph.braden@la.gov

Dwana King and Jill Carter
Attorneys, LDEQ
P.O. Box 4302
Baton Rouge, LA 70821-4302
Dwana.king@la.gov
Jill.carter@la.gov

As to LDWF:

Yolanda Martin
Louisiana Department of Wildlife and Fisheries
P.O. Box 98000
Baton Rouge, LA 70898-9000
ymartin@wlf.la.gov

As to CITGO:

William S. Booth
Sr. Corporate Counsel Refinery Operations
CITGO Petroleum Corporation
135th & New Avenue
Lemont, Illinois 60439
WBOOTH@citgo.com

Christopher Newcomb
General Manager, Health, Safety, Security and Environmental
CITGO Petroleum Corporation
1293 Eldridge Parkway (W3044)
Houston, TX 77077
cnewco1@citgo.com

Phyllis Holifield
Manager, Environmental Protection Department
CITGO Petroleum Corporation
1601 Highway 108 East
Sulphur, LA 70665

As to Occidental Chemical and OXY USA Inc.:

Madeline Stone
Senior Counsel
Glenn Springs Holdings, Inc.
5 Greenway Plaza
Dallas, TX 77046
Madeline.Stone@oxy.com

David Sweeten
Glenn Springs Holdings, Inc.
5 Greenway Plaza
Houston, TX 77046
David.Sweeten@oxy.com

As to PPG:

Steven F. Faeth
Corporate Counsel - EHS
PPG Industries, Inc.
One PPG Place
Pittsburgh PA 15272
sfaeth@ppg.com

Thomas Ebbert
Manager, Remediation
Corporate EHS
PPG Industries, Inc.
440 College Park Drive
Monroeville, PA 15146
ebbert@ppg.com

XIII. MODIFICATION

36. Modifications. Material modifications to this Consent Decree shall be in writing, signed by the Parties, and shall be effective upon approval by the Court. Non-material modifications to this Consent Decree shall be in writing and shall be effective when signed by the Parties.

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

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

38. 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 U.S. Department of Justice policy, and the State will provide a concurrent period of not less than thirty (30) days for public notice and comment on the Consent Decree in accordance with State requirements. Each Plaintiff reserves the right to withdraw or withhold its consent to entry of this Decree if comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate.

39. 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.

40. The Settling Defendants consent to the entry of this Consent Decree without further notice.

XV. EFFECTIVE DATE AND RETENTION OF JURISDICTION

41. This Consent Decree will be effective upon the approval and entry of the Consent Decree by the Court.

42. This Court shall retain 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 modifying or enforcing the terms and conditions of this Consent Decree, and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, execution or enforcement of this Consent Decree.

XVI. SIGNATORIES/SERVICE

43. Each undersigned representative of a Settling Defendant to this Consent Decree, of the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and of LDEQ and LDWF on behalf of the State, 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.

44. Each Settling Defendant 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 or the State has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

45. Each Settling Defendant 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 the service of the Complaint, Consent Decree, and any

related filings with the Court. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

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

XVII. FINAL JUDGMENT

47. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

48. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

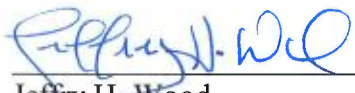
SO ORDERED THIS _____ **DAY OF** _____, 201_.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, LDEQ and LDWF v. CITGO Petroleum Corp., et al.*, relating to Bayou d'Inde Calcasieu Estuary Natural Resource Damages.


FOR THE UNITED STATES OF AMERICA:

3/17/18
Date



Jeffrey H. Wood
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C.

3/20/2018
Date



Kenneth G. Long
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
202-514-2840
kenneth.long@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, LDEQ and LDWF v. CITGO Petroleum Corp., et al.*, relating to Bayou d'Inde Calcasieu Estuary Natural Resource Damages.

Alexander C. Van Hook
United States Attorney
Western District of Louisiana

s/ Katherine W. Vincent
Katherine W. Vincent (#18717)
Assistant United States Attorney
Western District of Louisiana
U.S. Department of Justice
United States Attorney's Office
800 Lafayette Street, Suite 2200
Lafayette, Louisiana 70501
katherine.vincent@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, LDEQ and LDWF v. CITGO Petroleum Corp., et al.*, relating to Bayou d'Inde Calcasieu Estuary Natural Resource Damages.

FOR LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

11/16/17

Date



Chuck Carr Brown, Ph.D.

Secretary

Louisiana Department of Environmental Quality

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, LDEQ and LDWF v. CITGO Petroleum Corp., et al.*, relating to Bayou d'Inde Calcasieu Estuary Natural Resource Damages.

FOR LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES:

3-1-18


Date


Jack Montoucet
Secretary
Louisiana Department of Wildlife and Fisheries

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, LDEQ and LDWF v. CITGO Petroleum Corp., et al.*, relating to Bayou d'Inde Calcasieu Estuary Natural Resource Damages.

FOR CITGO PETROLEUM:

12-13-2017
Date


Name: James Critman
Title: Vice President Refining

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, LDEQ and LDWF v. CITGO Petroleum Corp., et al.*, relating to Bayou d'Inde Calcasieu Estuary Natural Resource Damages.

FOR OCCIDENTAL CHEMICAL CORPORATION:

12/4/2017

Date




Name: MICHAEL ANDERSON

Title: VICE PRESIDENT

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, LDEQ and LDWF v. CITGO Petroleum Corp., et al.*, relating to Bayou d'Inde Calcasieu Estuary Natural Resource Damages.

FOR OXY USA, INC.:

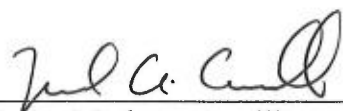
12/4/2017
Date


Name: MICHAEL ANDERSON
Title: VICE PRESIDENT

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, LDEQ and LDWF v. CITGO Petroleum Corp., et al.*, relating to Bayou d'Inde Calcasieu Estuary Natural Resource Damages.

FOR PPG INDUSTRIES, INC.:

12/19/2017
Date


Name: Mark A. Cancilla

Title: Vice President, EHS