

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

UNITED STATES OF AMERICA and )  
STATE OF TEXAS, )  
Plaintiffs, )  
v. )  
City of Port Arthur, Jefferson County, )  
Texas; )  
American Commercial Barge Line LLC; )  
E.I. du Pont de Nemours & Company; )  
Huntsman Petrochemical Corporation; )  
Kirby Corporation; )  
Kirby Inland Marine, LP; )  
Phillips 66 Company; )  
Port Neches Towing, Inc.; and )  
Sabine Towing & Transportation Co. Inc.; )  
Defendants. )

CIVIL ACTION NO. 1:13-CV-235

**CONSENT DECREE**



686249

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”); and the State of Texas (“State”), on behalf of the Texas Commission on Environmental Quality (“TCEQ”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 (“CERCLA”), as amended, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the State Marine Superfund Site, located in the City of Port Arthur, Jefferson County, Texas (“the Site”). The State also alleged that the Settling Defendants are liable to the State under Section 361.197 of the Texas Solid Waste Disposal Act (“TSWDA”), TEX. HEALTH & SAFETY CODE § 361.197.

B. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

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

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

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. This Court has supplemental jurisdiction over the state law claims brought under the Texas Health and Safety Code, pursuant to 28 U.S.C. § 1367. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

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

## IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-6975, as amended.

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

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

“DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

“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.

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

“Parties” shall mean the United States, the State of Texas and the Settling Defendants.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through January 31, 2012.

“Past State Response Costs” shall mean all costs that the State has paid at or in connection with the Site pursuant to Section 133(c) of the TSWDA, TEX. HEALTH & SAFETY CODE § 361.133(c), through August 31, 2012.

“Plaintiffs” shall mean the United States and the State of Texas.

“Remedial Action” shall mean those activities that were undertaken to implement the Record of Decision relating to the Site, and all attachments thereto, signed April 18, 2007.

“Removal Action” shall mean those activities that were undertaken to implement the Request for a Removal Action at State Marine Site, dated May 8, 2000.

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

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

“Settling Defendants” shall mean:

- a. the City of Port Arthur, Jefferson County, Texas;
- b. American Commercial Barge Line LLC, and its predecessors, successors and assigns, and its parent or affiliate entities, including American Commercial Lines LLC, American Commercial Lines Inc., ACL Transportation Services LLC and Jeffboat LLC, but only to the

extent that the alleged liability of such entities arises out of the same activities relating to the Site that gave rise to the alleged liability of American Commercial Barge Line LLC;

c. E.I. du Pont de Nemours & Company;

d. Huntsman Petrochemical Corporation;

e. Kirby Corporation, and its subsidiaries, Kirby Inland Marine, LP, Kirby Ocean Transport Company and Sabine Transportation Company, together with their predecessors in interest, including Hollywood Marine, Inc., Dixie Offshore Transportation Company, and Dixie Carriers Inc.;

f. Phillips 66 Company, and its predecessors in interest, ConocoPhillips Company, Continental Oil Company and Conoco Inc.;

g. Port Neches Towing, Inc.; and

h. Sabine Towing & Transportation Co. Inc., and its parent or affiliate entities, Chromolloy American Corporation and Sequa Corporation, but only to the extent that the alleged liability of such entities arises out of the same activities relating to the Site that gave rise to the alleged liability of Sabine Towing & Transportation Co. Inc.

“Site” shall mean the State Marine Superfund site, encompassing approximately 17 acres, located on Pleasure Islet in Port Arthur, Jefferson County, Texas.

“State” shall mean the State of Texas, acting on behalf of the TCEQ.

“TCEQ” shall mean the Texas Commission on Environmental Quality, an agency of the State of Texas, and its successor agencies.

“TSWDA” shall mean the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE § 361.001 *et seq.*

“United States” shall mean the United States of America and each department, agency,

and instrumentality of the United States, including EPA.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make cash payments, which include premiums, to resolve their alleged liability to the United States and the State for the Site, as provided in the Covenants Not to Sue by Plaintiffs in Section VIII, and subject to the Reservations of Rights by Plaintiffs in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Payment by Settling Defendants to the United States for Past Response Costs.  
Within 30 days after the Effective Date, Settling Defendants shall pay to EPA \$1,029,000 for Past Response Costs.

6. Payment by Settling Defendants to the United States shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Eastern District of Texas after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Robin E. Morse  
Crain Caton & James  
Five Houston Center  
1401 McKinney, Suite 1700  
Houston, TX 77010  
[rmorse@craincaton.com](mailto:rmorse@craincaton.com)  
713-752-8611

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA



in accordance with Section XIV (Notices and Submissions).

7. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 06BX, and DOJ case number 90-11-3-09504.

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

9. Payment by Settling Defendants to the State for Past Response Costs. Within 30 days after the Effective Date, Settling Defendants shall pay to the State \$70,000, of which \$65,000 is designated as Past State Response Costs and \$5,000 is designated as State Attorneys' Fees. Any such amounts remaining unpaid more than 30 days after the Effective Date shall draw interest at the legal rate from the Effective Date until paid.

10. Payment by Settling Defendants to the State shall be made by Wire Transfer to the Comptroller of Public Accounts, State of Texas, for the Attorney General's Suspense Account, using the following instructions:

Financial Institution:	TX COMP AUSTIN
Routing Number:	114900164
Account Name:	Comptroller of Public Accounts Treasury Operations
Account Number to Credit:	463600001
Reference:	AG No. 11-3265253 (State Marine Superfund Site)
Attention:	Office of the Attorney General Chief, EPD Div. (463-2012)
Contact:	Abel Rosas, Fin. Rptg. (475-4380)

11. At the time of payment, the payor shall likewise send a copy of the Wire Transfer authorization form and transaction record, together with a transmittal letter, in accordance with Section XIV (Notices and Submissions), and shall send a copy by email to [Thomas.Edwards@TexasAttorneyGeneral.gov](mailto:Thomas.Edwards@TexasAttorneyGeneral.gov). The transmittal letter shall state that the payment is made pursuant to this Consent Decree, and shall reference the civil action number of this case and AG No. 11-3265253.

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

12. Interest on Late Payments: If Settling Defendants fail to make any payment under Paragraph 5 (Payment by Settling Defendants to the United States for Past Response Costs) or Paragraph 9 (Payment by Settling Defendants to the State for Past Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

13. Stipulated Penalty.

a. If any amounts due to EPA under Paragraphs 5 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 12, of \$10,000 per violation per day that such payment is late.

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

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727

SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference the CDCS Number, Site/Spill ID Number 06BX, and DOJ Case Number 90-11-3-09504.

c. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 06BX, the CDCS Number, and DOJ Case Number 90-11-3-09504.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

14. If the United States or the State brings an action to enforce this Consent Decree and such action is successful, Settling Defendants shall reimburse the United States or the State, respectively, for all costs of such action, including but not limited to costs of attorney time.

15. Payments made under this Section shall be in addition to any other remedies or

sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

16. The obligations of Settling Defendants to pay amounts owed the United States and the State under Paragraphs 5, 9, 12 and 13 of this Consent Decree are joint and several. In the event of the failure of any Settling Defendant to make the payments required under Paragraph 5, 9, 12 or 13 of this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

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

#### VIII. COVENANTS NOT TO SUE BY PLAINTIFFS

18. Covenants for Settling Defendants by United States. Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of the payment required by Paragraph 5 (Payment by Settling Defendants to the United States for Past Response Costs) and any Interest due thereon under Paragraph 12 or stipulated penalties due under Paragraph 13 (Stipulated Penalty). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling

Defendants and do not extend to any other person.

19. Covenants for Settling Defendants by the State. Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the State covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); Section 7002 of RCRA, 42 U.S.C. § 6972; subchapters F–L of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code §§ 361.181–361.345; subchapters C and D of Chapter 7 of the Texas Water Code, Tex. Water Code §§ 7.051–7.111; or Tex. Water Code §§ 26.261–26.267, with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by the State of the payment required by Paragraph 9 (Payment by Settling Defendants to the State for Past Response Costs) and any Interest due thereon under Paragraph 12 or stipulated penalties due under Paragraph 13 (Stipulated Penalty). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants and do not extend to any other person.

#### IX. RESERVATIONS OF RIGHTS BY PLAINTIFFS

20. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenants Not To Sue By Plaintiffs in Section VIII. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendants with respect to:

- a. liability for failure of the Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;

- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by Settling Defendants when such ownership or operation commences after signature of this Consent Decree by Settling Defendants;
- e. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants;
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

21. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform response actions relating to the Site or (2) to reimburse the United States or the State for additional costs of response if:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Removal Action and/or Remedial Action is not protective of human health or the environment.

22. For purposes of Paragraph 21, the information and the conditions known to EPA

shall include only that information and those conditions known to EPA as of the date the Record of Decision ("ROD") for the Site was signed and set forth in that ROD and the administrative record supporting that ROD.

X. COVENANTS BY SETTling DEFENDANTS

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

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

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

c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site; or

d. any claim that the State's actions in this case have been frivolous, unreasonable, or without foundation, within the meaning of TEX. HEALTH & SAFETY CODE § 361.342, or that its pleadings have been groundless, brought in bad faith, brought for the purpose of harassment, fictitious, or false.

24. Except as provided in Paragraph 26 (Claims Against Other PRPs) and Paragraph 31 (Waiver of Claims-Splitting Defenses), these covenants not to sue shall not apply in the event

the United States or the State, respectively, brings a cause of action or issues an order pursuant to any of the reservations set forth in Section IX (Reservations of Rights by Plaintiffs), other than in Paragraph 20(a) (liability for failure to meet a requirement of this Consent Decree) or 20(b) (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States or the State, respectively, is seeking pursuant to the applicable reservation.

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

26. Claims Against Other PRPs. Each Settling Defendant agrees not to assert any claims and agrees to waive all claims or causes of action (including but not limited to claims or causes of action under CERCLA Sections 107(a) and 113, 42 U.S.C. §§ 9607(a), 9613) that it may have for response costs relating to the Site against any other person who is a potentially responsible party at the Site under CERCLA. This waiver shall not apply with respect to any defense, claim or cause of action that the Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

#### XI. EFFECT OF SETTLEMENT; CONTRIBUTION

27. Except as provided in Paragraph 26 (Claims Against Other PRPs), 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 Paragraph 26 (Claims Against Other PRPs), each Party expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that such Party may have with respect to any matter, transaction, or occurrence relating



in any way to the Site against any person not a Party to this Consent Decree. Nothing in this Consent Decree diminishes the right of the United States and the State, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

28. Contribution Protection under CERCLA. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant is entitled, as of the Effective Date, 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 “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the State, or any other person; provided, however, that if the United States or the State exercises rights under the reservations in Section IX (Reservations of Rights by Plaintiffs), other than in Paragraphs 20(a) (claims for failure to meet a requirement of the Consent Decree) and 20(b) (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

29. Contribution Protection under the TSWDA. The Parties agree, and by entering this Consent Decree the Court finds, that this Consent Decree constitutes a settlement agreement with the State that resolves all liability of the Settling Defendants to the State as regards the Site, within the meaning of TEX. HEALTH & SAFETY CODE § 361.277(b), and therefore the Settling Defendants are released from liability to other persons who may have incurred response costs at

the Site, as described in TEX. HEALTH & SAFETY CODE § 361.344(a), for cost recovery, contribution, or indemnity regarding a matter addressed in this Consent Decree, as provided by TEX. HEALTH & SAFETY CODE § 361.277(b).

30. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA, DOJ and the State in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA, DOJ and the State in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA, DOJ and the State within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

31. Waiver of Claim-Splitting Defenses: In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States 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 Section VIII (Covenants Not to Sue by Plaintiffs).

## XII. ACCESS TO INFORMATION

32. Settling Defendants shall provide to EPA and the State, upon request, copies of all records, reports, documents, or other information (hereinafter referred to as "records") within

their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

33. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to the United States under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law (or Texas law, as to any records sought by the State). If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to the Plaintiffs in redacted form to mask the privileged information only. Settling Parties shall retain all records that they claim to be privileged until the Plaintiffs

have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

c. Records submitted to the State shall be subject to the confidentiality and public access requirements of the Texas Public Information Act, TEX. GOV'T CODE § 552.001 *et seq.*

34. No claim of confidentiality shall be made with respect to any data, including but not limited to all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

### XIII. RETENTION OF RECORDS

35. Until ten years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all non-identical copies of Records (including records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary:

36. After the conclusion of the ten-year document retention period in the preceding Paragraph, Settling Defendants shall notify EPA, DOJ and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA, DOJ or the State, Settling Defendants shall deliver any such Records to EPA or the State, respectively. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name,

title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all Records that they claim to be privileged until the Plaintiffs have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

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

#### XIV. NOTICES AND SUBMISSIONS

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

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-09504

As to EPA:

Director, Superfund Division (6SF)  
U.S. Environmental Protection Agency  
1445 Ross Avenue  
Dallas, TX 75202

As to the State:

Chief, Environmental Protection Division  
(Attn: Thomas Edwards)  
Texas Attorney General's Office (MC-066)  
P.O. Box 12548  
Austin, TX 78711-2548

Or deliver to:

Wm. P. Clements State Office Bldg.  
300 W. 15th St., Fl. 10  
Austin, TX 78701-1649  
Phone: (512) 463-2012

- and -

Christa McLintock, Staff Attorney  
Office of Legal Services  
Litigation Division, MC-175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

As to Settling Defendants:

Robin E. Morse  
Crain Caton & James  
Five Houston Center  
1401 McKinney, Suite 1700  
Houston, TX 77010  
[rmorse@craincaton.com](mailto:rmorse@craincaton.com)  
713-752-8611

XV. RETENTION OF JURISDICTION

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

XVI. INTEGRATION

40. This Consent Decree, and its appendices, constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

41. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. This Consent Decree is also subject to the opportunity for a public meeting as described in Section 7003(d) of RCRA, 42 U.S.C. § 6973(d). The United States and the State each reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

#### XVIII. SIGNATORIES/SERVICE

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

44. Each Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

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

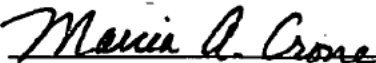
#### XIX. FINAL JUDGMENT

46. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State and the Settling



Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 20 DAY OF June, 2013.

  
United States District Judge

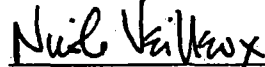
Signature Page for Consent Decree in United States of America v. City of Port Arthur, Jefferson  
County, Texas, et al. (E.D. Tex.)

Through their undersigned representatives, the Parties agree and consent to the entry of this  
Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA:



IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7415  
Washington, DC 20044-7415  
(202) 514-2718



NICOLE VEILLEUX  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Voice: (202) 514-0056/616-8746  
Facsimile: (202) 514-8395  
Email: [nicole.veilleux@usdoj.gov](mailto:nicole.veilleux@usdoj.gov)

JOHN M. BALES  
United States Attorney  
Eastern District of Texas

ROBERT AUSTIN WELLS  
Assistant United States Attorney  
SBN: 24033327  
110 North College, Suite 700  
Tyler, TX 75702-0204  
Voice: (903) 590-1400  
Facsimile: (903) 590-1437  
Email: [Robert.Wells3@usdoj.gov](mailto:Robert.Wells3@usdoj.gov)

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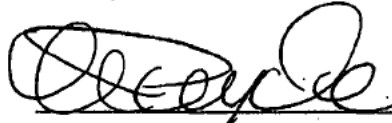
**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

Date: 4/10/13



CARL EDLUND, P.E.  
Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Ave.  
Dallas, TX 75202-2733

Date: 04/08/13



for JOSEPH COMPTON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Ave.  
Dallas, TX 75202-2733

Signature Page for Consent Decree in United States of America v. City of Port Arthur, Jefferson  
County, Texas, et al. (E.D. Tex.)

Through its undersigned representatives, the State agrees and consents to the entry of this Consent Decree subject to the public notice and comment provisions of TEX. WATER CODE § 7.110:

**FOR THE STATE OF TEXAS:**

GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

JOHN B. SCOTT  
Deputy Attorney General for Civil Litigation

JON NIERMANN  
Chief, Environmental Protection Division

Date:

June 3, 2013

J. N. Edwards

THOMAS H. EDWARDS  
Assistant Attorney General  
Tex. Bar No. 06461800  
[Thomas.Edwards@TexasAttorneyGeneral.gov](mailto:Thomas.Edwards@TexasAttorneyGeneral.gov)

Office of the Attorney General (MC-066)  
P.O. Box 12548  
Austin, Texas 78711-2548  
Tel: (512) 463-2012  
Fax: (512) 320-0052

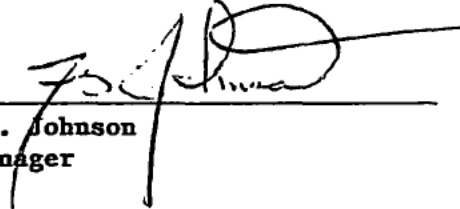
ATTORNEYS FOR THE STATE OF TEXAS, ON  
BEHALF OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Signature Page for Consent Decree in United States of America v. City of Port Arthur, Jefferson  
County, Texas, et al. (E.D. Tex.)

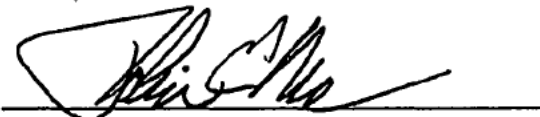
Through their undersigned representatives, the Parties agree and consent to the entry of this  
Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

**FOR THE CITY OF PORT ARTHUR, JEFFERSON COUNTY, TEXAS:**

Date: 2-1-13

  
\_\_\_\_\_  
Floyd T. Johnson  
City Manager

Date: 2/28/13

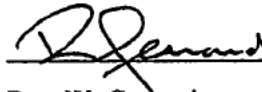
  
\_\_\_\_\_  
Robin E. Morse  
Crain Caton & James  
Five Houston Center  
1401 McKinney, Suite 1700  
Houston, TX 77010

Signature Page for Consent Decree in United States of America v. City of Port Arthur, Jefferson  
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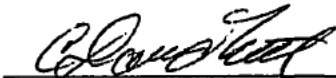
**FOR HUNTSMAN PETROCHEMICAL CORPORATION:**

Date: <sup>22</sup>FEB - 1 - 2013

  
\_\_\_\_\_

Ron W. Gertard  
Senior Vice President EHS and Manufacturing  
Excellence  
Huntsman International LLC  
8600 Gosling Road  
The Woodlands, TX 77381  
281-719-3000

Date: 1-31-2013

  
\_\_\_\_\_

C. David Nutt  
Director of Legal Services, EHS  
Huntsman International LLC  
8600 Gosling Road  
The Woodlands, TX 77381  
281-719-3001

Signature Page for Consent Decree in United States of America v. City of Port Arthur, Jefferson  
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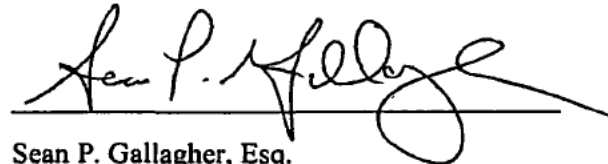
**FOR AMERICAN COMMERCIAL BARGE LINE LLC:**

Date: 2/5/13



Dawn R. Landry  
Senior Vice President & General Counsel  
American Commercial Barge Line LLC  
1701 E. Market Street  
Jeffersonville, IN 47130

Date: 2/5/13



Sean P. Gallagher, Esq.  
Corporate Counsel  
American Commercial Lines  
1701 East Market Street  
Jeffersonville, IN 47130

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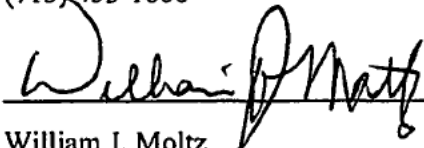
**FOR KIRBY CORPORATION AND KIRBY INLAND MARINE, LP:**

Date: Feb 11, 2013



Amy D. Husted  
Vice-President Legal  
Kirby Corporation  
55 Waugh Drive, Suite 1000  
Houston, TX 77007  
(713) 435-1000

Date: 2-12-13



William J. Moltz  
Moltz Morton O'Toole, L.L.P.  
106 E. 6th Street, Suite 700  
Austin, TX 78701




Signature Page for Consent Decree in United States of America v. City of Port Arthur, Jefferson  
County, Texas, et al. (E.D. Tex.)

Through their undersigned representatives, the Parties agree and consent to the entry of this  
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**FOR PORT NECHES TOWING, INC.:**

Date: 2/6/13

  
\_\_\_\_\_

Wayne Barber  
President  
Port Neches Towing, Inc.

Date: 2/6/13

  
\_\_\_\_\_

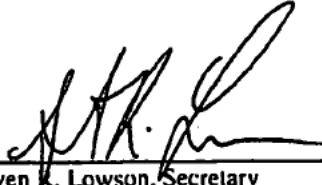
Guy N. Goodson  
Germer Gertz, L.L.P.  
550 Fannin, Suite 400  
Beaumont, Texas 77701

Signature Page for Consent Decree in United States of America v. City of Port Arthur, Jefferson  
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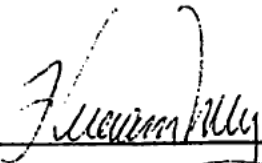
Through their undersigned representatives, the Parties agree and consent to the entry of this  
Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

**FOR SABINE TOWING & TRANSPORTATION CO., INC.:**

Date: 2/5/13

  
\_\_\_\_\_  
Steven K. Lowson, Secretary  
Sabine Towing & Transportation Co., Inc.  
300 Blaisdell Road  
Orangeburg, NY 10962  
(813) 434-4521

Date: 2/5/13

  
\_\_\_\_\_  
F. William Mahley  
Strasburger & Price LLP  
1401 McKinney, Suite 2200  
Houston, Texas 77010

Signature Page for Consent Decree in United States of America v. City of Port Arthur, Jefferson  
County, Texas, et al. (E.D. Tex.)

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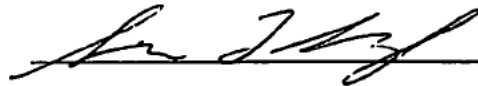
**FOR PHILLIPS 66 COMPANY:**

Date: 2/8/2013

  
\_\_\_\_\_

Jim R. Smith  
Remediation Manager  
Phillips 66 Company  
Bartlesville, OK 74004

Date: 2-7-13

  
\_\_\_\_\_

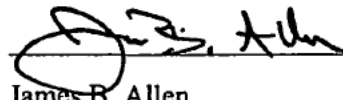
Steven L. Slagel  
Senior Counsel  
Phillips 66 Company  
PWC.8119 Pinnacle  
3010 Briarpark Drive  
Houston, TX 77042  
(832) 765-1217

Signature Page for Consent Decree in United States of America v. City of Port Arthur, Jefferson  
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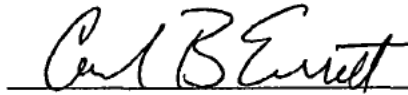
**FOR E.I. DU PONT DE NEMOURS & COMPANY:**

Date: 1/31/13



James B. Allen  
E.I. du Pont de Nemours & Company  
Legal D-7084  
1007 Market Street  
Wilmington, DE 19898

Date: 2/1/13



Carl B. Everett  
Saul Ewing LLP  
3800 Centre Square West  
1500 Market Street  
Philadelphia, PA 19102  
(215) 972-7171  
[ceverett@saul.com](mailto:ceverett@saul.com)