

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
FIRST CHEMICAL CORPORATION,)	
)	
Defendant)	
)	

CONSENT DECREE

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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint (the "Complaint"), simultaneously with the lodging of a Consent Decree, against First Chemical Corporation ("FCC"). The Complaint and Consent Decree concern the mononitrotoluene ("MNT") Stills Area (the "Facility") of the FCC chemical manufacturing complex, located on a 60-acre parcel east of Pascagoula, Mississippi in the Bayou Cassotte Industrial Park.

B. In the Complaint, FCC is alleged to have failed to fulfill its general duty under Section 112(r)(1) of the Clean Air Act ("the Act" or "CAA"), 42 U.S.C. § 7412(r)(1) by failing to identify hazards which may result from an accidental release of MNT, at the FCC Pascagoula, Mississippi Site, using appropriate hazard assessment techniques, and by failing to design and maintain a safe Facility by failing to properly operate and maintain valves, piping and equipment, and by failing to install proper instrumentation for monitoring as regards the C501 MNT Column at the Facility, and by failing to adequately design the relief valve that existed on the C501 Column, and by

failing to train employees generally in hazard monitoring and response. FCC is therefore, alleged to be subject to a civil penalty pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), of up to \$27,500 for violations after January 30, 1997, pursuant to the Debt Collection Act of 1996, and increased to \$32,500 per day for each such violation that occurred after March 15, 2004, and up to \$37,500 per day for each day of violation that occurred on or after January 13, 2009.

C. By entering into this Consent Decree, FCC does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint and does not admit to any of the facts as alleged by the United States in the Complaint. Nothing in the allegations, the proposed penalties, this Consent Decree, or the signing, execution, or implementation of this Consent Decree constitutes an admission or evidence of, or shall be treated as an admission or evidence of, any allegation or of any violation of the statute and regulations referred to herein, in any litigation or forum whatsoever.

D. The United States and FCC recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this

Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties, it is ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. A. This Court has jurisdiction over the subject matter of this action and over the Parties, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and 42 U.S.C. § 7413(b). Venue lies in this District pursuant 28 U.S.C. §§ 1391 (b) and (c) because FCC resides and is located in this judicial district, and the violations alleged in the Complaint are alleged to have occurred in, and FCC conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, FCC consents to the Court's jurisdiction over this Decree and consents to venue in this judicial district.

B. For purposes of this Consent Decree, FCC agrees that the Complaint states claims upon which relief may be granted pursuant to 112(r)(1) of the Act, 42 U.S.C.

§ 7412(r)(1).

III. APPLICABILITY

A. The obligations of this Consent Decree apply to and are binding upon the United States, and upon FCC and any

successors, assigns, or other entities or persons otherwise bound by law.

B. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve FCC of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, FCC shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 4, the United States Attorney for the Southern District of Mississippi, and the United States Department of Justice, in accordance with Section XIV of this Decree ("Notices"). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

C. FCC shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. FCC shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

D. In any action to enforce this Consent Decree, FCC shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

E. The undersigned representatives certify that they are fully authorized to enter into the Consent Decree and to execute and to bind the Parties to the Consent Decree.

IV. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the Clean Air Act, or in regulations promulgated under the Act shall have the meaning assigned to them in the Act or in such regulations. Whenever terms set forth below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

A. "Complaint" shall mean the complaint filed by the United States in this action;

B. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control;

C. "Date of Entry of the Consent Decree" shall mean the date the Consent Decree is approved or signed by the United States District Court Judge;

D. "Day" shall mean a calendar day unless expressly stated to be a business 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;

E. "Defendant" shall mean First Chemical Corporation of Mississippi;

F. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States;

G. "FCC" shall mean First Chemical Corporation of Mississippi;

H. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States;

I. "Facility" shall mean the MNT Stills Area of the FCC chemical manufacturing complex, located on a 60 acre parcel east of Pascagoula, Mississippi, in the Bayou Cassotte Industrial Park;

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

K. "Parties" shall mean the United States and FCC;

L. "Plaintiff" shall mean the United States;

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

N. "United States" shall mean the United States of America, including each of its departments, agencies, and instrumentalities.

V. PAYMENT OF CIVIL PENALTIES

A. Within sixty (60) days after the effective date of this Consent Decree, FCC shall pay to the United States a civil penalty of \$731,000, as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961.

B. FCC shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to FCC, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Mississippi, 188 East Capitol Street, Suite 500, Jackson, MS 39201, phone #

(601)965-4480. At the time of payment, FCC shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. First Chemical Corporation, and shall reference the civil action number and DOJ case number 90-5-2-1-08054, to the United States in accordance with Section XIV of this Decree ("Notices"); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

C. FCC shall notify the United States in writing that payment has been made, in accordance with Section XIV ("Notices"). FCC shall also send a copy of the notice to Ellen Rouch of the United States Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, GA 30303.

D. FCC shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII ("Stipulated Penalties") in calculating its federal income tax.

E. Upon entry of the Consent Decree, the United States shall be deemed a judgment creditor for purposes of

collection of the penalties required by the Consent Decree and enforcement of the Consent Decree.

VI. COMPLIANCE REQUIREMENTS

B. FCC shall comply with Section 112(r)(1) of the Clean Air Act as it applies to the MNT Stills at the Pascagoula, Mississippi facility.

B. FCC shall, within twelve (12) months of the effective date of the Decree, complete a comprehensive Process Hazard Analysis ("PHA") on all three MNT Stills at its Facility pursuant to the requirements set forth in the Statement of Work ("SOW") attached hereto as Appendix A.

C. FCC shall submit the complete PHA to EPA which shall review the PHA for consistency with the SOW requirements.

D. If EPA accepts the PHA, FCC shall, within two years of date of EPA's acceptance of the PHA, implement all recommendations set forth in the PHA. If EPA only conditionally accepts the PHA, or approves it only in part, then the PHA shall be considered rejected in total by EPA.

E. If the PHA is rejected by EPA, FCC shall, within ninety (90) Days of the receipt of EPA's rejection, or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the PHA for acceptance, in accordance with the preceding Paragraphs. If the

resubmission is accepted in whole, FCC shall proceed in accordance with the preceding Paragraph. If EPA rejects the resubmitted PHA, then the issue of PHA deficiencies shall go to dispute resolution pursuant to Section X of this Decree.

F. Any stipulated penalties applicable to the PHA, as provided in Section VIII of this Decree, shall accrue during the ninety (90) Day period or other specified period, but shall not be payable unless the PHA is untimely or is rejected in whole or in part; provided that, if the original submission was so deficient, as compared to the SOW requirements, as to constitute a material breach of FCC's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

VII. REPORTING REQUIREMENTS

A. Within thirty (30) Days after the end of each calendar quarter (i.e., by April 30, July 30, October 30, and January 30) after lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII, FCC shall submit a report for the preceding quarter that shall include: the status of the implementation of PHA recommendations such as the status of any construction or

compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; and a summary of costs incurred since the previous report.

B. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If FCC violates, or has reason to believe that it may violate, any requirement of this Consent Decree, FCC shall notify the United States of such violation and its likely duration, in writing, within ten (10) working Days of the Day FCC first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, FCC shall so state in the report. FCC shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day FCC becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves FCC of its obligation to provide the

notice required by Section IX of this Consent Decree ("Force Majeure").

C. Whenever any violation of this Consent Decree or any other event affecting FCC's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, FCC shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after FCC first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

1) All reports shall be submitted to the persons designated in Section XIV of this Consent Decree ("Notices").

2) Each report submitted by FCC under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

D. The reporting requirements of this Consent Decree do not relieve FCC of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

E. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

A. FCC shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX ("Force Majeure"). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

B. Late Payment of Civil Penalty

If FCC fails to pay the civil penalty required to be paid under Section V of this Decree ("Civil Penalty") when due, a stipulated penalty of \$3,500 per Day shall accrue for each Day that the payment is late.

C. Compliance Milestones - The following stipulated penalties shall accrue per violation per Day for each violation of Section VI and the requirements therein to complete the PHA and implement its recommendations:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$1,500	15th through 30th Day
\$2,000	31st Day and beyond

D. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1,000	15th through 30th Day
\$1,500	31st Day and beyond

E. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and

shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

F. FCC shall pay any stipulated penalty within Sixty (60) Days of receiving the United States' written demand.

G. The United States may in the unreviewable exercise of its discretion, reduce or waive the amount of stipulated penalties it seeks under this Consent Decree.

H. Stipulated penalties shall continue to accrue as provided in Section VIII Paragraph E, during any Dispute Resolution, but need not be paid until the following:

1. If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the Court, FCC shall pay accrued penalties determined to be owing, together with interest, to the United States within Sixty (60) Days of the effective date of the agreement or the receipt of its decision or order.

2. If the dispute is appealed to the Court and the United States prevails in whole or in part, FCC shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph 3, below.

3. If any Party appeals the District Court's decision, FCC shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

I. FCC shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Section V, Paragraphs B and C, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

J. If FCC fails to pay stipulated penalties according to the terms of this Consent Decree, FCC shall be liable for interest on such penalties, as provided for in 28 U.S.C. §1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for FCC's failure to pay any stipulated penalties.

K. Subject to the provisions of Section XII of this Consent Decree ("Effect of Settlement/Reservation of Rights"), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for FCC's violation of this Consent Decree or applicable law.

Where a violation of this Consent Decree is also a violation of the Clean Air Act, FCC shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

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

B. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, FCC shall provide notice orally or by electronic or facsimile transmission to Beverly Spagg, EPA Region 4 Air and EPCRA

Enforcement Branch Chief, 61 Forsyth St., S.W., Atlanta, Georgia 30303; spagg.beverly@epa.gov, within 72 hours of when FCC first knew that the event might cause a delay. Within seven days thereafter, FCC shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; FCC's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of FCC, such event may cause or contribute to an endangerment to public health, welfare or the environment. FCC shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude FCC from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. FCC shall be deemed to know of any circumstance of which FCC, any entity controlled by FCC, or FCC's contractors knew or should have known.

C. If the United States agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended for such time the United States determines is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The United States will notify FCC in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

D. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify FCC in writing of its decision.

E. If FCC elects to invoke the dispute resolution procedures set forth in Section X ("Dispute Resolution"), it shall do so no later than thirty (30) Days after receipt of EPA's notice. In any such proceeding, FCC shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be

warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that FCC complied with the requirements of Section X, Paragraphs A and B, above. If FCC carries this burden, the delay at issue shall be deemed not to be a violation by FCC of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

A. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. FCC's failure to seek resolution of a dispute under this section shall preclude FCC from raising any such issue as a defense to an action by the United States to enforce any obligation of FCC arising under this Consent Decree.

B. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when FCC sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days

from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, FCC invokes formal dispute resolution procedures as set forth below.

C. Formal Dispute Resolution. FCC shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting FCC's position and any supporting documentation relied upon by FCC.

D. The United States shall serve its Statement of Position within Forty-Five (45) Days of receipt of FCC's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on FCC, unless FCC files a motion for judicial

review of the dispute in accordance with the following Paragraph.

E. FCC may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree ("Notices"), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of FCC's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

F. The United States shall respond to FCC's motion within the time period allowed by the Local Rules of this Court. FCC may file a reply memorandum, to the extent permitted by the Local Rules.

G. Standard of Review

1. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Section X, Paragraph C, pertaining to the adequacy or appropriateness of plans,

procedures to implement plans, schedules or any other items requiring approval by the United States under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, FCC shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

2. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Section X, Paragraph C, FCC shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the objectives of the Consent Decree.

H. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of FCC under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Section X, Paragraph I. If FCC does not prevail on the disputed

issue, stipulated penalties shall be assessed and paid as provided in Section VIII ("Stipulated Penalties").

XI. INFORMATION COLLECTION AND RETENTION

A. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

1. monitor the progress of activities required under this Consent Decree;
2. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
3. obtain samples and, upon request, splits of any samples taken by FCC or its representatives, contractors, or consultants;
4. obtain documentary evidence, including photographs and similar data; and
5. assess FCC's compliance with this Consent Decree.

B. FCC may assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to

any information that FCC seeks to protect as CBI, FCC shall follow the procedures set forth in 40 C.F.R. Part 2.

C. Upon request, FCC shall provide the United States or its authorized representatives splits of any samples taken by FCC. Upon request, the United States shall provide FCC splits of any samples taken by the United States.

D. Until three (3) years after the termination of this Consent Decree, FCC shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to FCC's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, FCC shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

E. At the conclusion of the information-retention period provided in the preceding Paragraph, FCC shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, FCC shall deliver any such documents, records, or other information to the United States as directed. FCC may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If FCC asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by FCC. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

F. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain

information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of FCC to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

A. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

B. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated above in Section XIII, Paragraph A. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Section XII Paragraph A.

C. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility FCC's violations, FCC shall not assert, and may not maintain, any defense or claim based upon the

principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Section XII, Paragraph A of this Section.

D. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. FCC is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and FCC's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that FCC's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7412(r)(1) et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

E. This Consent Decree does not limit or affect the rights of FCC or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against FCC, except as otherwise provided by law.

F. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by FCC.

XIV. NOTICES

A. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08054

To EPA:

Beverly Spagg
EPA Region 4 Air and EPCRA Enforcement Branch Chief,
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street
13th Floor
Atlanta, GA 30303

To Defendant(s):

Chief Counsel, Environmental Legal
E. I. du Pont de Nemours and Company
1007 Market Street
Wilmington, DE 19898

And

Guy V. Johnson, Esq.
Corporate Counsel
E. I. du Pont de Nemours and Company
Legal - D-7090-2
1007 Market Street
Wilmington, DE 19898

B. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

C. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

The Effective Date of this Consent Decree shall be the Date of Entry of the Consent Decree or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

A. Except as otherwise set forth in Section VI Paragraph E and Appendix B, the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

B. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X of this Decree ("Dispute Resolution"), provided, however, that, instead of the burden of proof provided by Section X, Paragraph G, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

A. After FCC has complied with all other requirements of this Consent Decree and has paid the civil penalty and any demanded stipulated penalties as required by this Consent Decree, FCC may serve upon the United States a Request for Termination, stating that FCC has satisfied those requirements, together with all necessary supporting documentation.

B. Following receipt by the United States of FCC's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether FCC has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the

Court's approval, a joint stipulation terminating the Decree.

C. If the United States does not agree that the Decree may be terminated, FCC may invoke Dispute Resolution under Section X of this Decree. However, FCC shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph C of Section X, until sixty (60) Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

A. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. §50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. FCC consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified FCC in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

A. Each undersigned representative of FCC and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice 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 the Party he or she represents to this document.

B. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. FCC agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

A. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that

are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

A. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and FCC. 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.

Dated and entered this day of _____, ____.

UNITED STATES DISTRICT JUDGE
Southern District of Mississippi

THE UNDERSIGNED PARTIES enter into this Consent Decree in
the matter of *United States v. First Chemical Company,*

FOR THE UNITED STATES OF AMERICA

~~JOHN C. CRUDEN~~
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

~~CHERYL L. SMOUT~~
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Phone 202.514.5466

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. First Chemical Company*:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

MARY J. WILKES
Regional Counsel
Region IV
U.S. Environmental Protection
Agency

61 Forsyth Street S.W.
Atlanta, Georgia 30303

ELLEN A. ROUCH
Attorney-Adviser
U.S. EPA
61 Forsyth Street S.W.
Atlanta, Georgia 30303

THE UNDERSIGNED PARTIES enter into this Consent Decree in
the matter of **United States v. First Chemical Company,**

FOR FIRST CHEMICAL COMPANY:

ROBERT F. BERNACKI
Chairman
First Chemical Corporation
Barley Mill Plaza 23-2360
4417 Lancaster Pike
Wilmington, Delaware 19805
May 11, 2009

APPENDICES

A. The following appendices are attached to and part of this Consent Decree:

"Appendix A" - "Statement of Work - Process Hazards Analysis (PHA) Requirements - First Chemical Corporation, MS Site ("Site")".

APPENDIX A

STATEMENT OF WORK

FIRST CHEMICAL CORPORATION
PASCAGOULA, MS SITE ("Site")

PROCESS HAZARDS ANALYSIS (PHA) REQUIREMENTS

- Conduct revalidation PHA of Site MNT ("mononitrotoluene) Distillation Area according to defined boundaries and the PHA Charter.
- Revalidation PHA to include:
 1. Hazard Identification
 2. Consequence Analysis
 3. Hazards Evaluation
 4. Human Factors Evaluation
 5. Facility Siting Evaluation
 6. Inherently Safer Process Evaluation
 7. Development of Recommendations
 8. Review of laboratory analyses and procedures associated with MNT Distillation Area
- Define the Study PHA boundaries.
- Participation in PHA process to involve wide cross section of Site organization.
- Use the prior PHA evaluation (including that done by PSRG) to determine and document the specific scope for revalidation, and to identify any needed improvements to the previous PHA.
- Identify Process Hazards of MNT Distillation Area.
- Complete PHA focusing on catastrophic events and hazards..
- Determine impact of MNT Distillation Area on Facility Siting in area and across site using Consequence Analysis.

- Conduct or validate existing interlock event review and document results.
- Evaluate hazards identified, determine adequacy of safeguards and make recommendations for improvements required.
- Document PHA using appropriate documentation tool and prepare a free-standing PHA Report, bringing documentation up to current standards. Where work from the previous PHA is reviewed and accepted, provide documentation of what was reviewed, how the review was done, and the basis for conclusions.
- Effective 5/7/09, FCC announced that operation of the MNT Distillation Area (as defined above) will permanently cease effective in the third quarter 2009.
- Based on the permanent curtailment of the MNT Distillation Area, FCC will conduct a "Shutdown PHA" to govern the permanent cessation of the operating area.
- The "Shutdown PHA" will be submitted to EPA for approval, along with the revalidation PHA above (essentially a "baseline PHA"), pursuant to Section VI of the Consent Decree.
- Once approved by EPA, FCC shall promptly implement the recommendations from the Shutdown PHA to achieve compliance with the Consent Decree and to achieve a safe and orderly cessation of operations of the MNT Distillation Area.
- If the MNT Stills production ever resumes, the recommendations from the revalidation PHA shall be implemented.