

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA
BATON ROUGE DIVISION**

UNITED STATES OF AMERICA)	
and)	
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY,)	
)	
Plaintiffs,)	Civil Action No. 16-260-JJB-RLB
)	
v.)	Judge James J. Brady
)	
ORB EXPLORATION LLC,)	Mag. Judge Richard L. Bourgeois, Jr.
)	
Defendant.)	
)	

CONSENT DECREE

Plaintiffs, the United States of America, on behalf of the United States Coast Guard and the Environmental Protection Agency (“EPA”), and the Louisiana Department of Environmental Quality (“LDEQ”), filed a Complaint against Defendant, ORB Exploration LLC. The Complaint alleges that Defendant is civilly liable for violations of Sections 301(a) and 311(b)(3) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. §§ 1311(a) and 1321(b)(3), and provisions of Louisiana law. The United States seeks federal civil penalties and injunctive relief for three discharges of crude oil and multiple violations of spill prevention regulations at Defendant’s oil production facilities in the Atchafalaya River Basin. LDEQ seeks civil penalties and recovery of state response costs for violations of the Louisiana Environmental Quality Act, La. R.S 30:2001 *et seq.*, and the regulations promulgated pursuant to that statute.

Defendant represents that it has replaced the oil transfer pipeline that was discovered leaking on or about January 3, 2013, at Defendant’s Frog Lake oil well site. Defendant further

represents that it has taken and is committed to taking further corrective measures to prevent future spills as set forth herein.

Defendant further asserts that it has a limited financial ability to pay penalties and response costs for the alleged violations and has submitted to Plaintiffs financial information that materially sets forth Defendant's current financial circumstances. This financial information includes Defendant's income tax returns, interim and annual balance sheets and income statements, loan agreements, and accounts payable records.

Plaintiffs have reviewed the financial information submitted by Defendant to assess the asserted limited ability to pay. Based on the financial information provided, Plaintiffs have determined that Defendant has a limited ability to pay the full amount that would be appropriate for the violations alleged in the Complaint. Accordingly, the amounts assessed in this Consent Decree are reduced to the agreed levels presented herein based on Defendant's limited ability to pay.

The Parties 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 continued litigation between the Parties on the claims addressed in the Consent Decree, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before taking testimony and without adjudication or admission of any issue of fact or law, or liability, except as provided above and in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the United States' claims in this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 301(a), 309(b), and 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. §§ 1311(a), 1319(b), 1321(b)(7)(E) and (n). This Court has supplemental jurisdiction over LDEQ's claims pursuant to 28 U.S.C. § 1367(a) because the claims are related to the federal claims and form part of the same case or controversy. The Court has personal jurisdiction over the Parties to this Consent Decree.

2. Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1395 because the claims arose in this district and Defendant is located and doing business in this district.

3. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant and consents to venue in this judicial district.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, LDEQ, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility shall relieve Defendant of its obligation to ensure that the requirements of the Consent Decree are implemented, unless (1) the transferee agrees to undertake the obligations required by this Decree and to be substituted for Defendant as a Party under the Decree and thus be bound by the terms thereof, (2) the United States consents to relieve Defendant of its obligations, and (3) the Court approves a joint motion

from the United States, Defendant, and the transferee requesting that the Court approve a modification substituting the transferee as the Defendant responsible for complying with the terms and conditions of the Consent Decree.

6. In any action to enforce this Consent Decree, Defendant 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.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the CWA, or in regulations promulgated thereunder, shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Coast Guard” shall mean the United States Coast Guard.
- b. “Complaint” shall mean the complaint filed by Plaintiffs in this action.
- c. “Consent Decree” or “Decree” shall mean this document.
- d. “Crocodile Bayou Facility” shall mean Defendant’s oil production, storage, and transfer equipment and operations at Crocodile Bayou in the Atchafalaya River Basin.
- e. “Day” shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, the rules set forth in Rule 6(a) of the Federal Rules of Civil Procedure shall be followed.
- f. “Defendant” shall mean ORB Exploration LLC.
- g. “Discharges” shall mean the crude oil discharge discovered at Defendant’s

transfer pipeline at the Frog Lake Facility on or about January 3, 2013, the crude oil discharge discovered at Defendant's production barge at the Frog Lake Facility on or about September 29, 2015, and the crude oil discharge discovered at Defendant's Crocodile Bayou Facility on or about October 26, 2015.

h. "Effective Date" shall have the definition provided in Section XII.

i. "EPA" shall mean the United States Environmental Protection Agency.

j. "Frog Lake Facility" shall mean Defendant's oil production, storage, and transfer equipment and operations at Frog Lake in the Atchafalaya River Basin.

k. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.

l. "Parties" shall mean the United States, on behalf of the Coast Guard and EPA, LDEQ, and Defendant ORB Exploration LLC.

m. "Plaintiffs" shall mean the United States and LDEQ.

n. "Section" shall mean a portion of this Decree identified by a Roman numeral.

o. "State" shall mean the State of Louisiana.

p. "United States" shall mean the United States of America.

IV. CIVIL PENALTIES

8. Defendant shall not deduct or capitalize the civil penalties paid under this Section in calculating federal income tax or any state income tax.

Penalty to be paid to the United States:

9. Defendant shall pay to the United States the sum of six hundred fifteen thousand

dollars (\$615,000.00), plus interest, as civil penalties. Interest shall accrue from the date on which this Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the date of lodging.

10. Defendant shall pay the penalty to the United States within 30 Days of the Effective Date of the Consent Decree, or it may pay in up to two installments over a period of four months. If Defendant elects to make payment in installments, Defendant shall pay the first installment in the amount of three hundred seven thousand five hundred dollars (\$307,500.00), plus interest, within 30 Days of the Effective Date of this Decree. Defendant shall pay the second installment in the amount of three hundred seven thousand five hundred dollars (\$307,500.00), plus interest, within 120 Days of the Effective Date of this Decree. Defendant may elect to make payments in advance of this installment schedule but shall not make any penalty payment before the Effective Date.

11. Defendant 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 Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Middle District of Louisiana. Such monies are to be deposited in the Oil Spill Liability Trust Fund. The payment shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-11281 and shall specify that the payment is made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

12. At the time of payment, Defendant 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 this case, and shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-11281, to the United States in accordance with Section XI of this Decree (Notices) and to:

Thomas H. VanHorn
National Pollution Funds Center
US Coast Guard Mailstop 7605
2701 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7605

Chief
United States Coast Guard
Office of Claims and Litigation CG-LCL
US Coast Guard Mailstop 7213
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7213

EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio, 45268

Penalties and costs to be paid to LDEQ:

13. Defendants shall pay one hundred thousand dollars (\$100,000.00) as civil penalties and response costs to LDEQ.

14. Defendant shall pay LDEQ within 30 Days of the Effective Date of the Consent Decree, or it may pay in up to two installments over a period of four months. If Defendant elects to make payment in installments, Defendant shall pay the first installment in the amount of fifty thousand dollars (\$50,000.00) within 30 Days of the Effective Date of this Decree. Defendant shall pay the second installment in the amount of fifty thousand dollars (\$50,000.00) within 120 Days of the Effective Date of this Decree. Defendant may elect to make payments in advance of this installment schedule but shall not make any payment before the Effective Date.

15. Payment shall be made by check or EFT in accordance with instructions to be

provided to Defendant by LDEQ. If by check, the check shall be made payable to the Louisiana Department of Environmental Quality, referencing this Civil Action, and mailed to: Fiscal Director, LDEQ, Office of Management and Finance, P.O. Box 4303, Baton Rouge, LA 70821-4303.

V. INJUNCTIVE RELIEF

16. Defendant shall perform the following injunctive relief to help ensure that the oil spills and other alleged spill prevention violations that were discovered by the Coast Guard and EPA at the Defendant's Frog Lake facility will not be repeated.

17. Beginning 15 Days after the Effective Date of this Consent Decree, and continuing thereafter independent of other Paragraphs in this Section, Defendant shall provide at least 24 hours of advance notice to the Coast Guard before any transfer operation is conducted at any of Defendant's oil transfer facilities in Louisiana regulated by the Coast Guard.

18. Within 45 days after the Effective Date of this Decree, Defendant (a) may complete a feasibility study to determine the economic viability of the Frog Lake Facility and (b) shall notify the United States and LDEQ, in accordance with Section XI of this Decree (Notices), of its intent regarding future operations of the Facility.

19. If Defendant continues future operations of the Frog Lake Facility beyond 45 Days after the Effective Date of this Decree, Defendant shall perform all actions listed in this Section on the schedules provided.

20. For the next 3 years after the Effective Date of this Decree, Defendant shall inspect the area along the length of the transfer pipeline at least weekly and after each transfer operation at the Frog Lake Facility. Defendant shall record inspection findings and results in a

log book to be kept at the facility, which will be made available to the Coast Guard, EPA, and LDEQ for inspection at any time.

21. Within 60 Days of the Effective Date of this Decree, Defendant shall install flow meter gauges at both ends of the transfer pipeline (i.e., at the storage tank barge and at the transfer (load-out) point) at the Frog Lake Facility. Defendant shall check, verify, and record in a log book the readings before, during, and at the end of each transfer operation to ensure oil losses are not occurring along the transfer pipeline. Defendant shall calibrate and maintain the flow meters on a schedule and in accordance with the manufacturer's recommendations.

22. Within 60 Days of the Effective Date of this Decree, Defendant shall raise the height of the containment barrier curbing on the deck of the oil storage barge at the Frog Lake Facility. The increased height shall be sufficient to prevent overflow of oil off of the barge deck into the surrounding waterway, and shall include, at a minimum, raising the curbing on the lower side of the barge to at least the height of the curbing on the high side.

23. Within 90 Days of the Effective Date of this Decree, and again 18 months and 37 months after the Effective Date, Defendant shall submit a written report to the United States and LDEQ, in accordance with Section XI of this Decree (Notices), regarding the progress on and compliance with the requirements of this Section, including descriptions of when and how each corrective measure was performed and any defects or spills discovered through the inspections of the pipeline or review of flow meter data.

24. Each report or certification submitted by Defendant 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.

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

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

27. Defendant reserves the right to cease its Frog Lake Facility operations in the future. Defendant shall provide at least 45 Days advance notice to the United States and LDEQ, in accordance with Section XI of this Decree (Notices), of its decision to cease operations and shall confirm when operations have ceased.

28. If Defendant decides to cease operation of its Frog Lake Facility under Paragraphs 18 or 27, Defendant shall perform or continue to perform, while operations are ceased, the injunctive relief measures in Paragraphs 17, 20, 22, and 23 on the schedules provided and comply with all applicable statutory and regulatory requirements. Any sale, lease, or other transfer of the Facility shall be subject to compliance with this Consent Decree.

VI. STIPULATED PENALTIES

29. Defendant shall be liable for stipulated penalties to the United States and LDEQ for violations of this Consent Decree as specified below, unless excused under Section VII

(Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any 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.

30. If Defendant fails to pay the federal civil penalty and interest required under Section IV (Civil Penalties) when due, Defendant shall pay to the United States a stipulated penalty of twenty-five hundred dollars (\$2,500) per Day for each Day for each payment that is late.

31. If Defendant fails to pay LDEQ as required under Section IV when due, Defendant shall pay to LDEQ a stipulated penalty of twenty-five hundred dollars (\$2,500) per Day for each Day for each payment that is late.

32. If Defendant fails to perform the injunctive relief required under Section V (Injunctive Relief) when due, Defendant shall pay to the United States a stipulated penalty as follows:

- a. 1st to 30th day: \$1,000 penalty per day;
- b. 31st to 60th day: \$2,500 penalty per day; and
- c. More than 60 days: \$5,000 penalty per day.

33. Late payment of amounts due under this Consent Decree and payment of any stipulated penalties shall be made in accordance with payment instructions in Section IV above. All transmittal correspondence shall state that any such payment is for late payment of the amount due under this Consent Decree, for delayed performance of injunctive relief required under this Consent Decree, or for stipulated penalties for late payment of an amount due, as

applicable.

34. For all payments of stipulated penalties to the United States, Defendant shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-11281 and shall specify that the payments are for stipulated penalties to be deposited into the United States Treasury.

35. For all payments of stipulated penalties to LDEQ, Defendant shall reference the Civil Action Number and submit the payment as specified in Paragraph 15. All stipulated penalties paid to LDEQ shall be deposited in the Hazardous Waste Site Cleanup Fund.

36. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

37. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving a written demand from the United States or LDEQ, as applicable.

38. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to the United States under this Consent Decree. LDEQ may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to LDEQ under this Consent Decree.

39. Stipulated penalties shall continue to accrue as provided in Paragraph 36 during any Dispute Resolution under Section VIII, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States or LDEQ that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States or LDEQ within thirty (30)

Days of the effective date of the agreement or the receipt of the United States' or LDEQ's decision or order.

b. If the dispute is appealed to the Court and the United States or LDEQ prevails in whole or in part, Defendant 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 c, below.

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

40. Defendant shall not deduct stipulated penalties paid under this Section in calculating federal income tax or any state income tax.

41. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant 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 or LDEQ from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

42. Subject to the provisions of Section IX 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 or LDEQ for Defendant's violation of this Consent Decree or applicable law.

VII. FORCE MAJEURE

43. "Force Majeure," for purposes of this Consent Decree, is defined as any event

arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

44. 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, Defendant shall provide notice orally or by electronic or facsimile transmission to the Coast Guard, EPA, and LDEQ within five (5) Days of when Defendant first knew that the event might cause a delay. Within ten (10) Days thereafter, Defendant shall provide in writing to the Coast Guard, EPA, and LDEQ 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; Defendant'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 Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant 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 Defendant 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. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

45. If the United States, after a reasonable opportunity for review and comment by LDEQ, 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, after a reasonable opportunity for review and comment by LDEQ, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. The United States will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

46. If the United States, after a reasonable opportunity for review and comment by LDEQ, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, the United States will notify Defendant in writing of the decision.

47. If Defendant elects to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution) in response to the United States' determination in Paragraph 46, it shall do so no later than thirty (30) Days after receipt of the United States' notice. In any such proceeding, Defendant 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 Defendant complied with the requirements of Paragraphs 43 and 44, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to the United States and the Court.

VIII. DISPUTE RESOLUTION

48. 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. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

49. 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 Defendant sends the United States and LDEQ a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) 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 or LDEQ shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

50. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and LDEQ 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 Defendant's position and any supporting documentation relied upon by Defendant.

51. The United States or LDEQ shall serve its Statement of Position within forty-five (45) Days of receipt of Defendant's Statement of Position. The United States' or LDEQ's 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 or LDEQ. The United States' or LDEQ's Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

52. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and LDEQ, in accordance with Section XI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' or LDEQ's Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant'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.

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

54. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 52, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

55. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant 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 Paragraph 39. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Stipulated Penalties).

IX. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

56. This Consent Decree resolves the civil penalty, State response cost, and injunctive relief claims of the United States and LDEQ for the causes of action alleged in the Complaint.

57. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 56.

58. The United States and the State reserve all legal and equitable claims for, including but not limited to, injunctive relief, civil penalties, damages including natural resource damages, criminal liability, and other appropriate relief, except as expressly stated in Paragraph 56. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain additional relief under any federal or state law, implementing regulations of federal or state law, or permit conditions, except as expressly specified in this Consent Decree.

59. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, damages including natural resource damages, criminal liability, or other appropriate relief relating to the Facilities or Defendant's violations alleged in the Complaint, Defendant 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 or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to Paragraph 56 of this Section. Defendant reserves any and all defenses or claims not specifically addressed in this Section.

60. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, orders, and permits. Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, orders, or permits, except as set forth herein. The United States and LDEQ do not, by their consent to the entry of this Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of federal, state, or local laws, regulations, orders, or permits.

61. This Consent Decree does not limit or affect the rights of Defendant or of the United States and the State against any third parties that are not party to this Consent Decree, nor does it limit the rights of third parties that are not party to this Consent Decree against Defendant, except as otherwise provided by law, including but not limited to 33 U.S.C. § 1365(b)(1)(B) and 42 U.S.C. § 7604(b)(1)(B). This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

62. Defendant hereby covenants not to sue and agrees not to assert any claims related to the Discharges, or response activities in connection with the Discharges, against the State or the United States pursuant to the CWA, Oil Pollution Act (“OPA”), or any other state or federal law or regulation for acts or omissions through the date of lodging of the Consent Decree. Defendant further covenants not to sue and agrees not to assert any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund or pursuant to any other provision of law.

X. COSTS

63. The Parties shall bear their own costs related to this Action and this Consent Decree, including attorneys’ fees, except that the United States and LDEQ shall be entitled to collect costs (including attorneys’ fees) incurred in any action necessary to enforce this Consent Decree.

XI. NOTICES

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

As to the United States:

To the U.S. Department of Justice:

Chief (re: DJ # 90-5-1-1-11281)
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-0097 (facsimile)

To EPA Region 6:

OPA Enforcement Coordinator
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200, 6SF-PC
Dallas, TX 75202-2733
(214) 665-7447 (facsimile)

Amy Salinas
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200, 6RC-S
Dallas, TX 75202-2733
(214) 665-6460 (facsimile)

As to LDEQ:

Celena Cage
Enforcement Administrator
Office of Environmental Compliance
La. Department of Environmental Quality
P.O. Box 4312
Baton Rouge, LA 70821-4312

Jill Carter
Attorney, Legal Division
La. Department of Environmental Quality
P.O. Box 4312
Baton Rouge, LA 70821-4312

As to Defendant:

Joel N. Broussard, Manager
ORB Exploration, LLC
300 Rue Beauregard, Building A
Lafayette, Louisiana 70508

Timothy W. Hardy
V. Joyce Matthews
Roedel Parsons Koch Blache Balhoff & McCollister
8440 Jefferson Highway, Suite 301
Baton Rouge, LA 70809
Counsel for ORB Exploration, LLC

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

66. 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.

XII. EFFECTIVE DATE

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

XIII. RETENTION OF JURISDICTION/TERMINATION

68. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purpose of effectuating or enforcing compliance with the terms of this Decree.

XIV. TERMINATION

69. After Defendant has complied with the requirements of this Consent Decree, including injunctive relief, and has paid the amounts due and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States and LDEQ a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

70. Following receipt by the United States and LDEQ of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States after consultation with

LDEQ agrees that the Decree may be terminated, the Parties shall submit a joint stipulation terminating the Decree that shall automatically terminate this Consent Decree as of the date the joint stipulation is filed. If the United States, after consultation with LDEQ, does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section VIII. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until thirty (30) Days after service of its Request for Termination.

XV. PUBLIC PARTICIPATION

71. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to notice of lodging of the Consent Decree and a public comment period. The United States reserves the right to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

72. Further, the Parties agree and acknowledge that final approval by LDEQ and entry of this Consent Decree is subject to the requirements of La. R.S. 30:2050.7, which provides for public notice of the Consent Decree in newspapers of general circulation and the official journals of parishes in which the Defendant's facilities are located, an opportunity for public comment of not less than forty-five (45) days, consideration of any comments, and concurrence by the State Attorney General. Evidence of final approval of this Consent Decree by LDEQ shall be LDEQ's execution of a Motion to Enter the Consent Decree, and LDEQ reserves the right to withdraw or withhold consent based on information provided during the public comment period. In the event public comments raise issues over the content or terms of the Consent Decree,

LDEQ may withdraw from this Consent Decree and will not join in the filing of a Motion to Enter the Consent Decree.

73. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States or LDEQ has notified the Parties in writing that it no longer supports entry of the Decree. Defendant consents to entry of this Consent Decree without further notice except through the Court's electronic case filing system.

XVI. SIGNATORIES/SERVICE

74. The Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, on behalf of the United States, and the undersigned representatives of LDEQ and Defendant each 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 the terms of this Decree.

75. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

XVII. INTEGRATION

76. 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 supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. 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.

XVIII. FINAL JUDGMENT

77. 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, LDEQ, and Defendant.


This Consent Decree is dated and entered this ____ day of _____, 2016.

**_____
UNITED STATES DISTRICT JUDGE
Middle District of Louisiana**

Signature Page to Consent Decree in *U.S. et al. v. ORB Exploration LLC*

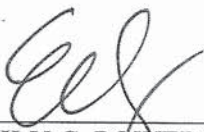
FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: 4/21/16



JOHN C. CRUDEN
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

Dated: 4/21/16



EMILY C. POWERS (Lead Attorney)
Trial Attorney (N.Y. Bar No. 5132204)
JASON T. BARBEAU
Senior Trial Attorney (D.C. Bar No. 468200)
United States Department of Justice
Environment and Natural Resources Division
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Signature Page to Consent Decree in *U.S. et al. v. ORB Exploration LLC*.


FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

Dated: 30 MAR 2016



BRIAN JUDGE
Chief, Office of Claims and Litigation
United States Coast Guard
Coast Guard Headquarters
2703 Martin Luther King Jr. Ave. SE
Washington, DC 20593-7213

Dated: 4 April 2016



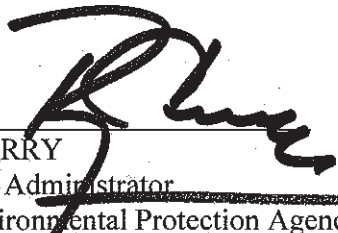
BENES Z. ALDANA, CAPT
Staff Judge Advocate
United States Coast Guard
Eighth Coast Guard District
500 Poydras Street
New Orleans, LA 70130

Signature Page to Consent Decree in *U.S. et al. v. ORB Exploration LLC*

FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

Dated: _____


4/19/2016



RON CURRY
Regional Administrator
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Dated: _____

4/4/16



AMY SALINAS
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200, 6RC-S
Dallas, Texas 75202-2733

Signature Page to Consent Decree in *U.S. et al. v. ORB Exploration LLC*, subject to the public notice and comment requirements of La. R.S. 30:2050.7.


FOR PLAINTIFF LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

Dated: 3-31-16



LOURDES ITURRALDE
Assistant Secretary
Office of Environmental Compliance
Louisiana Department of Environmental Quality
P.O. Box 4312
Baton Rouge, Louisiana 70821-4312

Dated: 3-30-16



JILL CARTER, La. Bar # 33050
Lead Counsel
DWANA C. KING, La. Bar # 20590
Deputy General Counsel
Office of the Secretary, Legal Division
Louisiana Department of Environmental Quality
P.O. Box 4312
Baton Rouge, Louisiana 70821-4312

Page to Consent Decree in *U.S. et al. v. ORB Exploration LLC*

FOR DEFENDANT:

ORB EXPLORATION LLC

Dated: 4-21-2016

By:


JOEL N. BROUSSARD, Manager
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V. Joyce Matthews
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