

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRENCH LIMITED, INC., et al.,

Defendants.

Civil Action No. H-89-2544

**AGREEMENT AND ORDER REGARDING
FOURTH MODIFICATION OF CONSENT DECREE**

On March 7, 1990, this Court entered a Consent Decree in the above-captioned matter (“the 1990 Consent Decree”) to resolve the United States’ environmental claims against eighty-nine parties (“Settling Defendants”), as described below. The 1990 Consent Decree was modified three times by orders of this Court entered on March 10, 1993, January 27, 1994, and January 30, 1997. Hereafter, the 1990 Consent Decree as previously modified is the “Modified 1990 Consent Decree.” The United States and the certain Settling Defendants identified herein as the FLTG Settling Defendants, as parties to the Modified 1990 Consent Decree, now propose to further modify the 1990 Consent Decree as set forth in this *Agreement and Order Regarding Fourth Modification of Consent Decree* (“Agreement and Order”).

A. The Modified 1990 Consent Decree resolved the United States’ claims against Settling Defendants under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. §§ 9601 – 9675, related to the French Limited Superfund Site (“the French Limited Site” or “the Site”) which is located approximately one mile east of the San Jacinto River near Crosby in Harris County, Texas. The French Limited

Site is a former commercial disposal facility that operated from approximately 1966 to 1972. The Site was proposed for listing on the National Priorities List (“NPL”), the priority list of hazardous waste sites in the United States eligible for long-term remedial investigation and remedial action under the federal Superfund program, on December 30, 1982, and was placed on the NPL in a final rulemaking published on September 8, 1983.

B. Pursuant to the 1990 Consent Decree, Settling Defendants agreed to be jointly and severally obligated to perform response activities at the French Limited Site as selected in a Record of Decision for the Site signed on March 24, 1988 (“the 1988 ROD”). These response activities include remedial design, remedial action, and operation and maintenance for contaminated source areas (soils, sludges, and wastes) and affected groundwater at the Site. See 1990 Consent Decree §§ V (Binding Effect), VI (Obligations for the Remedial Action), and VII (Work to be Performed). Also pursuant to the 1990 Consent Decree, Section XVI, ¶ C, Settling Defendants were required to reimburse EPA for its costs of overseeing the response action on an ongoing basis when billed by EPA. The 1997 Modification to the 1990 Consent Decree modified the oversight payment requirement of Section XVI, ¶ C by providing for a one-time cash payment by Settling Defendants intended as full satisfaction of past and estimated future oversight costs of the remedial action. EPA’s oversight costs for the response action have exceeded that payment amount, and the payment has thus proved insufficient.

C. Pursuant to Section VII of the Modified 1990 Consent Decree, Settling Defendants completed the source control remediation of contaminated soils, sludges, and wastes at the Site in 1995, and EPA issued a Certification of Completion for the soils, sludges, and wastes component of the remedy on April 15, 1995. The Settling Defendants also undertook to implement the 1988 ROD selected remedy for recovery and treatment of contaminated groundwater. The groundwater

components of the remedy included pumping and treating the contaminated groundwater, and groundwater monitoring for a period of thirty years. However, after active pumping and treating for three years, followed by a period of monitoring, EPA determined that certain areas of the Site groundwater are significantly more contaminated and more difficult to remediate than EPA estimated in 1988 and as was modeled by the Settling Defendants during the active groundwater remediation. The EPA determined that the groundwater remedial action selected in 1988 would not be effective in achieving the remedial action objectives for the Site groundwater. In response to the new information, and after notice and consideration of public comments on its proposal, EPA revised the groundwater remedy for the Site through a ROD Amendment dated September 30, 2014. (“Based on the review of the ground water monitoring, site characterization, and contaminant mass removal data, the EPA has concluded that currently available remedial technologies cannot reliably or feasibly attain the remedial goals for Site ground water within a reasonable period of time.” *Id.* at 2). The 2014 ROD Amendment, among other things, modified the remedial requirements for certain areas of groundwater (identified as Technically Impracticable Zones) that cannot be remediated to drinking water standards set forth in the 1988 ROD and required containment and monitoring of the Technically Impracticable Zones as well as institutional controls to restrict access to or use of the groundwater within those Zones.

D. Pursuant to Section VII, ¶ I of the Modified 1990 Consent Decree, the Settling Defendants are required to perform additional remedial actions, subject to EPA’s approval, in the event the initial remedial action set forth in the 1988 ROD fails to achieve the remedial action objectives set forth in the 1988 ROD. In addition, in Section XVII, ¶ D of the Modified 1990 Consent Decree, the United States reserves its rights to seek modification of the Consent Decree or to institute new actions when new conditions at the Site are discovered or new information is

received after the date of Consent Decree entry, and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment.

E. The Modified 1990 Consent Decree expressly states that “[t]his Consent Decree applies to and is binding upon the Parties, their successors, and assigns.” Modified 1990 Consent Decree at § V, ¶ A.

F. ARCO Chemical Company is a signatory to the Modified 1990 Consent Decree. In 1998, ARCO Chemical Company changed its name to Lyondell Chemical Worldwide, Inc., and in 1999 Lyondell Chemical Worldwide, Inc. merged into the Lyondell Chemical Company. Lyondell Chemical Company is the successor to ARCO Chemical Company, and the Modified 1990 Consent Decree applies to and is binding upon Lyondell Chemical Company.

G. Lyondell Chemical Company and certain of its affiliates (collectively “Debtors”) filed with the United States Bankruptcy Court for the Southern District of New York (“the Bankruptcy Court”) voluntary petitions for relief under Title 11 of the United States Code on various dates in 2009, and those petitions were consolidated for procedural purposes and administered jointly as Case No. 09-10023 (Bankr. S.D.N.Y.). In July and August 2009, the United States filed, on behalf of various federal agencies, ten proofs of claim against various Debtors for response costs, natural resource damages, and civil penalties and protective proofs of claim for compliance obligations and injunctive relief.

H. The United States, the Debtors, and various state environmental agencies including the Texas Commission on Environmental Quality (“TCEQ”) entered into an agreement titled *Settlement Agreement Among The Debtors, The Environmental Custodial Trust Trustee, The United States, And Certain State Environmental Agencies* (“the 2010 Bankruptcy Settlement”).

Notice of the 2010 Bankruptcy Settlement was published in the Federal Register on April 5, 2010, 75 Fed. Reg. 17160-01. On April 23, 2010, the Bankruptcy Court approved the 2010 Bankruptcy Settlement in its Order Pursuant to Fed. R. Bankr. P. 9019 Approving Settlement Agreement Among the Debtors, the Environmental Custodial Trust Trustee, the United States, and Certain State Environmental Agencies. The 2010 Bankruptcy Settlement resolved, inter alia, the CERCLA proofs of claims of the United States against Debtors for the French Limited Site.

I. The specific provisions of the 2010 Bankruptcy Settlement that related to the French Limited Site included the requirement that Debtors make a cash payment to the United States on behalf of EPA in the amount of \$2,171,000 (“Bankruptcy Settlement Payment Amount”). 2010 Bankruptcy Settlement at ¶ 5(a)(6). Debtors made that payment to the United States. It is the EPA’s intent to disburse the 2010 Bankruptcy Settlement Payment Amount to FLTG Settling Defendants, upon a proper showing, in partial reimbursement for the performance of response actions at the Site.

J. Pursuant to Section XXXIII (Continuing Jurisdiction) of the Modified 1990 Consent Decree, “the Court specifically retains jurisdiction over both the subject matter of and the [p]arties to this action for the duration of this Consent Decree for the purposes of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Consent Decree or for any further relief as the interest of justice may require.”

K. Section XXXII (Modification) of the Modified 1990 Consent Decree provides: “Except as provided for herein, there shall be no modification of this Consent Decree without written approval of all parties to this Consent Decree and entry by the Court.” Due to the passage of time, some of the Settling Defendants no longer exist or cannot be located. Accordingly, the

provisions of this Proposed Fourth Modification of the 1990 Consent Decree shall apply only to the Settling Defendants who are signatories to this Agreement and Order, defined below as “the FLTG Settling Defendants,” and shall have no effect on the rights or obligations of the other Settling Defendants who are not signatories to this Agreement and Order. The FLTG Settling Defendants are the particular Settling Defendants that have been performing the work to implement the 1988 ROD remedy since the Lyondell bankruptcy and will continue to perform work under this Agreement and Order. The United States has provided notice of this proposed Agreement and Order, with an opportunity to object, to all Settling Defendants by service at last known addresses where available. The proposed Agreement and Order will also be published in the Federal Register, as described below, so that the public will have an opportunity to comment and unlocated Settling Defendants will have the opportunity to object.

L. Accordingly, consistent with Section XXXII (Modification) of the Modified 1990 Consent Decree, the United States and the FLTG Settling Defendants now jointly seek to modify the Consent Decree to reflect the work requirements of the 2014 ROD Amendment, provide for the reimbursement of Past Response Costs and Future Response Costs, and to provide for the disbursement to the FLTG Settling Defendants of the 2010 Bankruptcy Settlement payment for the French Limited Site.

M. The Assistant Attorney General, on behalf of the United States, and the undersigned representatives of the FLTG Settling Defendants certify that they are fully authorized to enter into the terms and conditions of this Agreement and Order and to execute and legally bind such party to this document.

By the signatures of their representatives to this document, the United States and the FLTG Settling Defendants hereby approve these further modifications to the Modified 1990 Consent Decree set forth below.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Section IV of the Modified 1990 Consent Decree is modified to add the following twenty-two definitions:

“Amended Remedial Action” or “Amended RA” shall mean the remedial action selected in the 2014 ROD Amendment.

“Amended Remedial Design” or “Amended RD” shall mean those activities undertaken by FLTG Settling Defendants to develop final plans and specifications for the Amended Remedial Action as stated in the Statement of Work.

“Appendix G” is the September 30, 2014 ROD Amendment.

“Appendix H” is the Amended Remedial Design/Amended Remedial Action Statement of Work for implementation of the 2014 ROD Amendment (“Statement of Work” or “SOW”).

“Appendix I” is the list of the FLTG Settling Defendants.

“2014 ROD Amendment” means the Record of Decision Amendment French Limited Superfund Site dated September 30, 2014, which is attached as Appendix G and which amends the March 24, 1988 Record of Decision for the Site attached as Appendix A.

“Consent Decree,” “CD,” “Decree,” or “Modified 1990 Consent Decree” shall mean the consent decree entered on March 7, 1990, by the District Court of the Southern District of Texas, Houston Division, Civil Action No. H-89-2544, as modified by orders of this Court entered on March 10, 1993, January 27, 1994, and January 30, 1997, and as further modified by the Agreement and Order Regarding Fourth Modification of Consent Decree upon entry by the Court, and all appendices attached thereto, including but not limited to the 2014 ROD Amendment (Appendix G), the Statement of Work (Appendix H), and the list of FLTG Settling Defendants (Appendix I). In the event of conflict between the Consent Decree and any appendix, this Consent Decree shall control.

“Effective Date” for purposes of the modifications set forth in this Fourth Modification of the 1990 Consent Decree shall be the date that the Court approves and enters the Agreement and Order Regarding Fourth Modification of Consent Decree.

“FLTG Settling Defendants” for purposes of the modifications set forth in this Fourth Modification of the 1990 Consent Decree shall be those Settling Defendants who sign the Agreement and Order Regarding Fourth Modification of Consent Decree. The FLTG Settling Defendants are identified in Appendix I.

“French Limited Site Disbursement Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Section XVI(E)(1) (Creation of French Limited Site Disbursement Special Account).

“French Limited Site Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and this Consent Decree.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Consent Decree after the Effective Date, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant Section VI(B), Section VII(I) (Failure of Remedy), Section XI (Access) (including the cost of attorney time and any monies paid to secure or enforce access), and Section XXII (Dispute Resolution), costs incurred pursuant to EPA’s reviews of the Site under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, costs related to ¶

4.3(a) (Emergencies and Releases) of the SOW, the costs of EPA community involvement regarding the Site including any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), costs incurred to secure or enforce resource use restrictions and/or to secure, implement, monitor, maintain, or enforce institutional controls regarding the Site, and all litigation costs and any Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site. Future Response Costs shall also mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Site between August 31, 2021, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action or Amended RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund,

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. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Interest Earned” shall mean interest earned on amounts in the French Limited Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the EPA Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

“Operation and Maintenance” or “O&M” shall mean all activities required to operate, maintain, and monitor the effectiveness of the Remedial Action and the Amended RA as specified in the SOW or any EPA-approved O&M Plan, including all Post Closure activities and including but not limited to the Post Closure Activity Plan and Site Closure Plan pursuant to the Consent Decree.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through August 30, 2021, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Performance Standards” or “PS” shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

“Statement of Work” or “SOW” means the document describing the activities FLTG Settling Defendants must perform to implement the Amended Remedial Design, the Amended Remedial Action, and O&M regarding the Site, including Post Closure activities, and which is attached as Appendix H and incorporated in and made a part of this Consent Decree by reference.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and under Sections 361.003(34) and (35) of the Texas Solid Waste Disposal Act.

“Work” means all activities and obligations FLTG Settling Defendants are required to perform under this Consent Decree, except the activities required under Section XIV (Records).

2. In Section IV of the Modified 1990 Consent Decree, definitions of “Record of Decision/ROD” and “Remedial Action,” are modified to read as follows:

“Record of Decision” or “ROD” means the document signed by the EPA Region VI Regional Administrator on March 24, 1988, which describes the Remedial Action to be conducted at the Site and is attached as Appendix A, as modified by the 2014 ROD Amendment, which is attached as Appendix G.

“Remedial Action” means the implementation, in accordance with this Decree, of the remedy selected by EPA for the Site in the ROD.

3. Because Settling Defendants have implemented many, but not all, of the actions required by Section VII (Work to be Performed) of the Modified 1990 Consent Decree, and additional response actions are necessary pursuant to the 2014 ROD Amendment, Paragraphs B through H(6) of Section VII of the Modified 1990 Consent Decree are replaced in their entirety with the following provisions:

B. Upon the Effective Date, the FLTG Settling Defendants shall perform the following Work to implement the 2014 ROD Amendment: (a) develop the Amended Remedial Design for the 2014 ROD Amendment; (b) perform the Amended Remedial Action for the 2014 ROD Amendment; and (c) operate, maintain, and monitor the effectiveness of the Remedial Action and Amended Remedial Action for the ROD, including all Post Closure and operation and maintenance activities. This Work shall be performed

in accordance with the SOW, which is incorporated in and made a part of this CD by reference, and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the SOW shall be subject to approval by EPA in accordance with ¶ 6.6 (Approval of Deliverables) of the SOW.

C. Modification of SOW or Related Deliverables.

(1) If EPA determines that it is necessary to modify the Work as specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedial Action and Amended Remedial Action, and such modification is consistent with the scope of the remedy set forth in ¶ 1.3 of the SOW, then EPA may notify the FLTG Settling Defendants of such modification. If the FLTG Settling Defendants object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XXII (Dispute Resolution) of this Consent Decree.

(2) The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if the FLTG Settling Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent

Decree, and the FLTG Settling Defendants shall implement all work required by such modification. The FLTG Settling Defendants shall incorporate the modification into the deliverable required under the SOW, as appropriate.

(3) Nothing in this SOW shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

D. Nothing in the Consent Decree, the SOW, or any deliverable required under the SOW, constitutes a warranty or representation of any kind by the United States that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

4. Paragraphs D and E of Section IX (Project Coordinators) and Section X (Health and Safety Plan) are deleted in their entirety and replaced with the applicable provisions of the SOW.

5. In order to provide for reimbursement of Past Response Costs, to reinstate the FLTG Settling Defendants' obligations to reimburse the United States for Future Response Costs on an ongoing basis, and to provide for conditional disbursement by EPA of funds received for the Site from the 2010 Bankruptcy Settlement, Section XVI (Response Cost Reimbursement) of the Modified 1990 Consent Decree, as amended on January 30, 1997, shall be replaced in its entirety with the following provisions:

**XVI. RESPONSE COST REIMBURSEMENT AND DISBURSEMENT
OF SPECIAL ACCOUNT FUNDS**

A. Payments by the FLTG Settling Defendants for Past Response Costs. The FLTG Settling Defendants have agreed that EPA shall be reimbursed \$455,599.71 for Past Response Costs. Solely as an administrative convenience for the FLTG Settling Defendants and at their request, in lieu of the FLTG Settling Defendants making actual payment of this amount for Past Response Costs, the EPA will instead retain the sum of \$455,599.71 of the 2010 Bankruptcy Settlement Payment Amount as reimbursement of its Past Response Costs. The FLTG Settling Defendants have submitted to EPA appropriate documentation of qualifying work that would otherwise have entitled them to payment of that same sum from the 2010 Bankruptcy Settlement Payment Amount in accordance with Section XVI (Disbursement of Special Account Funds). Retention of this sum reduces the amount available for future disbursement in this Fourth Modification of Consent Decree to \$1,715,400.29. In accordance with EPA policy on receipt of payments of Past Response Costs, the \$455,599.71 amount will remain in the French Limited Site Special Account, to be retained by EPA and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

B. Payments by the FLTG Settling Defendants for Future Response Costs. The FLTG Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the NCP.

(1) **Periodic Bills.** On a periodic basis, EPA will send the FLTG Settling Defendants a bill requiring payment that includes an e-Recovery Report which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. The FLTG Settling Defendants shall make all payments within 60 days after the FLTG Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph XVI(C), in accordance with Paragraph XVI(B)(3) (instructions for future response cost payments).

(2) **Deposit of Future Response Costs Payments.** The total amount to be paid by the FLTG Settling Defendants pursuant to Paragraph XVI(B)(1) (Periodic Bills) shall be deposited by EPA in the French Limited Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the French Limited Site Special Account balance is sufficient to address currently anticipated future

response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by the FLTG Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(3) Payment Instructions for the FLTG Settling Defendants – Future Response Costs Payments and Stipulated Penalties

For all payments subject to this Paragraph XVI(B), the FLTG Settling Defendants shall make such payment at <https://www.pay.gov> in accordance with the following payment instructions: enter “sfo 1.1” in the search field to access EPA’s Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the Site Name, DJ Number 90-11-3-46, and Site/Spill ID Number 0601. FLTG Settling Defendants shall send to EPA in accordance with Section XXIV (Notices and Submissions), a notice of this payment including these references.

C. Contesting Future Response Costs. The FLTG Settling Defendants may submit a Notice of Dispute, initiating the procedures of Section XXII (Dispute Resolution), regarding any Future Response Costs billed under Paragraph XVI(B) (Payments by the FLTG Settling Defendants for Future Response Costs) if they

determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 60 days after receipt of the bill and must be sent to the United States pursuant to Section XXIV (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If the FLTG Settling Defendants submit a Notice of Dispute, the FLTG Settling Defendants shall within the 30-day period, and also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The FLTG Settling Defendants shall send to the United States, as provided in Section XXIV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow

account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, the FLTG Settling Defendants shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If the FLTG Settling Defendants prevail concerning any aspect of the contested costs, the FLTG Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within 7 days after the resolution of the dispute. The FLTG Settling Defendants shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with Paragraph XVI(B)(3) (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the FLTG Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

D. Interest. In the event that any payment for Past Response Costs or Future Response Costs required under this Section is not made by the date required, the FLTG Settling Defendants shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date.

The Interest on Future Response Costs shall begin to accrue on the date on which payment is due and owing on the bill. The Interest shall accrue through the date of the FLTG Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of the FLTG Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XX (Stipulated Penalties).

E. Disbursement of Special Account Funds

(1) **Creation of French Limited Site Disbursement Special Account and Agreement to Disburse Funds to the FLTG Settling Defendants.** Within 30 days after the Effective Date, EPA shall establish the French Limited Site Disbursement Special Account and shall transfer \$1,715,400.29 from the French Limited Site Special Account to the French Limited Site Disbursement Special Account. Subject to the terms and conditions set forth in this Paragraph, EPA agrees to make the funds in the French Limited Site Disbursement Special Account, including Interest Earned on the funds in the French Limited Site Disbursement Special Account, available for disbursement to the FLTG Settling Defendants as partial reimbursement for performance of the Work performed, or to be performed, by the

FLTG Settling Defendants after October 2010. EPA shall disburse funds from the French Limited Site Disbursement Special Account to the FLTG Settling Defendants in accordance with the procedures and milestones for phased disbursement set forth in this Paragraph.

(2) **Timing, Amount, and Method of Disbursing Funds From the French Limited Site Disbursement Special Account.** Within 120 days after EPA's receipt of a Cost Summary and Certification, as defined by Paragraph XVI(E)(3)(b), or if EPA has requested additional information under Paragraph XVI(E)(3)(b) or a revised Cost Summary and Certification under Paragraph XVI(E)(3)(c), within 120 days after receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Paragraph, EPA shall disburse the funds from the French Limited Site Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below:

Milestone	Disbursement of Funds
EPA Approval of the Amended Remedial Design	Up to \$1,167,400.29 from the French Limited Site Disbursement Special Account for costs incurred for Work performed after October 2010 by the FLTG Settling Defendants.
EPA Notification that Remedial Action Construction for the Amended Remedial Action is Complete Pursuant to ¶ 4.5(e) of the SOW	Up to \$548,000 from the French Limited Site Disbursement Special Account for costs incurred for Work performed after the Effective Date.

EPA shall disburse the funds from the French Limited Site Disbursement Special Account to the FLTG Settling Defendants

pursuant to instructions for electronic funds transfer, which the FLTG Settling Defendants shall provide to EPA no later than the day the FLTG Settling Defendants submit their Cost Summary and Certification to EPA.

(3) Requests for Disbursement of Special Account Funds.

(a) Within 120 days after issuance of EPA's written confirmation that the milestone of the Work, as defined in Paragraph XVI(E)(2) (Timing, Amount, and Method of Disbursing Funds), has been satisfactorily completed, the FLTG Settling Defendants shall submit to EPA a Cost Summary and Certification, as defined in Paragraph XVI(E)(3)(b), covering the Work performed up to the date of completion of that milestone.

(b) The Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by the FLTG Settling Defendants for the Work covered by the submission, excluding costs not eligible for disbursement under Paragraph XVI(E)(4) (Costs Excluded from Disbursement). The Cost Summary and Certification shall contain the following statement signed by an Independent Certified Public Accountant or a Chief Financial Officer of an FLTG Settling Defendant:

"To the best of my knowledge, after thorough investigation and review of the FLTG Settling Defendants' documentation of costs

incurred and paid for Work performed pursuant to this Consent Decree [insert, as appropriate for each milestone, 'up to the date of completion of milestone 1,' or 'between the date of completion of milestone 1 and the date of completion of milestone 2], I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

The Independent Certified Public Accountant or Chief Financial Officer of an FLTG Settling Defendant shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, the FLTG Settling Defendants shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

(c) If EPA finds that a Cost Summary and Certification includes a mathematical error, costs excluded under Paragraph XVI(E)(4) (Costs Excluded from Disbursement), or costs that are inadequately documented, it will notify the FLTG Settling Defendants and provide them an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If the FLTG Settling Defendants fail to cure the deficiency within 30 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate the FLTG Settling Defendants' costs eligible for disbursement for that submission and disburse the corrected amount to the FLTG Settling Defendants in accordance with the procedures in Paragraph XVI(E)(2) (Timing, Amount, and

Method of Disbursing Funds). The FLTG Settling Defendants may dispute EPA's recalculation under this Paragraph pursuant to Section XXII (Dispute Resolution). In no event shall the FLTG Settling Defendants be disbursed funds from the French Limited Site Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

(4) **Costs Excluded from Disbursement.** The following costs are excluded from, and shall not be sought by the FLTG Settling Defendants for, disbursement from the French Limited Site Disbursement Special Account: (a) response costs paid pursuant to Paragraph XVI(B) (Payments by the FLTG Settling Defendants for Future Response Costs); (b) any other payments made by Settling Defendants to the United States pursuant to this Consent Decree, including, but not limited to, any Interest or stipulated penalties paid pursuant to Paragraph XVI(D) (Interest) or XX (Stipulated Penalties); (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to obtaining access and institutional controls as required by Section XI (Site Access and Property Requirements); (d) costs of any response activities Settling Defendants perform that are not required under, or approved by EPA pursuant to, this Consent Decree; (e) costs related to Settling Defendants' litigation, settlement, development

of potential contribution claims, or identification of defendants; (f) internal costs of Settling Defendants, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Settling Defendants directly performing the Work; (g) any costs incurred by Settling Defendants prior to the Effective Date except for approved Work completed pursuant to this Consent Decree after October 1, 2010; or (h) any costs incurred by Settling Defendants pursuant to Section XXII (Dispute Resolution).

(5) **Termination of Disbursements from the Special Account.** EPA's obligation to disburse funds from the French Limited Site Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that the FLTG Settling Defendants: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 30 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph XVI(E)(3) (Requests for Disbursement of Special Account Funds) within 120 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its

obligation to make disbursements pursuant to this Paragraph because of the FLTG Settling Defendants' failure to submit the Cost Summary and Certification as required by Paragraph XVI(E)(3). EPA's obligation to disburse funds from the French Limited Site Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph B of Section VI (Work Takeover), when such assumption of performance of the Work is not challenged by the FLTG Settling Defendants or, if challenged, is upheld under Section XXII (Dispute Resolution). The FLTG Settling Defendants may dispute EPA's termination of special account disbursements under Section XXII.

(6) Recapture of Special Account Disbursements. Upon termination of disbursements from the French Limited Site Disbursement Special Account under Paragraph XVI(E)(5) (Termination of Disbursements from the Special Account), if EPA has previously disbursed funds from the French Limited Site Disbursement Special Account for activities specifically related to the reason for termination, e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to the FLTG Settling Defendants for those amounts already disbursed from the French Limited Site Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount

covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by the FLTG Settling Defendants. Within 30 days after receipt of EPA's bill, the FLTG Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for the total amount billed. Payment shall be made in accordance with Paragraph XVI(B) (Payments by the FLTG Settling Defendants for Future Response Costs). Upon receipt of payment, EPA may deposit all or any portion thereof in the French Limited Site Special Account, the French Limited Site Disbursement Special Account, or the EPA Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by the FLTG Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. The FLTG Settling Defendants may dispute EPA's determination as to recapture of funds pursuant to Section XXII (Dispute Resolution).

(7) **Balance of Special Account Funds.** After EPA issues its written Certification of Amended Remedial Action Completion pursuant to this Consent Decree, and after EPA completes all disbursement to the FLTG Settling Defendants in accordance with this Paragraph, if any funds remain in the French Limited Site Disbursement Special Account, EPA may transfer such funds to the French Limited Site Special Account or to the EPA

Hazardous Substance Superfund. Any transfer of funds to the French Limited Site Special Account or the EPA Hazardous Substance Superfund shall not be subject to challenge by the FLTG Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

6. The final sentence of Paragraph A of Section XVII of the Modified 1990 Consent Decree (Covenant Not to Sue) shall be modified to read as follows:

With respect to future liability, this covenant not to sue shall take effect upon issuance of the Certification of Completion under Section VII G(17), and as to the Amended Remedial Action, upon issuance of the Certification of Amended RA Completion under ¶ 4.6 of the SOW.

7. Paragraph B of Section XVII of the Modified 1990 Consent Decree shall become subparagraph B(1)(Covenants by Settling Defendants) of Section XVII, and new subparagraphs (B)(2)-(6) shall be added as follows:

B.

(2) Covenants by the FLTG Settling Defendants.

Subject to the reservations in Paragraph XVII(B)(3), the FLTG Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site and this Consent Decree, including, but not limited to:

(a) any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund

through CERCLA §§ 106(b)(2), 107, 111, 112, or 113, or any other provision of law;

(b) any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site and this Consent Decree;

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

(d) any direct or indirect claim for (1) disbursement from the French Limited Site Special Account or French Limited Site Disbursement Special Account, except as provided in Section XI (Disbursement of Special Account Funds).

(3) Except as provided in Paragraph XVII(B)(6) (Res Judicata and Other Defenses), the covenants in Paragraph B(2) of this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XVII(C), other than in Paragraph XVII(C)(1)-(4), but only to the extent that the FLTG Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

(4) The FLTG Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of the FLTG Settling Defendants' deliverables or activities.

(5) 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).

(6) **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or

other appropriate relief relating to the Site, the FLTG 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 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 XVII (Covenant Not to Sue).

8. Section XX of the Modified 1990 Consent Decree shall be further modified to add a new subparagraph (3) to Paragraph C of Section XX as follows:

(3) **Stipulated Penalty Amounts – SOW.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the SOW:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000
15th through 30th day	\$4,000
31st day and beyond	\$8,000

9. Section XXIV (Notices and Submissions) shall be replaced in its entirety with the following provisions:

A. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Decree

must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Decree, it must be sent as specified below. All notices under this Section are effective upon receipt unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: via email to:

eescdcopy.enrd@usdoj.gov

Re: DJ # 90-11-3-46A

As to EPA:

via email to:

Ronald D. Crossland
Superfund & Emergency Mgmt. Division Director
crossland.ronnie@epa.gov

Re: Site/Spill ID #0601

and

EPA Region 6 Remedial Project Manager for the
French Limited Superfund Site

Karen Berecz
berecz.karen@epa.gov

Re: Site/Spill ID #0601

For Notices of Payment:

via email to:

EPA Cincinnati Finance Center at
CINWD_AcctsReceivable@epa.gov
Re: Site/Spill ID #0601

As to the Texas Commission on Environmental Quality:

via email to:

TCEQ Project Manager for the
French Limited Superfund Site
Irina Afanasyeva
irina.afanasyeva@tceq.texas.gov

As to the FLTG Settling Defendants:

via email to:

Dave Roberson
112 Greentree Drive, Ste. 100
Crawford, TX 76638
dave@demaximis.com

10. Section XXXII (Modifications) shall be modified to add the following provisions:

A. Except as provided in Paragraph 7(C)(Modification of SOW or Related Deliverables), material modifications to this Fourth Modification of Consent Decree, including the SOW, shall be in writing, signed by the United States and FLTG Settling Defendants, and shall be effective upon approval by the Court. Except as provided in Paragraph 7(C)(Modification of SOW or Related Deliverables), non-material modifications to this Fourth Modification of Consent Decree, including the SOW, shall be in

writing and shall be effective when signed by duly authorized representatives of the United States and the FLTG Settling Defendants. A modification to the SOW shall be considered material if it implements a new ROD amendment that fundamentally alters the basic features of the selected remedy in the 2014 ROD Amendment within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any material modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

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

11. All provisions of the Modified 1990 Consent Decree unaffected by the modifications in this Agreement and Order Regarding Fourth Modification of Consent Decree shall operate in conjunction with these new provisions in the same manner and to the same extent as did the substituted language in the Modified 1990 Consent Decree.

12. Except as specifically provided in this Agreement and Order, all other terms and conditions of the Modified 1990 Consent Decree will remain unchanged and in full effect.

13. This Agreement and Order shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Department of Justice policy and described at 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if comments by the public regarding the Agreement and Order disclose facts or considerations which indicate that the Agreement and Order is inappropriate, improper, or

inadequate. This Paragraph does not create any rights exercisable by any person other than the United States. FLTG Settling Defendants agree not to oppose or appeal the entry of this Agreement and Order.

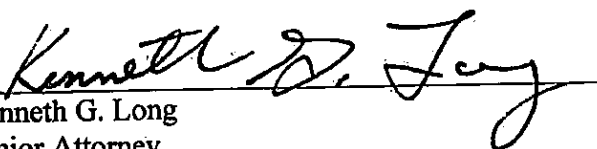
SO ORDERED THIS _____ DAY OF _____, 2024.

United States District Judge

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: April 19, 2024


Kenneth G. Long
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington D.C. 20044-7611
Telephone: (202) 514-2840
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ALAMDAR S. HAMDANI
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Southern District of Texas

/s Jimmy A. Rodriguez
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Assistant United States Attorney
Southern District of Texas
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1000 Louisiana, Suite 2300
Houston, Texas
Tel: (713) 567-9532
jrodriguez3@usa.doj.gov

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**RONALD
CROSSLAND**

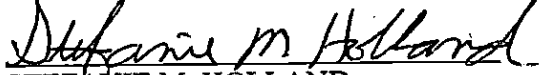
Digitally signed by
RONALD CROSSLAND
Date: 2024.04.16
09:19:07 -05'00'

Date

Ronald D. Crossland, Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency
Region 6
1201 Elm Street
Dallas, TX 75270


FOR THE FLTG SETTLING DEFENDANTS:

12/5/2023
DATE:


STEFANIE M. HOLLAND
VICE PRESIDENT, DEPUTY GENERAL
COUNSEL, CORPORATE AND
ASSISTANT SECRETARY
ALBEMARLE CORPORATION
4250 CONGRESS STREET, SUITE 900
CHARLOTTE, NC 28209

FOR THE FLTG SETTLING DEFENDANTS:

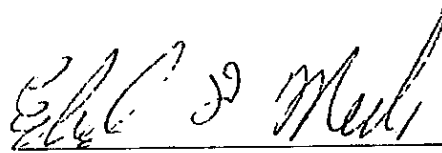
December 13, 2023
DATE:



Ronald Halsey
Vice President, Atlantic Richfield Company
317 Anaconda Road
Butte, MT 59701

FOR THE FLTG SETTLING DEFENDANTS:

February 20, 2024
DATE:



Edward D. Meeks
Senior Manager - Remediation
Ashland, Inc.
500 Hercules Road
Wilmington, DE 19808

FOR THE FLTG SETTLING DEFENDANTS:

01/23/2024

DATE: January , 2024

By: *John B. Nickerson*

John Nickerson

Vice President

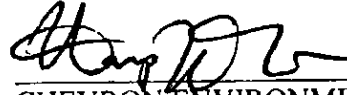
Browning-Ferris Industries Chemical Services, Inc.

18500 N Allied Way

Phoenix, AZ 85054

FOR THE FLTG SETTLING DEFENDANTS:

DECEMBER 14, 2023



CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY, for itself
and as Attorney-in-Fact for Chevron
Chemical Company LLC
HARPREET K. TIWANA
ASSISTANT SECRETARY
6001 BOLLINGER CANYON RD.
SAN RAMON, CA 94583

FOR THE FLTG SETTLING DEFENDANTS:

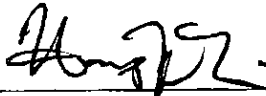
DECEMBER 14, 2023



CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY, for itself
and as Attorney-in-Fact for Texaco Inc.
HARPREET K. TIWANA
ASSISTANT SECRETARY
6001 BOLLINGER CANYON RD.
SAN RAMON, CA 94583

FOR THE FLTG SETTLING DEFENDANTS:

DECEMBER 14, 2023



CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY, for itself
and as Attorney-in-Fact for Union Oil
Company of California
HARPREET K. TIWANA
ASSISTANT SECRETARY
6001 BOLLINGER CANYON RD.
SAN RAMON, CA 94583

FOR THE FLTG SETTLING DEFENDANTS:

11/3/2023
DATE:


Traci L. Forrester

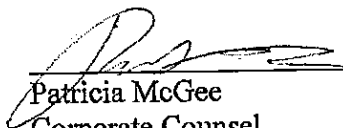
Executive Vice President, Environmental &
Sustainability

Cleveland-Cliffs Steel Corporation
200 Public Square, Suite 3300
Cleveland Ohio 44114-2315

FOR THE FLTG SETTling DEFENDANTS:

11/12/23


DATE:



Patricia McGee
Corporate Counsel
EIDP, Inc. Company
(f/o/a E.I. du Pont de Nemours and Company)

FOR THE FLTG SETTLING DEFENDANTS:

12/11/2023
DATE:



Darcy Robison
Vice President and Chief Sustainability
Officer

The Goodyear Tire & Rubber Company
200 Innovation Way
Akron, Ohio 44316

FOR THE FLTG SETTLING DEFENDANTS:

February 20, 2024

DATE:

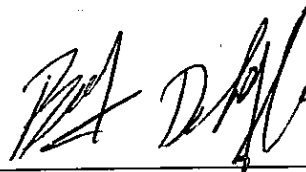


Edward D. Meeks
Senior Manager - Remediation
Hercules, LLC
500 Hercules Road
Wilmington, DE 19808

FOR THE FLTG SETTLING DEFENDANTS:

12/15/2023

DATE:



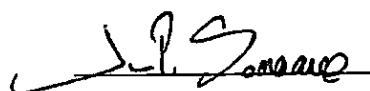
Benny Dehghi
Vice President, Global Remediation and Site
Redevelopment
Honeywell International Inc
855 S Mint Street
Charlotte, NC. 28202

FOR THE FLTG SETTling DEFENDANTS:

Name of Defendant: Occidental Chemical Corporation, as a successor to Diamond Shamrock
Chemicals Company

Dated: 3-20-2024

Name: Juan P. Somoano

A handwritten signature in black ink, appearing to read "J.P. Somoano", written over a horizontal line.

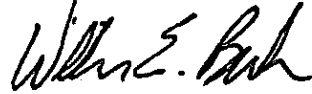
Title: Vice President

Address: 14555 Dallas Parkway, Suite 400
Dallas, TX 75254

FOR THE FLTG SETTLING DEFENDANTS:

12/15/2023

DATE:



William E. Beck
East Region Manager - Remediation
Management
Phillips 66 Company
1700-01 Phillips Building
420 S. Keeler Avenue
Bartlesville, OK 74003-6670

FOR THE FLTG SETTLING DEFENDANTS:

February 21, 2024
DATE:

Steve Faeth

Steven F. Faeth
Assistant General Counsel
EHS & Sustainability
PPG Industries, Inc.
One PPG Place
Pittsburgh PA 15272