

FORMOSA SIX SPILL AGREEMENT

This agreement is made and entered into by and among:

- 1. The National Oceanic and Atmospheric Administration (NOAA), an agency of the United States Department of Commerce;**
- 2. The Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Natural Resources (LDNR), the Louisiana Department of Wildlife and Fisheries (LDWF);**
- 3. Formosa Plastics Tanker Corporation, EFNAV Co., LTD and Segesta Shipping Co., LTD.**

STATEMENT OF FACTS

1. On or about April 11, 1997, the M/V FORMOSA SIX and the M/V FLORA collided in federal waters approximately three miles off the Mississippi River's Southwest Pass.
2. The collision produced a hole in the M/V FORMOSA SIX's hull on the Port side, breaching Hold # 6. Hold # 6 contained Ethylene Dichloride (also known as 1,2-dichloroethane or EDC).
3. As a result of the breach, an estimated 1500 to 1,800 metric tons of EDC were released into the Gulf of Mexico, in waters approximately 40-46 meters deep. The collision and resulting release of EDC on April 11, 1997, are hereafter referred to as the "Incident".
4. Based on chemical characteristics of the EDC (density = 1235 kg/m³; water solubility = 8606 g/m³; specific gravity = 1.25), most of the EDC descended rapidly to the sea floor following the Incident.
5. NOAA, LDEQ, LDNR, and LDWF (collectively, Trustees) are each designated natural resource trustees under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9601 et seq. and the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §§1251 et seq. and other applicable Federal law including the National Oil and Hazardous Substances Pollution Contingency Plan, Subpart G, 40 C.F.R. §§300.600 - 300.615. Their trusteeship under these authorities encompasses natural resources in the coastal marine environment which were or are likely to have been injured as a result of this Incident. Where trust resources are likely to have been injured by the unauthorized release of a hazardous substance, the Trustees share responsibility for determining the injuries to the natural resources and acting to ensure the public is compensated for such losses through the restoration, replacement, or acquisition of similar resources or resource services.
6. EDC is designated as a hazardous substance for purposes of CERCLA and FWPCA. 42

U.S.C. §9601(14); 40 C.F.R. Table 302.4.

7. Formosa Plastics Tanker Corporation (Formosa) was the owner and operator of the M/V FORMOSA SIX at the time of the Incident.
8. EFNAV Co., LTD (EFNAV) was the manager of the M/V FLORA at the time of the Incident.
9. Segesta Shipping Co, LTD (Segesta) was the owner of the M/V FLORA at the time of the Incident.
10. Following the Incident, Formosa retained Beak Consultants, Inc. (Beak), an environmental consulting firm, to conduct a survey of the extent and degree of EDC contaminated sea bottom sediments in the area surrounding the collision site. That survey was conducted on May 3, 1997. Eighteen sediment samples were collected during the survey and analyzed for the presence of EDC.
11. The results of the Beak survey indicate that in May 1997 an area of approximately 12 acres of sediments had EDC concentrations of 100 ppm to 26,000 ppm and that another approximately 50 acres of sediments had EDC concentrations between one and 100 ppm. The 100 ppm level approximates Environmental Protection Agency's (EPA) acute water quality criterion for the protection of aquatic organisms.
12. The seabed in the vicinity of the release is habitat for numerous species of benthic macro invertebrates. This area is utilized by a variety of fish, such as red and black drum, croaker, sheepshead, mullet, and various pelagic and reef-associated fishes, including Gulf menhaden and red snapper that live associated with the sea floor sediments. It is also utilized by a variety of crabs and shrimp species, including commercially important penaeid shrimp.
13. The Trustees have concluded the EDC concentrations found in the sediments in the vicinity of the release in May 1997 are high enough to have resulted in the death of some benthic macro invertebrates due to direct toxicity from the EDC and a reduction in ecological services provided to fish and epibenthic crustaceans.
14. There was no evidence to indicate any other natural resource was adversely affected by the spill.
15. EDC is known to naturally biodegrade under both aerobic and anaerobic conditions and to gradually disperse into the water column. By this time, the Trustees believe that these processes have resulted in natural recovery of the affected areas, i.e., a return to benthic resource and service levels that existed prior to the Incident.
16. The Trustees believe it is appropriate and, accordingly, are seeking to provide for the restoration or replacement of benthic services in order to compensate for any interim loss of

benthic resources and services which occurred as a result of the Incident.

TRUSTEES' PROPOSED RESTORATION PLAN

17. To support restoration and compensation objectives, the Trustees have developed a Damage Assessment and Restoration Plan (DARP) addressing this Incident. The DARP evaluates restoration alternatives which are appropriate for consideration to address benthic resource and service losses and identifies marsh creation as the alternative preferred by the Trustees for use to compensate for the natural resource injuries which are likely or believed to have resulted from the Incident.

18. The Trustees are entering into the settlement outlined herein after considering the potential costs to implement restoration actions evaluated in the DARP and finding that the funds provided by this settlement will be sufficient to provide for the implementation of one or more of those actions and, therefore, to achieve restoration and compensation objectives for this Incident on behalf of the public.

19. The Trustees reserve and have the sole right to select the final restoration action to be implemented with funds provided by this settlement.

STATEMENT OF OBLIGATIONS

20. NOAA has expended significant time, funds, and resources investigating the Incident and the natural resource injuries which may have resulted, and in developing the DARP. Therefore, Formosa, EFNAV and Segesta shall pay NOAA \$25,000.00 to reimburse those costs within 15 days of the execution of this agreement. Payment to NOAA shall be made by check payable to "NOAA, Department of Commerce", with "Formosa 6 - Costs Reimbursement; 8K3E01F6" appearing as reference notation on the check, and sent to:

NOAA/NOS/OR&R
ATTN: Kathy Salter, DARRF Manager
1305 East-West Highway
SSMC 4, Rm 9331
Silver Spring MD 20910-3281

LDEQ, LDNR, and LDWF each agree to waive reimbursement of any assessment costs which they incurred because such costs are minimal.

21. Formosa, EFNAV and Segesta shall pay the sum of \$65,000.00 as compensation for the natural resource injuries which are believed to have resulted from the Incident. This sum shall also be paid by Formosa, EFNAV and Segesta within 15 days of the execution of this agreement

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by check made payable to "NOAA, Department of Commerce", with "Formosa 6 - Restoration Funds; 8K3E01F6" appearing as reference notation on the check. This check shall also be sent Kathy Salter, NOAA's DARRF Manager, at the address listed above in paragraph 20. These funds shall be held by NOAA on behalf of all the Trustees and used solely to implement the final restoration action selected by the Trustees.

22. In consideration of the payments made by Formosa, EFNAV and Segesta under both paragraphs 20 and 21, the Trustees agree to release Formosa, EFNAV and Segesta from any and all civil claims for natural resource damages arising from the Incident. This release is expressly conditioned upon full and timely payment by Formosa, EFNAV and Segesta of the sums identified in paragraphs 20 and 21. Further, nothing in this agreement is intended to be, nor shall it be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, for:

- a. natural resource damages arising from the Incident, in the event that Formosa, EFNAV and Segesta do not pay the sums identified in paragraphs 20 and 21;
- b. any releases, discharges, or spills, in the past or in the future, other than the Incident described in the Statement of Facts;
- c. any and all potential criminal liability;
- d. any matter not expressly included in the release from liability for natural resource damages set forth in this paragraph 22 of the Statement of Obligations.

23. Formosa, EFNAV and Segesta each certify, to the best of their knowledge and belief and after careful inquiry, that they each have fully and accurately disclosed to the Trustees all information currently in the possession of the officers, employees, contractors, and agents of Formosa, EFNAV and Segesta which relate in any way to the potential for natural resource injuries to have resulted from the Incident.

24. Each undersigned representative of the Trustees and Formosa, EFNAV and Segesta certifies that he/she is fully authorized to enter into this agreement.

25. This agreement may be executed in counterparts. It will be effective as of the date the last signature is affixed. A copy with all original executed signature pages affixed shall constitute the original agreement, which original agreement shall be retained by NOAA.


26. The Trustees will provide for public notice of the DARP in order to allow 30 days for public review before the final restoration action is selected. The effective date of this settlement, however, is not affected by the public comment period.

27. The undersigned representative of each party certifies that he or she is authorized to enter

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27. The undersigned representative of each party certifies that he or she is authorized to enter into and execute this agreement, and to bind the party whom he or she represents.

FORMOSA PLASTICS TANKER CORPORATION



Date: 2-11-99

Gerald M. Baca, Esq.

Counsel for FORMOSA PLASTICS TANKER CORPORATION

EFNAV CO., LTD & SEGESTA SHIPPING CO., LTD

_____ Date: _____

Paul N. Vance, Esq.

Counsel for EFNAV CO., LTD & SEGESTA SHIPPING CO., LTD

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

_____ Date: _____

Craig O'Connor

Deputy General Counsel

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

_____ Date: _____

Dale Givens

Secretary

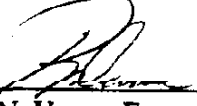
FORMOSA SIX Spill Agreement- Pg 5

27. The undersigned representative of each party certifies that he or she is authorized to enter into and execute this agreement, and to bind the party whom he or she represents.

FORMOSA PLASTICS TANKER CORPORATION

_____ Date: _____
Gerald M. Baca, Esq.
Counsel for FORMOSA PLASTICS TANKER CORPORATION

EFNAV CO., LTD & SEGESTA SHIPPING CO., LTD


_____ Date: April 15, 1999
Paul N. Vance, Esq.
Counsel for EFNAV CO., LTD & SEGESTA SHIPPING CO., LTD

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

_____ Date: _____
Craig O'Connor
Deputy General Counsel

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

_____ Date: _____
Dale Givens
Secretary

FORMOSA SIX Spill Agreement- Pg 5

27. The undersigned representative of each party certifies that he or she is authorized to enter into and execute this agreement, and to bind the party whom he or she represents.

FORMOSA PLASTICS TANKER CORPORATION

Date: _____
Gerald M. Baca, Esq.
Counsel for FORMOSA PLASTICS TANKER CORPORATION

EFNAV CO., LTD & SEGESTA SHIPPING CO., LTD

Date: _____
Paul N. Vance, Esq.
Counsel for EFNAV CO., LTD & SEGESTA SHIPPING CO., LTD

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION



Date: 4/22/99
Craig O'Connor
Deputy General Counsel

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Date: _____
Dale Givens
Secretary

27. The undersigned representative of each party certifies that he or she is authorized to enter into and execute this agreement, and to bind the party whom he or she represents.

FORMOSA PLASTICS TANKER CORPORATION

_____ Date: _____
Gerald M. Baca, Esq.
Counsel for FORMOSA PLASTICS TANKER CORPORATION

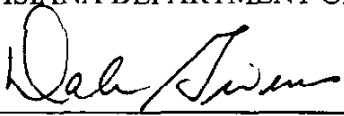
EFNAV CO., LTD & SEGESTA SHIPPING CO., LTD

_____ Date: _____
Paul N. Vance, Esq.
Counsel for EFNAV CO., LTD & SEGESTA SHIPPING CO., LTD

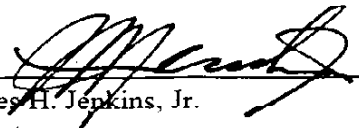
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

_____ Date: _____
Craig O'Connor
Deputy General Counsel

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY


_____ Date: 5/3/99
Dale Givens
Secretary

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES



James H. Jenkins, Jr.
Secretary

Date: 4/27/99

LOUISIANA DEPARTMENT OF NATURAL RESOURCES

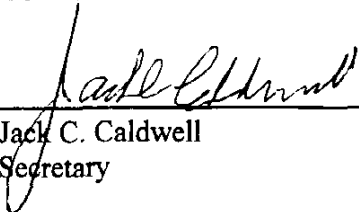
Jack C. Caldwell
Secretary

Date: _____

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

_____ Date: _____
James H. Jenkins, Jr.
Secretary

LOUISIANA DEPARTMENT OF NATURAL RESOURCES

 _____ Date: 5-11-99
Jack C. Caldwell
Secretary

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