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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MAR 1 1993

Michael N. Milby, Clerk  
By Deputy: *M. Milby*

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRENCH LIMITED, INC., et al.,

Defendants.

CIVIL ACTION NO.

H-89-2544

NATURAL RESOURCES CONSENT DECREE

INTRODUCTION

On March 7, 1990, this Court entered a Consent Decree between the United States of America ("United States") and the Defendants in this action ("Settling Defendants") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. §9601 et seq., resolving CERCLA liability of the Settling Defendants to the United States arising from the release or threatened release of hazardous substances at or from the French Limited Site, near Crosby, Harris County, Texas. The Consent Decree reserved the United States' claims under CERCLA for damages to natural resources which resulted from the release or threatened release of hazardous substances at or from the French Limited Site.

The United States, on behalf of the Secretary of the Interior ("DOI") and the Under Secretary for Oceans and Atmosphere and the Administrator of the National Oceanic and Atmospheric Administration ("NOAA") for the Secretary of Commerce ("Federal Trustees"), the State of Texas ("State") on behalf of the Texas Water Commission ("TWC"), the Texas Parks and Wildlife Department ("TP&WD") and the Texas General Land Office ("GLO") ("State Trustees"), and the Settling Defendants (listed on Appendix "A") now desire to resolve liability for damages for injury to, destruction of, or loss of natural resources which arise under Section 107 of CERCLA, 42 U.S.C. § 9607. Without admission or finding of liability, the Parties stipulate and agree to the entry of this Natural Resources Consent Decree ("Natural Resources Decree").

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

I. PARTIES

The parties to this Natural Resources Decree are the United States, the State of Texas and the Settling Defendants listed on Appendix "A" and incorporated herein.

II. NATURAL RESOURCE DAMAGES

A. Purpose. The purpose of this Natural Resources Decree is to provide for replacement of natural resources injured, destroyed, or lost as a result of releases of hazardous substances at or from the French Limited Site.

B. Marsh Restoration Project. The Settling Defendants shall undertake the Marsh Restoration Project ("Project")

described in this Natural Resources Decree in settlement of all claims of the Federal Trustees and the State Trustees (collectively the "Trustees"), under CERCLA and applicable state law, against the Settling Defendants for damages resulting from injury to, destruction of, or loss of natural resources (the "Trust Resources") under the trusteeship of the Trustees as a result of releases of hazardous substances at or from the French Limited Site.

C. Project Review Group. Not later than 30 days after the effective date of this Natural Resources Decree, a Project Review Group shall be established consisting of one representative each from DOI, NOAA, TWC, TP&WD and GLO. In addition, one representative each from the Environmental Protection Agency and the Settling Defendants shall be appointed to serve as non-voting ex officio members of the Project Review Group. Responsibilities of the Project Review Group shall include evaluation and approval of the Land identified for marsh restoration; review and approval of the Marsh Restoration Plan; and oversight of implementation of the Marsh Restoration Plan. Decisions of the Project Review Group shall be by consensus of the voting members.

D. Identification of Land. Not later than 12 months after the effective date of this Natural Resources Decree, the Settling Defendants shall have acquired or cause to be acquired good title to 21 to 25 acres of land, suitable to the Project Review Group for marsh restoration ("Marsh Land"). This Marsh Land shall be,

or shall be made to be, tidally linked to the San Jacinto River and, if possible, in the general vicinity of the French Limited Site.

E. Marsh Restoration Plan. Not later than 18 months after the effective date of this Natural Resources Decree, the Settling Defendants shall submit a draft Marsh Restoration Plan ("Plan") to the Project Review Group for approval. The Plan shall (1) identify plant species, planting density, slope of surface, and upper and lower boundaries of planting based on the natural characteristics of nearby marsh areas, (2) identify any Federal, State or local permits required, (3) include a schedule for implementation and completion of the Project, including identification of the anticipated date of completion of the project and the anticipated date of conveyance of the Marsh Land for purposes of paragraphs II.F and II.G, (4) identify a public entity which is agreeable to accepting title to the Marsh Land, (5) identify criteria to determine when the Project is to be considered successful and completed and (6) include a contingency plan for restoration of the Project during the first five (5) years following completion.

1. Within 45 days of receipt of the draft Plan, the Project Review Group shall approve the Plan or disapprove the Plan with comments.

2. Within 45 days of receipt of comments on the draft Plan, Settling Defendants shall revise the Plan to incorporate such comments and resubmit the Plan for approval.

3. Settling Defendants shall implement the approved Plan.

4. Upon successful implementation of the Marsh Restoration Plan, the Settling Defendants shall certify to the Trustees that the Project has been completed.

F. Restoration Fund. Not later than the anticipated date of completion of the Project, the Settling Defendants shall establish a restoration fund of \$30,000.00 to be maintained by the Settling Defendants and available for restoration of the Marsh Land if damaged due to natural events such as hurricane, high tides, river flows or flood. Use of the restoration fund shall be determined by the Project Review Group. If not used within five (5) years after completion of the Project, the balance of the restoration fund shall revert to the French Site Trust Fund.

G. Maintenance Fund. Not later than the anticipated date of conveyance of the Marsh Land to the public entity identified in the Plan, Settling Defendants shall establish a \$30,000.00 maintenance fund for use by the public entity for future maintenance of the Project.

H. Cost Reimbursement.

1. Assessment Costs. Not later than 60 days after the effective date of this Natural Resources Decree, the Settling Defendants shall tender the following amounts to the United States and the State:

DOI	\$16,800.00
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NOAA	\$13,130.00
TWC	\$1,077.46
TP&WD	\$1,745.27
GLO	\$459.37
Texas AG	\$2,520.00

The preceding amounts represent (a) the reasonable costs incurred by or on behalf of the Trustees in assessing the injury to, destruction or loss of Trust Resources as a result of the release of hazardous substances at or from the French Limited Site and (b) estimated future costs associated with development, implementation and monitoring of the Marsh Restoration Plan. These costs shall be paid by cashier's or certified check referencing the "French Limited Site" as follows:

As to DOI:

Check for \$16,800 payable to:  
Department of the Interior

Mail to: Department of the Interior  
Office of the Secretary  
Fiscal Section, Room 5257  
18th & E Streets, N.W.  
Washington, D.C. 20240

A copy of the check should be mailed to:

Office of Environmental Affairs  
Room 2340 (PEA)  
Department of the Interior  
Washington, D.C. 20240

As to NOAA:

Check for \$13,800 payable to:  
National Oceanic & Atmospheric Administration

Mail to: Manager, Damage Assessment Center  
National Ocean Service

Room 425  
6001 Executive Blvd.  
Rockville, MD 20852

As to TWC:

Check for \$1,077.46 payable to:  
Texas Water Commission

Mail to: Roger G. Bourdeau, Chief Fiscal Officer  
Texas Water Commission  
P.O. Box 13087, Capitol Station  
Austin, Texas 78711-3087

As to TP&WD:

Check for \$1745.27 payable to:  
Texas Parks and Wildlife Department

Mail to: Mr. Jim Dickinson  
Deputy Director  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

As to GLO:

Check for \$459.73 payable to:  
Texas General Land Office

Mail to: Cheryl MacBride, Fiscal Division  
Texas General Land Office  
1700 N. Congress Avenue  
Austin, Texas 78711

As to Texas AG:

Check for \$2520.00 payable to:  
The Office of the Attorney General

Mail to: Office of the Attorney General  
Environmental Protection Division  
P.O. Box 12548  
Austin, Texas 78711  
Attention: Nancy Lynch

A copy of each check and transmittal letter shall be  
sent to:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
10th & Pennsylvania Avenue, N.W.

Washington, D.C. 20530

2. Future Costs. The Trustees will continue to incur costs in connection with development, implementation and monitoring of the Marsh Restoration Plan. All costs in excess of the amounts identified in Section II.H. incurred by the Trustees prior to the expiration of five (5) years from the date of completion of the Project shall be fully reimbursed by the Settling Defendants. The Trustees will provide the Settling Defendants with an annual itemized statement of costs. Payment shall be made within 60 days of receipt of each statement, in the manner provided in Section II.H.

I. Stipulated Penalties. The Settling Defendants shall pay stipulated penalties for failure to comply with the requirements of this Natural Resources Decree as follows:

1. Failure to timely identify the land pursuant to Section II.D. \$1000/day
2. Failure to timely submit or resubmit the Marsh Restoration Plan pursuant to Section II.E. \$1000/day
3. Failure to establish the Restoration Fund pursuant to Section II.F. \$1000/day
4. Failure to establish the Maintenance Fund pursuant to Section II.G \$1000/day
5. Failure to timely pay costs pursuant to Section II.H. \$1000/day
6. Failure to timely comply with the schedule in the Marsh Restoration Plan for completion of work pursuant to Section II.E. \$1000/day



Stipulated penalties shall be paid by cashier's or certified check within 60 days of receipt of demand. Penalties shall be divided equally between the United States and the State and paid as follows:

As to the United States:  
Check payable to the "Treasurer of the United States"

Mail to: United States Attorney  
515 Rusk  
Houston, Texas 77002  
Attn: Chief, Civil Division

As to the State:  
Check payable to "The Office of the Attorney General"

Mail to: Office of the Attorney General  
Environmental Protection Division  
P.O. Box 12548  
Austin, Texas 78711  
Attn: Nancy Lynch

J. Dispute Resolution. The following dispute resolution provisions shall govern disputes arising under this Natural Resources Decree.

1. Any dispute that arises with respect to the meaning or application of this Natural Resources Decree shall, in the first instance, be the subject of informal negotiations between the Parties to this Natural Resources Decree. The Settling Defendants shall commence informal negotiations by notifying the Trustees in writing that dispute resolution is being invoked. Informal negotiations shall not extend beyond thirty (30) days from the date of receipt of such notification unless the Parties agree otherwise in writing.

2. If the dispute cannot be resolved through informal negotiation, the Settling Defendants may file a petition with the

Court requesting the Court to hear and resolve the dispute. The petition shall describe the nature of the dispute and include a proposal for its resolution. The filing of the petition requesting the Court to resolve a dispute shall not in and of itself act to postpone the deadlines which have been established for Settling Defendants to meet their obligations under this Natural Resources Decree or stay the accrual of stipulated penalties. However, the obligation to pay stipulated penalties shall be stayed pending resolution of the dispute. The Parties shall have thirty (30) days in which to respond to the petition.

K. Indemnification. Settling Defendants shall indemnify, save and hold harmless the United States and the State from any and all claims, causes of action or liabilities arising from the negligent acts or omissions or willful misconduct of Settling Defendants in implementing this Natural Resources Decree.

L. Covenant Not To Sue.

1. Except as provided herein, Consent Decree Sections XVII (Covenant Not to Sue), XVIII (De Minimis Settlement) and XIX (Owner/Operator/ Transporter Settlement) are modified to delete the exception for claims for damages to natural resources, and as modified are expressly incorporated in this Natural Resources Decree.

2. Except as provided herein, the State covenants not to sue, or take administrative action against, the Settling Defendants for any and all civil liability to the State for causes of action for injury to, or destruction or loss of natural

resources at the French Limited Site under CERCLA or applicable laws of the State of Texas.

3. The United States and the State expressly reserve their response authority under CERCLA or other applicable federal or state law with respect to the Marsh Land and the Marsh Restoration Project.

III. CONFORMING MODIFICATIONS TO THE CONSENT DECREE

A. The following provisions of the Consent Decree are modified to conform to this Natural Resources Decree:

(1) Section XVII.C. (Covenant Not to Sue) is modified by inserting "and" following the ";" at the end of the paragraph C.(4); by replacing "; or" with "." at the end of paragraph C.(5); and by deleting paragraph C.(6) in its entirety.

(2) Section XVIII.B (De Minimis Settlement) is modified by deleting paragraph B.(1) in its entirety; and paragraph B.(2) is modified by replacing "(2)" with "(1)".

(3) Section XIX.A. (Owner/Operator/Transporter Settlement) is modified by deleting paragraph A.(1) in its entirety; and paragraph A.(2) is modified by replacing "(2)" with "(1)".

(4) Exhibit "A" to Appendix C (French Site Trust Agreement) is modified by the revised Exhibit "A" attached hereto.

B. Except as expressly provided for in this Natural Resources Decree, the Consent Decree remains unchanged and in

full force and effect and the provisions thereof are incorporated herein to the extent applicable.

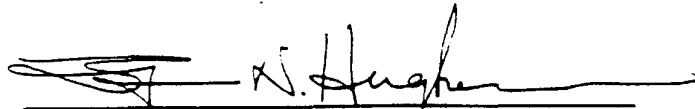
IV. PUBLIC COMMENT

This Natural Resources Decree is subject to the public comment requirements of Section 122 of CERCLA.

V. EFFECTIVE DATE

This Natural Resources Decree is effective upon the date of its entry by the Court.

SIGNED ~~and ENTERED~~ this 10<sup>th</sup> day of MARCH, 1993.

  
UNITED STATES DISTRICT JUDGE  
LYNN N. HUGHES