

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

United States Courts  
Southern District of Texas  
FILED

FEB 21 1996

Michael N. Miiby, Clerk of Court

UNITED STATES OF AMERICA,  
STATE OF TEXAS,

Plaintiffs,

v.

MOBIL MINING AND MINERALS CO.,

Defendant.

H96 0605

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CIV. NO.                       
ENTERED

JUN 13 1996

Michael N. Miiby, Clerk

CONSENT DECREE ADDRESSING NATURAL RESOURCE DAMAGES

This Consent Decree is made and entered into by and between the United States, on behalf of the Secretary of the Interior (DOI), and the Under Secretary for Oceans and Atmosphere as the Administrator of the National Oceanic and Atmospheric Administration (NOAA) acting on behalf of the Secretary of Commerce (Federal Trustees), and the State of Texas on behalf of the Texas Natural Resources Conservation Commission (TNRCC), the Texas Parks and Wildlife Department (TPWD), and the Texas General Land Office (TGLO) (State Trustees) and Mobil Mining and Minerals Co. (Mobil).

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

I. JURISDICTION AND VENUE

1. For purposes of entry and enforcement of this Decree only, the Parties to this Decree ("the Parties") agree that the Court has personal jurisdiction over the Parties and has jurisdiction over

personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9607 and 9613(b) (CERCLA). Solely for the purposes of this Decree, the Parties waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District and to service of process.

## II. DEFINITIONS

2. Day - The term "day" as used in this Consent Decree shall refer to a calendar day.

## III. DEFENDANT

3. Defendant Mobil Mining and Minerals Company is an operating division of Mobil Oil Corporation, which division and corporation engage in business under the laws of the State of Texas.

## IV. STATEMENT OF FACTS

4. On April 6, 1992, in Pasadena, Texas, the southern retaining wall of Mobil's No. 3 gypsum stack experienced structural failure and released 45 million gallons of gypsum and acidic process water.

5. The material released was a mixture of a number of substances, but was primarily a gypsum slurry containing a 2.31

percent solution of phosphoric acid with a pH of less than two standard units. The material released was classified as hazardous because of its corrosivity and constituted a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. et seq. The material flowed into flood control ditches, open field, Cotton Patch Bayou, and eventually into the Houston Ship Channel through a barge basin. Large areas of terrestrial and aquatic habitat were physically covered by the released material along the entire course of the release. The bulk of the material was released during the first day of the incident with some release continuing for several days.

6. As a result of the release, numerous natural resources were affected. Surface water quality within approximately seven miles of the Houston Ship Channel was adversely affected for at least one week. Injuries were sustained to freshwater, marine, and estuarine wildlife, fishes, invertebrates, plants, and sediments. In addition, terrestrial wildlife, plants, and soils were impacted by the release. The services provided by these resources, such as the food, shelter, and nursery values of the affected habitats were also impaired.

7. Cotton Patch Bayou, which was severely impacted by the release, provided habitat for species of songbirds and wading birds, terrestrial reptiles, amphibians, mammals, and numerous invertebrates such as crayfish. In addition, the important water quality services of nutrient and contaminant filtration/removal, storm water/flood control, and erosion prevention which the Bayou

provided were impaired.

8. Important aquatic resources actually affected, especially in the Houston Ship Channel, included commercially and recreationally important finfish and shellfish species, mollusks, invertebrates, and plankton. A fish and macro-crustacean kill related to the release was documented in the Houston Ship Channel.

9. Mobil undertook response actions to contain, neutralize, and remove contaminated water and soil. The response action undertaken by Mobil did not provide compensation for the natural resources and natural resource services injured or lost as a result of the release of the phosphoric acid/gypsum.

10. The State and Federal Trustees are designated co-Trustees of the natural resources injured or lost as a result of the Mobil release.

#### V. NATURAL RESOURCE DAMAGES

11. Purpose - This Decree provides the terms upon which the United States, the State of Texas and Mobil agree to settle all claims of the Federal and State Trustees, under CERCLA and applicable state law, for natural resource damages against Mobil as a consequence of the injuries to, destruction of, or losses of natural resources or resource services which resulted from the April 6, 1992, release of hazardous substances at or from Mobil's Pasadena, Texas facility.

12. Wetlands Restoration Project - Mobil shall undertake the Wetlands Restoration Project ("Restoration Project") described in

Attachment A to this Decree. The Restoration Project provides for the restoration or replacement of equivalent natural resources or natural resource services, injured, destroyed, or lost as a result of Mobil's April 6, 1992, release by providing for the creation of approximately 17 acres of intertidal estuarine marsh and providing for the creation of freshwater wetlands and enhanced upland habitat on approximately 15 additional acres on property situated on the Houston Ship Channel at Mobil's Pasadena TX facility. The Restoration Project shall be implemented by Mobil in accordance with the particulars of Attachment A, which Attachment is specifically incorporated herein, and all other terms of this Decree.

13. Project Review Group - A. Not later than 30 days after the effective date of this Decree, a Project Review Group shall be established consisting of one representative each from NOAA, DOI, TNRCC, TGLO and TPWD. In addition, one representative from Mobil Mining and Minerals Company shall be appointed to serve as a non-voting ex-officio member of the Project Review Group. The Project Review Group shall act on behalf of the Federal and State Trustees on all matters related to the Restoration Project under the terms of this Decree including, but not limited to:

1. reviewing and approving all work plans and specifications, including performance criteria, for use in implementing and monitoring the Restoration Project,
2. overseeing implementation of such plans,
3. certifying construction of the Restoration Project is

completed, as provided in Paragraph 14.D,

4. monitoring the Restoration Project post-construction to evaluate its viability and to provide timely identification of problems or conditions to be addressed under this Decree,

5. certifying the satisfactory completion of the Restoration Project when performance criteria are achieved, as provided in Paragraph 15.

B. Decisions of the Project Review Group shall be by consensus of its voting members.

C. Not later than 30 days after the effective date of this Decree, Mobil shall designate a liaison to act as the Project Review Group's point-of-contact with Mobil and to coordinate Mobil's activities in implementing this Restoration Project in accordance with this Decree.

14. Restoration Project Planning and Implementation - A. Not later than four (4) months after the effective date of this Decree, Mobil shall submit a detailed Draft Work Plan for construction of the Restoration Project to the Project Review Group for approval. The Draft Work Plan shall (1) be consistent with Restoration Project particulars described in this Decree, including in Attachment A, (2) identify any Federal, State or local permits required to construct the Restoration Project, (3) identify a schedule for construction of the Restoration Project, including both a proposed date to begin construction and an anticipated date of completion, (4) propose, consistent with the criteria specified in Attachment A, performance criteria for use in determining

completion of the Restoration Project as provided in Paragraph 15, and (5) propose, consistent with the performance criteria and the parameters for monitoring specified in Attachment A, a detailed Restoration Project Monitoring Plan for use by the Trustees in monitoring and assessing project performance as provided in Paragraph 15.

B. The following procedures will apply to review and development of the Draft Work Plan:

1. Within 30 days of receipt of the Draft Work Plan, the Project Review Group will act to approve the Draft Work Plan or to disapprove such Plan with comments. In disapproving the Plan, the Project Review Group may not request a change to or modification of the Restoration Project, performance criteria or Restoration Project Monitoring Plan proposed therein which is inconsistent with the terms of this Decree, including Attachment A.

2. In the event of disapproval, Mobil will have 30 days following receipt of the Group's comments to revise and resubmit the Draft Work Plan for approval as provided in Paragraph 14.B.1. This process will be repeated until the Draft Work Plan is approved by the Project Review Group or until dispute resolution is invoked pursuant to Section XII of this Decree.

3. Upon approval by the Project Review Group, the Draft Work Plan becomes the Final Work Plan and shall be implemented by Mobil according to the construction schedule identified therein.

C. All permits, right-of-ways, and other documents necessary to implement the Restoration Project shall be obtained by Mobil at

its expense and Mobil shall comply with all applicable Federal, State and local laws in implementing the Restoration Project.

D. Mobil shall notify the Project Review Group upon completing construction of the Restoration Project. The Project Review Group shall inspect the Restoration Project within 30 days of receipt of such notice and, upon finding its construction is in accordance with the Final Work Plan, shall provide Mobil with a dated written statement certifying that construction is complete. The date of such statement shall constitute the "Construction Certification Date" for purposes of Paragraphs 13 and 15.

15. Restoration Project Monitoring - A. Upon certifying construction is complete, the Project Review Group shall initiate the Restoration Project Monitoring Plan approved in the Final Work Plan. Data and information provided by the Restoration Project Monitoring Plan during the two (2) year period following the Construction Certification Date will be used by the Project Review Group to evaluate the performance of the Project according to the Project performance criteria identified in the Final Work Plan.

B. The Project Review Group shall provide Mobil with a written statement certifying satisfactory completion of the Project ("Project Completion Certificate") when performance criteria have been achieved. If Mobil fails to meet performance criteria in the extended period described in Paragraph 15(C)(3) despite Mobil's best efforts as agreed by the Project Review Group, the Project Review Group shall certify completion.

C. In the event the performance criteria are not achieved

within the two year period,

1. The Project Review Group, in consultation with Mobil, will evaluate and request such actions at the Project site as may be necessary or appropriate to achieve the performance criteria.

2. Mobil shall implement such actions through work plans approved by the Project Review Group and the Project Review Group shall certify the implementation of such actions in accordance with the procedures outlined in Paragraph 14.

3. The Project Review Group may extend the two year period for evaluating Project performance according to the Project's performance criteria for an additional period of up to two (2) years.

16. Project Restoration and Maintenance - Mobil will provide up to a maximum of \$100,000 in additional funds to the Trustees for use in restoring, rehabilitating, or reestablishing the Restoration Project site in the event it is damaged by hurricanes, high water flows or floods and for general care and maintenance of the Restoration Project site during the three (3) year period following the date the Restoration Project is certified complete. The use of these funds, including the amount to be provided by or credited to Mobil, shall be determined and directed by the Project Review Group and may include:

- a. Replanting of vegetation,
- b. Adjustments to elevations or enlargement of retention ponds and channels,
- c. Adjustments to openings of inlets, placement of culverts,

and removal of silt or sediments to ensure adequate circulation and flushing of the Project site,

d. Vegetation control efforts, including removal of nuisance species,

e. Repair and control of erosional forces,

f. Removal of flotsam, trash and foreign debris from the site,

g. Repair and/or replacement of culverts, trash deflectors, rip-rap and shoring structures,

h. Repair and/or replacement of access roads and fences.

i. Such other actions as the Project Review Group may decide are necessary or appropriate to restore or maintain the Restoration Project site in accordance with this Paragraph.

17. Mobil shall provide the Project Review Group with an accounting of restoration and maintenance expenditures under Paragraph 16 on a semiannual basis.

18. Deed Restriction - Within six (6) months following the Construction Certification Date, Mobil shall act to place and record a conservation easement or other form of restriction on the deed for the Project site which is adequate to preserve the property as a conservation site or for conservation uses in perpetuity. Language for use in the conservation easement or deed restriction must be approved by the United States and the State of Texas. Mobil shall record such easement or restriction on the deed for the project site property in the public records of Harris County, Texas, and deliver proof of recordation to the United

States, the State of Texas and to the Project Review Group within 30 days of recording.

VI. PAST COSTS REIMBURSEMENT

19. The Trustees expended time, funds, and resources investigating the April 6, 1992, release and the injuries and losses to natural resources which resulted from the incident. As part of this settlement, within 30 days of the effective date of this Decree, Mobil shall reimburse past costs incurred by the State and Federal Trustees through March 4, 1995. Such costs are identified and shall be paid by certified check referencing the "Mobil Mining and Minerals Company, Pasadena, Texas, Natural Resource Damages Agreement for Phosphoric Acid/Gypsum Release, April 6, 1992" as follows:

a. TPWD: A check in the amount of \$15,892.07 payable to the "Texas Parks and Wildlife Department" shall be sent to:

Texas Parks and Wildlife Department  
Kay Hiscoe, Cashier & Revenue Control  
4200 Smith School Road  
Austin, Texas 78744

b. TNRCC: A check in the amount of \$31,383.97 payable to the "Texas Natural Resource Conservation Commission" and with the additional notation "PCA 49360/Project No. 49360" shall be sent to:

Texas Natural Resource Conservation Commission  
P.O. Box 13088, Capitol Station  
Austin, Texas 78711-3088

c. TGLO: A check in the amount of \$5,924.59 payable to the "Texas General Land Office" shall be sent to:

Texas General Land Office  
Ms. Diane Hyatt, NRDA Director, Legal Services  
1700 North Congress, Room 730  
Austin, Texas 78701

d. DOI/FWS: A check in the amount of \$3,761.00 payable to the "Secretary, Department of the Interior, with the additional notation "NRDAR Account No. 14X1610" shall be sent to.

Chief, Division of Finance  
U.S. Fish and Wildlife Service  
4401 North Fairfax Drive, Room 380  
Arlington, VA 22203

e. NOAA: A check in the amount of \$73,139.94 payable to "NOAA, Department of Commerce" shall be sent to:

NOAA Finance Services Division  
Bills and Collection Unit, Caller Service 7025  
20020 Century Boulevard  
Germantown, MD 20874

with a copy of the check sent to:

NOAA Office of General Counsel  
9721 Executive Center Dr. N., Suite 137  
St. Petersburg, Florida 33702  
ATTN: Stephanie Fluke

#### VII. FUTURE COSTS REIMBURSEMENT

20. The State and Federal Trustees have incurred and will continue to incur administrative costs and expenses after March 4, 1995, in connection with the development, implementation, and monitoring of the Project and with other activities contemplated by this Decree. The future costs are in addition to the funding described in Paragraph 16 of this Decree. Mobil agrees to reimburse such Project Review Group costs and expenses incurred after March 4, 1995, consistent with this Decree. The Project Review Group will provide Mobil with a biannual itemized statement

of such costs and expenses and Mobil shall pay such costs within 60 days of receipt of each statement in the manner provided in Paragraph 19, unless otherwise instructed by the Project Review Group. Mobil's liability for future costs shall terminate with the termination of this Decree.

#### VIII. ACCESS

21. Commencing upon the date of entry of this Decree, Mobil agrees to provide the United States and the State of Texas, including the State and Federal Trustees, their representatives, and contractors, access at all reasonable times to the Project site and to any other property to which access is required for this implementation of this Decree, to the extent access is controlled by Mobil, for the purposes of conducting any activity related to this Decree including, but not limited to:

- a. overseeing or monitoring the implementation of the Project;
- b. verifying any data or information submitted to the United States and the State of Texas;
- c. conducting investigations related to implementation of the Project;
- d. obtaining samples;
- e. inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Mobil or their agents, consistent with Section VIII; and

f. assessing Mobil's compliance with this Decree.

22. Notwithstanding any provision of this Decree, the United States and the State of Texas retain all access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, or any other applicable Federal or State statute or regulation.

#### IX. ACCESS TO INFORMATION

23. Mobil shall provide to the State and Federal Trustees, upon request, copies of all documents and information within their possession or control relating to the Project site or the implementation of this Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the implementation of the Project. Mobil shall also make available to the Project Review Group, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the implementation, condition or performance of the Project.

#### X. APPLICABILITY OF CONSENT DECREE

24. The provisions of this Decree shall be binding on and inure to the benefit of the United States and the State of Texas and be binding on and inure to the benefit of Mobil, its officers, directors, employees, agents, predecessors, subsidiarics,

affiliates, parents, successors, and assigns. No change in the ownership or organizational form or status of Mobil shall affect its rights or obligations under this Decree.

XI. STIPULATED PENALTIES

25. The defendant shall pay stipulated penalties for failure to comply with the following requirements of the Restoration Project, unless excused under this Section on the basis of a Force Majeure event:

- a. Failure to timely submit Draft or Revised Work Plans under Paragraphs 14 & 15 \$1000/day
- b. Failure to timely comply with schedules approved under Paragraphs 14 & 15 for implementing Final Work Plans \$1000/day
- c. Failure to timely provide funds as directed under Paragraph 16 for restoration and maintenance activities \$1000/day
- d. Failure to provide timely access to the Restoration Project site or information as required by Sections VIII & IX. \$1000/day
- e. Failure to record deed restriction as required by Paragraph 18 \$1000/day

26. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Mobil or of any entity controlled by Mobil, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Mobil's best efforts to fulfill the obligation. The requirement that Mobil 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 (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the obligations of this Decree.

27. If any event occurs or has occurred that may delay the performance of any obligation under this Decree, whether or not caused by a force majeure event, Mobil shall immediately notify orally the Project Review Group. Within seven (7) days thereafter, Mobil shall provide a written 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; Mobil'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 Mobil, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Mobil shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Mobil from asserting any claim of force majeure for that event. Mobil shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

28. If the Project Review Group agrees that a force majeure event has occurred and that it caused a delay or anticipated delay, the only effect of the force majeure event shall be that the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the Project Review Group for such time as is necessary to complete those obligations. An extension of the time for performance of the obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If the Project Review Group does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the Project Review Group will notify Mobil in writing of that decision. If the Project Review Group agrees that the delay is attributable to a force majeure event, the Project Review Group will notify Mobil, in writing, of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

29. No later than 15 days after receipt of the Project Review Group's notice of decision relating to a force majeure claim, Mobil may elect to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution). In any such proceeding, Mobil 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 Mobil complied with the requirements of Paragraphs 27, above. If Mobil carries this burden, the delay at issue shall not be deemed to be a violation by Mobil of the affected obligation under this Consent Decree.

30. All penalties under this Section shall begin to accrue on the day after Mobil's performance or action is due and shall continue to accrue until the end of the day such inaction or nonperformance is fully cured by Mobil. Penalties may accrue simultaneously for separate violations of this Decree.

31. All penalties due under this section shall be due and payable within 30 days of Mobil's receipt of a demand for payment from the United States and the State of Texas, unless Mobil invokes dispute resolution under Section XII of this Decree.

32. In the event Mobil fails to pay stipulated penalties when due, the United States or the State of Texas may institute legal proceedings to collect such penalties, as well as interest accruing on any unpaid balance, as provided by law. Pursuant to Paragraph 36, however, stipulated penalties continue to accrue during dispute resolution but are not due and payable until resolution of the dispute.

## XII. DISPUTE RESOLUTION

33. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth

in this Section shall not apply to actions by the United States or the State of Texas to enforce obligations of Mobil that have not been disputed in accordance with this Section.

34. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless agreed to in writing by Mobil and the Project Review Group. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

35. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Project Review Group shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Mobil invokes formal dispute resolution by filing with the Court and serving on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Mobil's notice of judicial appeal.

36. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligations of Mobil under this Consent Decree not directly in dispute, unless the Project Review Group agrees or the Court finds

otherwise. Further, if any project evaluation or work performance schedules have been stayed due to the invocation of formal dispute resolution, the affected schedules for performance shall be extended by the period of time that the schedule was interrupted due to Dispute Resolution. Stipulated penalties with respect to the disputed matters shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Mobil does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI.

#### XIII. INDEMNIFICATION

37. Mobil shall indemnify, save and hold harmless the United States and the State of Texas from any and all claims, causes of action or liabilities arising from the negligent acts or omissions or willful misconduct of Mobil in implementing this Decree.

#### XIV. EFFECT OF SETTLEMENT/ENTRY OF JUDGMENT

38. This Decree was negotiated and executed by the Parties hereto in good faith at arms length to avoid expensive and protracted litigation and is a fair and equitable settlement of claims which were contested. The execution of this Decree is not, and shall not constitute or be construed as, an admission of liability by any Party, nor is it an admission or denial of any of

the factual allegations set out in the Complaint or an admission of violation of any law, rule, regulation, or policy by any of the Parties to the Decree.

XV. COVENANT NOT TO SUE

39. Except as specifically provided in Section XVI of the Decree, the United States and the State of Texas each hereby covenant not to sue or to take any other civil or administrative action against Mobil for natural resource damages caused by the April 6, 1992, release described in Section III under CERCLA, 42 U.S.C. §§ 9601 et seq., or any other federal, state or common law. These covenants not to sue shall take effect upon the date of entry of the Decree, and shall remain in effect as long as Mobil fulfills its obligations under this Decree.

XVI. RESERVATION OF RIGHTS

40. Notwithstanding any other provision of this Decree, the United States and the State of Texas reserve the right to institute proceedings against Mobil in this action or in a new action seeking recovery of Natural Resource Damages, as defined herein; based on (1) conditions unknown to the United States or the State of Texas on the Date of Execution of the Decree that contribute to injury to, destruction of, or loss of natural resources ("Unknown Conditions"); or (2) information received by the United States or the State of Texas after the Date of Execution of the Decree which indicates there is injury to, destruction of, or loss of natural

resources, of a type unknown to Plaintiffs as of the Date of Execution of the Decree ("New Information").

41. Conditions or information which affect only the United States' or State of Texas' assessment of the magnitude of the injury, destruction or loss to natural resources, or the estimate of or actual natural resource damages shall not be considered to be Unknown Conditions or New Information within the meaning of Paragraph 40.

42. Notwithstanding any other provision of this Decree, the covenants not to sue in Section XV shall apply only to matters addressed in the Decree and specifically shall not apply to the following claims:

- a. claims based on a failure by Mobil to satisfy the requirements of the Decree;
- b. claims for criminal liability; and,
- c. claims for natural resource damages from the past, present or future disposal, release or threat of release of hazardous substances that do not arise from disposal, release and threat of release of such hazardous substances by Mobil from the Pasadena facility on April 6, 1992.

#### XVII. COVENANTS BY SETTLING DEFENDANT

43. Mobil hereby covenants not to sue or to bring any administrative action of any kind against the United States or the State of Texas, or any agency or instrumentality of either, for any

claims arising from or relating to the April 6, 1992 spill described in Section IV, pursuant to any federal, state, or common law, including but not limited to, any direct or indirect claims pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, against the Hazardous Substance Superfund, pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for contribution, or pursuant to the Federal Torts Claims Act, 28 U.S.C. § 1346(b) and §§ 2671, et seq.

#### XVIII. VOIDABILITY

44. IF for any reason the District Court should decline to approve entry of this Decree in the form presented, this Decree and the settlement embodied herein shall be voidable by written notice to the other Parties at the sole discretion of any Party to this Decree, and the terms hereof may not be used as evidence in any litigation.

#### XIX. COMPLIANCE WITH OTHER LAWS

45. The Decree shall not be construed in any way to relieve Mobil or any other person or entity from the obligation to comply with any federal, state, or local law.

#### XX. RETENTION OF JURISDICTION

46. The Court shall retain jurisdiction of this matter for the purpose of entering such further order, direction, or relief as may be necessary or appropriate for the construction, implementation, or enforcement of this Decree.

XXI. AUTHORIZED REPRESENTATIVE

47. Each undersigned representative of a Party to the Decree certifies that he or she is fully authorized to enter into the terms and conditions of the Decree and to legally execute and bind that Party to this Decree.

XXII. MODIFICATION

48. The terms of this Decree may be modified only by a subsequent written agreement signed by all of the Parties signatory hereto, and approved by the Court as a modification to this Decree.

XXIII. TERMINATION

49. This Consent Decree shall terminate three years from the date the Project Review Group certifies completion of the Restoration Project under Paragraph 15 of this Decree or at the conclusion of the period provided for use of restoration and maintenance funds under Paragraph 16 where such period is extended due to the invocation of Dispute Resolution under Paragraph 36, whichever is later.

XXIV. PUBLIC COMMENT

50. The Parties agree that this Decree will be subject to a 30-day public comment period as provided in 28 C.F.R. § 50.7. Plaintiffs reserve the right to withdraw their consent to the Decree if comments received disclose facts or considerations which show that the Decree is inappropriate, improper, or inadequate.

Mobil consents to the entry of this Decree by the Court without further notice.

XXV. NOTICE

51. Any notice required hereunder shall be in writing and shall be delivered by hand, facsimile, or overnight mail as follows:

Notice to Plaintiffs:

Mr. Richard Siler  
MC 142  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Tx 78711-3087

Fax: 512-239-2527

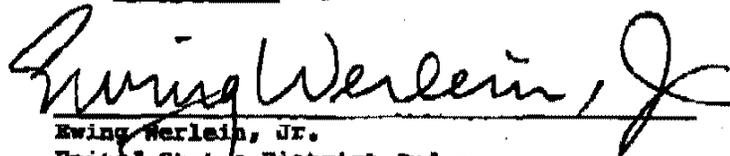
Notice to Mobil:

Mr. Steve Pierce  
Plant Manager  
Mobil Mining and Minerals Co. Pasadena Fertilizer Plant  
2001 Jackson Rd.  
Pasadena, TX 77506

52. Each party to this Decree may change the person(s) it has designated to receive notice for that Party, or the addresses for such notice, by serving said notice on each of the other Parties to the Decree.

50. By signature below, all Parties consent to this Consent Decree.

SIGNED at Houston, Texas, on this 12<sup>TH</sup> day of June 1996.

  
Ewing Werlein, Jr.  
United States District Judge

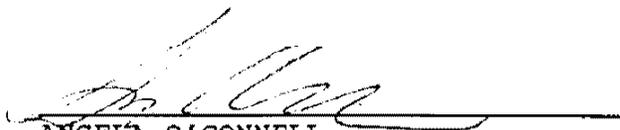
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Party Signatory Page

FOR THE PLAINTIFF UNITED STATES:



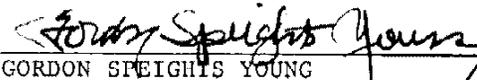
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LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, DC 20530



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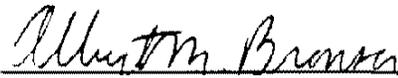
ANGELA O'CONNELL  
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