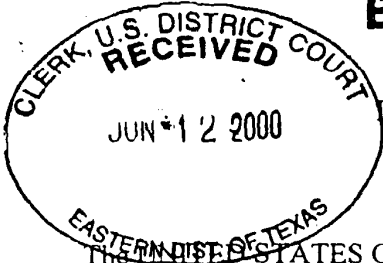


EOD \_\_\_\_\_



IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

The UNITED STATES OF AMERICA and  
The STATE OF TEXAS

Plaintiffs,

v.

BROWNING-FERRIS INDUSTRIES CHEMICAL  
SERVICES, INC.; CHEVRON CHEMICAL COMPANY  
LLC; CHEVRON ENVIRONMENTAL MANAGEMENT  
COMPANY, as successor in interest to CHEVRON  
CHEMICAL COMPANY, LLC; E.I. DUPONT DE  
NEMOURS & COMPANY; ENTERGY GULF STATES,  
INC.; PHILLIPS PETROLEUM COMPANY; SUN  
COMPANY, INC.; TEXACO INC.; MICHELIN NORTH  
AMERICA, INC., successor in interest to The Uniroyal  
Goodrich Tire Company and Uniroyal Goodrich Tire  
Company, Inc.; ATLANTIC RICHFIELD COMPANY;  
ARCO ENVIRONMENTAL REMEDIATION, L. L. C.,  
as successor to ATLANTIC RICHFIELD COMPANY;  
ALLIED SIGNAL, INC.; MATADOR CHEMICAL  
COMPANY [a/k/a KOCH CHEMICAL COMPANY],  
individually, and as successor in interest to ALLIED-  
SIGNAL, INC.; KOCH INDUSTRIES, INC., KOCH  
FUELS, INC., and KOCH PETROLEUM GROUP, L.P.,  
as successors to ALLIED SIGNAL, INC.; THE DOW  
CHEMICAL COMPANY; THE GOODYEAR TIRE &  
RUBBER COMPANY; OLIN CORPORATION; MOBIL  
OIL CORPORATION; PPG INDUSTRIES, INC.; UNION  
OIL COMPANY OF CALIFORNIA, d/b/a UNOCAL and  
UNOCAL CORPORATION; and BRIDGESTONE/  
FIRESTONE, INC., f/d/b/a/ Firestone Tire and Rubber  
Company, Inc.

Defendants.

*1:00-ev-386*

**FILED**  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

SEP - 5 2000

DAVID J. MALAND, CLERK  
BY DEPUTY *[Signature]*

CONSENT DECREE ADDRESSING NATURAL RESOURCE DAMAGES

Plaintiffs, the United States of America, on behalf of the United States Department of the

Interior for the United States Fish and Wildlife Service ("DOI/USFWS") and the National Oceanic and Atmospheric Administration ("NOAA") of the United States Department of Commerce, and the State of Texas, acting on behalf of the Texas Natural Resource Conservation Commission ("TNRCC"), the Texas Parks and Wildlife Department ("TPWD"), and the Texas General Land Office ("TGLO"), have filed a Complaint in this action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, seeking natural resource damages, including assessment costs, related to releases of hazardous substances from a facility known as the Bailey Waste Disposal Site ("Site"), located in Orange County, approximately three miles southwest of Bridge City, Texas.

The Complaint filed by the United States and the State of Texas alleges that the Defendants named therein are persons within the meaning of CERCLA who are liable for injuries or losses of natural resources caused by releases of hazardous substances from or response actions undertaken at the Site. The Complaint seeks to impose upon the Defendants liability for natural resource damages, including for assessment costs incurred by the United States and the State of Texas, based on those injuries and losses.

The United States, the State of Texas, and the Settling Defendants (defined in Section IV), have agreed on the terms set forth in this Consent Decree to settle this action. By entering into this Consent Decree the Settling Defendants make no admission with respect to their liability for, or the amount of, any natural resource damages arising from any conditions present at or arising in connection with the Site.

The United States, the State of Texas and the Defendants agree that settlement of this action and entry of this Consent Decree without further litigation is in the public interest and is

the most appropriate means of resolving this action.

IT IS, ADJUDGED, ORDERED AND DECREED THAT:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106, 107, and 113, of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, and pursuant to 28 U.S.C. §§ 1331 and 1345.

II. VENUE

2. Venue is proper in this district pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613, and pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a), as it is the judicial district in which the natural resource damages are alleged to have occurred.

III. BINDING EFFECT

3. This Consent Decree applies to and is binding upon the United States, the State of Texas and upon the Settling Defendants, and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

4. Each representative of a Defendant who signs this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Settling Defendant to this document. The undersigned representatives of the United States and the State of Texas certify that they are each fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind their respective entities to this document.

5. The unwillingness to pay or the insolvency of any Settling Defendant, whether or not it is through formal bankruptcy proceedings, shall not affect or change the obligations of the remaining signatories to this Consent Decree. The remaining Settling Defendants shall be jointly and severally responsible to the United States and the State of Texas for performing all of the obligations of Settling Defendants set forth herein.

#### IV. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Decree shall have the meanings assigned to them in CERCLA, 42 U.S.C. 9601 et seq., or in regulations promulgated under CERCLA at 43 C.F.R. Part 11 or 40 C.F.R. Part 300. The following definitions also apply to terms used in this Consent Decree:

a. "Bailey Waste Disposal Site", "Bailey Site" or the "Site" refers to the inactive waste disposal facility located in Orange County, approximately three miles southwest of Bridge City, west of Texas State Highway 87, at the north end of the Rainbow Bridge and along the north bank of the Neches River. The Site is accessible via a short bridge spanning a drainage channel adjacent and parallel to the highway. The Site is situated within an estuarine marsh, bounded by undeveloped lands and agricultural tracts. The Site is approximately 2 miles from the nearest residential area and the nearest developed industrial property is across the Neches River, as more fully described in Section V, hereto.

b. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986).

c. "Day" means calendar day.

d. "Trustees" means the DOI/USFWS, NOAA, TNRCC, TPWD and TGLO, collectively.

e. "Parties" means the United States, the State of Texas and the Settling Defendants.

f. "Settling Defendants" means those parties whose representatives have signed the Consent Decree, namely; Browning-Ferris Industries Chemical Services, Inc.; Chevron Chemical Company LLC; Chevron Environmental Management Company, as successor in interest to Chevron Chemical Company, LLC; E.I. Dupont De Nemours & Company, Entergy Gulf States, Inc.; Phillips Petroleum Company; Sun Company, Inc.; Texaco Inc.; Michelin North America, Inc., successor in interest to the Uniroyal Goodrich Tire Company and Uniroyal Goodrich Tire Company, Inc.; Allied Signal, Inc.; Matador Chemical Company [a/k/a Koch Chemical Company] individually, and as successor in interest to Allied-Signal, Inc.; Koch Industries, Inc., Koch Fuels, Inc., and Koch Petroleum, Group, L.P., as successors in interest to Allied Signal, Inc.; Atlantic Richfield Company; ARCO Environmental Remediation, L. L. C., as successor in interest to Atlantic Richfield Company; The Dow Chemical Company; The Goodyear Tire & Rubber Company; Mobil Oil Corporation; Olin Corporation; PPG Industries, Inc.; Union Oil Company of California, d/b/a Unocal and Unocal Corporation; and Bridgestone/ Firestone, Inc., f/d/b/a Firestone Tire and Rubber Company, Inc.

#### V. SITE DESCRIPTION AND REMEDIAL HISTORY

7. The Bailey Waste Disposal Site encompasses approximately 280 acres located 3 miles southwest of Bridge City, Orange County, Texas, west of Texas Highway 87, and along the north bank of the Neches River. The Site is accessible via a short bridge spanning a drainage channel adjacent and parallel to the highway. The Site is situated within an estuarine marsh, bounded by undeveloped lands and agricultural tracts. The Site is approximately 2 miles from the nearest

residential area and the nearest developed industrial property is across the Neches River.

8. The Site originally consisted of, inter alia, two ponds - Pond A (approx. 52 hectares) and Pond B (approximately 30 hectares) - constructed before 1950 in a salt marsh adjacent to the Neches River. The ponds were originally used for freshwater recreational fishing. The ponds were created by dredging sediments from the salt marsh to form the ponds' perimeter levees.

9. Beginning in the 1950's and until about 1971, the Site was used for disposal of industrial and municipal wastes. These wastes were deposited in a series of pits excavated along the northern and eastern levees of Pond A and in a drum disposal area on the southern levee of Pond A. The waste pits were originally connected, allowing for the bi-directional flow of wastes.

10. EPA proposed to include the Site on the National Priorities List ("NPL") in October 1984 due to the release or threatened release of hazardous substances. The NPL listing became final in 1986. A Remedial Investigation ("RI") was completed at the Site in October 1987, a Final Draft Feasibility Study Report ("FS") recommending an on-site *in-situ* stabilization remedy was completed in April 1988, and a Record of Decision ("ROD") based thereon was signed in June 1988. Investigations of Site wastes and conditions incident to the RI/FS process found hazardous substances at the Site, including metals, arsenic compounds, phenols, pyridenes, naphthalenes and chlorinated hydrocarbons in soils, and estimated the volume of wastes to be 156,000 cubic yards.

11. On-site *in-situ* stabilization of wastes began in September 1993. However, due to difficulties in meeting stabilization requirements for this remedy, the remedial approach was subsequently re-evaluated and other remedy alternatives considered. In February 1996, EPA issued an Explanation of Significant Differences ("February 1996 ESD") to address wastes that

were found to have migrated into the north marsh adjacent to the Site's north levee. The February 1996 ESD required wastes and marsh sediments in that area to be excavated and removed for off-Site disposal. EPA issued another ESD in May 1996, requiring approximately 12,000 cubic yards of wastes and affected sediments which had previously been contained in an adjacent waste disposal pit ("Pit B") to be excavated and removed for off-Site disposal to eliminate what was considered to be the source of the waste found in the north marsh.

12. An Amended ROD was issued in December 1996. In addition to actions specified in the two ESDs, the remedy approved in the Amended ROD included waste consolidation, grading and light weight capping within the Site's waste areas; installation of a water collection system to intercept and remove groundwater rising during construction of the cap; installation of storm-water management controls to treat storm-water runoff during construction and to divert storm-water from inactive or completed areas of the Site; and adjustments to existing dike elevations and slopes to link to the cap, address areas with excessive settlement and provide for erosion/slope protection. Construction activities to implement the Amended ROD began in January 1997, and were completed in August 1997.

13. The Settling Defendants have previously entered into a Consent Decree to address and resolve their liability under CERCLA for response activities performed and costs incurred in connection with the Site, with certain Defendants' liability being resolved by the terms of a Consent Decree entered on April 30, 1990, in Civil Action No. B89-00859-CA and other Defendants' liability being resolved by the terms of a Consent Decree entered on July 21, 1995, in Civil Action No. 1-95CV085. Both Consent Decrees reserved all claims of the United States for damages for injury to, destruction of or loss of natural resources associated with the Site.

VI. STATEMENT OF FACTS RELATING TO NATURAL RESOURCE DAMAGES

14. DOI/USFWS, NOAA, TGLO, TPWD and TNRCC are each designated under CERCLA as a trustee for natural resources which have been actually or potentially affected by hazardous substances at the Bailey Site.

15. Based on investigations of Site wastes and conditions during the RI/FS process or undertaken to assist in assessing the Site's impacts on surrounding estuarine resources, the Trustees found that natural resources or resource services were lost due to the placement of hazardous substances in certain areas of the Site, were injured due to the migration of hazardous substances into the northern salt marsh, were likely harmed by exposure to surface waters contaminated by Site releases, and were also injured or destroyed by the excavation and capping undertaken to implement remedial actions at the Site.

16. The remedial actions selected to address the contamination at the Site, including cap maintenance as required by EPA, are expected to protect natural resources from further or future injury but do not restore, replace or otherwise compensate for the injuries or losses of natural resources which may be attributed to the Site contamination, including the remedial actions undertaken.

17. To calculate what the Trustees determined to be appropriate compensation for these injuries or losses, information available from the Site investigations was used to evaluate the extent of natural resource injuries and service losses attributable to the Site. That evaluation considered (i) the area of each habitat type covered by wastes containing hazardous substances, covered by the migration of wastes containing hazardous substances or disturbed by remedial activities, (ii) whether habitat service losses in these areas were total or partial, (iii) whether the



service losses in these areas were permanent or would recover with time, and (iv) the duration of any service losses. Aided by a methodology known as Habitat Equivalency Analysis ("HEA"), the Trustees then used this information to estimate the total potential loss of wetland acre-years represented by the natural resource injuries associated with the Site and to identify the amount of estuarine marsh creation necessary to compensate for those habitat service losses. The Trustees have determined that HEA is a valid and reliable scientific methodology used to define the scale of restoration actions needed to restore or replace ecological services comparable in value to resource services lost.

18. Using this approach, the Trustees determined that approximately 28 acres (11.3 hectares) of estuarine marsh habitat would have to be created to adequately compensate for the natural resource injuries and service losses attributable to hazardous substance releases and response actions at the Bailey Site.

19. The Trustees estimated the cost for the Trustees to implement this type and scale of restoration project in the vicinity of the Bailey Site.

20. The Trustees have determined, pursuant to Section 122 (j) of CERCLA, 42 U.S.C. 9622(j), that the Settling Defendants, by providing the funds outlined in this Consent Decree, are providing funds sufficient to allow the Trustees, on behalf of the public, to plan and implement restoration actions sufficient to compensate the public for the injuries and losses of natural resources or resource services attributable to the Bailey Site and to reimburse each agency for its past assessment costs and future operating costs.

## VII. PAYMENT OF NATURAL RESOURCE DAMAGES

21. Within 45 days of the entry of this Consent Decree, the Settling Defendants shall pay

to the Trustees the sum of \$605,000.00, which shall be used to plan and implement one or more estuarine marsh restoration projects in the estuary or watershed encompassing the Bailey Site and to reimburse the Trustees for past assessment costs. On or before the 45th day after entry of this Consent Decree, the payment shall be made as follows:

a. Restoration Funds: The Settling Defendants shall transfer \$522,065.85 into an account established within the Court Registry, to be referred to as the "Bailey Waste Disposal Site Restoration Account", in accordance with procedures acceptable to the Court Registry for effecting such transfer. These funds will be held in this account solely for use by the Trustees to plan, implement and oversee the creation or enhancement of estuarine wetlands in the Neches River basin in accordance with a restoration plan to be developed by the Trustees to restore, replace or acquire the equivalent of natural resources or resource services injured or lost due to the Site. Such restoration plan shall include the opportunity for public review and comment and will otherwise be developed in accordance with the federal and state law, including requirements applicable to restoration planning as may be found within CERCLA, 43 C.F.R. Part 11.

b. State Trustee(s) Past Costs Reimbursement: The TGLO incurred costs in the amount of \$6,665.31. TPWD incurred costs in the amount of \$8,669.00. The TNRCC incurred costs in the amount of \$16,058.39. In total, State Trustees incurred costs in the amount of \$31,392.70. Such costs shall be paid by cashier's check made payable to the State of Texas and delivered to the Chief, Natural Resources Division, Office of Attorney General of Texas, P.O. Box 12548, Capital Station, Austin, Texas, 78711-2548. Said cashier's check shall bear the identifying number(s) "AG 98-971447, AG 98-944165, and AG 98-944156".

A copy of this check shall also be delivered to each of the following:

Andrew Neblett  
Deputy Commissioner  
Resource Management Division  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

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

Richard Seiler, MC142  
TNRCC  
P.O. Box 13087  
Austin, Texas 78701-3087

c. DOI/USFWS Past Costs Reimbursement: A certified check in the amount of \$4,486.72 payable to the "United States Treasury", with the additional notation, "NRDAR Account No. 14X5198, payment for Bailey Waste Disposal Site", and shall be delivered to:

J. Michael Bradford, Esq.  
United States Attorney  
Eastern District of Texas  
350 Magnolia Street, Suite 150  
Beaumont, TX 77701

A copy of this check shall also be delivered to each of the following:

Chief, Division of Finance  
U.S. Fish and Wildlife Service  
4401 North Fairfax Drive, Room 380  
Arlington, VA 22230

Steve Spencer  
DOI Office of Environmental Policy and Compliance  
P.O. Box 649  
Albuquerque, NM 87103

United States Department of Justice

Chief, Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20005

d. NOAA Past Costs Reimbursement: A certified check in the amount of \$47,054.72

payable to the "United States Treasury" and referencing the "Bailey Waste Disposal Site", shall  
be delivered to:

J. Michael Bradford, Esq.  
United States Attorney  
Eastern District of Texas  
350 Magnolia Street, Suite 150  
Beaumont, TX 77701

A copy of the check shall also be delivered to each of the following:

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

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

United States Department of Justice  
Chief, Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20005

#### VIII. INTEREST

22. In the event that the Defendants fail to timely pay any amount specified in Section VII, Paragraph 21, the Settling Defendants shall then pay interest on any balance due in the amount prescribed in Section 107(a), 42 U.S.C. § 9607(a) to the Bailey Waste Disposal Site

Restoration Fund or Trustee to whom the balance is owed. Interest shall accrue on any unpaid amount from and including the forty-sixth (46th) day following the date of entry of the Consent Decree, until and including the day full payment of penalty and interest is received by the United States and the State of Texas. Payments of interest due shall be made in the manner directed by the United States and the State of Texas. Settling Defendants shall be liable for attorneys' fees and costs incurred by the United States or the State of Texas to collect any amount due under this Consent Decree.

IX. DEFAULT

23. If the Settling Defendants fail to timely make any payment specified in Section VII, Paragraph 21 above, this Consent Decree shall be considered an enforceable judgment against the Defendants for purposes of post-judgment collection under Federal Rule 69, Federal Rules of Civil Procedure, and other applicable statutory authority without further order of this Court.

X. STIPULATED PENALTIES

24. In addition to any interest, the Settling Defendants shall pay stipulated penalties to the United States and the State of Texas for each failure to comply with any term or condition of this Consent Decree. Any stipulated penalties paid pursuant to this Section shall be in addition to the payment of natural resource damages pursuant to Section VII, Paragraph 21 and shall be payable to both the United States and the State of Texas in the manner instructed by the governments. The Settling Defendants shall pay the following amounts per day for each day of

violation:	<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
	1st through 14th day	\$2,000.00
	15th through 44th day	\$3,000.00

45th day and beyond

\$5,000.00

25. All Stipulated penalties owed to the United States and the State of Texas shall be due and payable within thirty (30) days of the Settling Defendants' receipt from either the United States, and/or the State of Texas, of a demand for payment of the penalties.

26. All Stipulated Penalties begin to accrue on the day that complete performance is due or a violation of the Consent Decree occurs, and continue to accrue through the final day of the correction of the non-compliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

27. All payments under this Section shall be made in the form of a certified check or checks and made payable to the United States and the State of Texas in the manner prescribed in Section VII, Paragraph 21.

28. If the Settling Defendants fail to pay stipulated penalties when due, the United States and the State of Texas may institute proceedings to collect the penalties, as well as any interest associated thereto. In addition, Settling Defendants shall be liable for attorney's fees and costs incurred by the United States and the State of Texas associated with the collection of stipulated penalties.

#### XI. COVENANTS NOT TO SUE

29. In consideration of the payments made by the Settling Defendants in accordance with this Consent Decree, and except as specifically provided in Section XII, Paragraph 33, the United States and the State of Texas each hereby covenant not to sue or to take any other civil or administrative action against the Settling Defendants for natural resource damages resulting from, or in connection with, hazardous substances released at or from the Bailey Site, under

CERCLA, 42 U.S.C. §§ 9601 et seq., or any other federal, state or common law.

30. These covenants not to sue are conditioned upon payment, and shall not take effect until the receipt by United States and Texas, of all funds required to be paid under the terms of this Decree. Further, these covenants not to sue extend only to the Settling Defendants, and not to any other person. With respect to ARCO Environmental Remediation, L.L.C., Chevron Environmental Management Company, Koch Industries, Inc., Koch Fuels, Inc., and Koch Petroleum Group L.P., these covenants not to sue extend only to alleged liability arising from their status as successors in interest to Atlantic Richfield Company, Chevron Chemical Company LLC, and Allied-Signal, Inc., respectively.

31. In consideration of the covenant not to sue contained in Paragraph 29, the Settling Defendants agree not to assert any claims or causes of action for natural resources damages with respect to the Site against the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) under CERCLA Sections 106, 111, 112, 113, 42 U.S.C. §§ 9606, 9611, 9612, and 9613, or any other federal, state or common law with respect to the Site against the United States or the State of Texas, including any department, agency or instrumentality of the United States or the State of Texas, under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613, or any other federal, state or common law.

## XII. NON-WAIVER PROVISIONS

32. Nothing in this Consent Decree shall be construed to relieve the Settling Defendants or their officers, agents, servants, employees, successors, or assigns of their obligations to comply with all applicable federal, state and local statutes and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act

("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986).

33. Notwithstanding any other provision of this Consent Decree, the United States and the State of Texas each reserve, and this Consent Decree is without prejudice to:

a. Any and all rights of the United States or the State of Texas to institute proceedings in a new action, or to issue an administrative order seeking to compel Settling Defendants to perform additional response actions at the Site, or reimburse the United States or the State of Texas for additional costs of response or for natural resource damages resulting from:

(i) conditions at the Site, presently unknown to the United States or the State of Texas, which are discovered after the entry of this Consent Decree; or,

(ii) information received, in whole or in part, after the entry of this Consent Decree, upon which the Trustees find, based on these previously unknown conditions or this information together with other relevant information, that there is injury to, destruction of, or loss of natural resources of a type unknown to the Trustees as of the date of entry of this Consent Decree.

b. Any and all rights against the Settling Defendants with respect to all other matters not specifically included in the covenant not to sue, including but not limited to the following:

(i) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(ii) liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site;

(iii) liability for the disposal of any hazardous substances taken from the Site; and,

(iv) criminal liability.



34. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States or the State of Texas, acting individually or in concert, to seek or obtain any other remedy, sanction or relief that may be available by virtue of the Settling Defendants' failure to comply with this Consent Decree, CERCLA, or any other applicable law or regulation.

35. This Consent Decree does not limit or affect the rights of the United States, the State of Texas or the Settling Defendants as against any third party. Except as set forth in Paragraph 36, this Consent Decree does not limit the rights of any entity, not a party to this Consent Decree, against Settling Defendants.

36. With regard to claims for contribution against the Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled, as of the receipt by United States and the State of Texas of all funds required to be paid under the terms of this Decree, to such protection from contribution actions or claims as is provided by CERCLA Sections 113(f)(2) and 122(h), 42 U.S.C. §§ 9613(f)(2) & 9622(h).

37. Nothing in this Consent Decree shall be deemed to limit the response authority of the United States or the State of Texas under any law.

### XIII. NOTICES AND SUBMISSIONS

38. Any notices or correspondence required to implement this Consent Decree shall be in writing and shall be deemed to have been made when sent by certified mail or its equivalent, including overnight courier, to the persons specified below:

a. Notices or correspondence to be submitted to the United States shall refer to

DJ No. 90-11-2-390A and shall be sent to:

United States Department of Justice  
Chief, Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20005

b. Notices or correspondence to be submitted to the State of Texas shall be sent to:

Office of the Texas Attorney General  
Natural Resources Division  
P. O. Box 12548  
Austin, TX 78711-2548  
Attn: Eugene A. Clayborn, Esq.

c. Notices or correspondence to be submitted to the Defendants shall be sent to:

Mayor, Day, Caldwell & Keeton, L.L.P.  
700 Louisiana, Suite 1900  
Houston, TX 77002-2778  
Attn: Debra L. Baker, Esq.

#### XIV. RETENTION OF JURISDICTION

39. The Court shall retain jurisdiction over both the subject matter of and the parties to this action for the purposes of enforcing the Parties' rights and obligations under this Consent Decree until such time as the United States and the State of Texas have received all funds required to be paid under the terms of this Consent Decree.

#### XV. PUBLIC COMMENT

40. The Parties agree and acknowledge that final approval by the United States and the State of Texas and entry of this Consent Decree is subject to a thirty (30) day period for public notice and an opportunity for public comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S. C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States and the State of Texas each reserve the right to withdraw or withhold consent if the public comments regarding the Consent

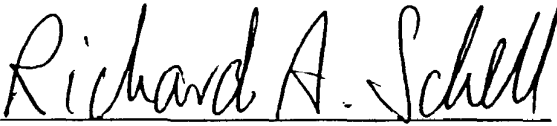
Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice. Each Settling Defendant agrees that it will not oppose the entry of this Consent Decree.

41. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. EFFECTIVE DATE

42. This Consent Decree is effective upon the date of its entry by the Court.

SIGNED and ENTERED this 5<sup>th</sup> day of September, 2000.



United States District Judge

FOR THE UNITED STATES OF AMERICA:

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division

6/7/00

Dated:

Walker Smith

Walker Smith  
Deputy Chief  
Environmental Enforcement  
Section

6/8/00

Dated:

Kirk W. Koester

Kirk W. Koester  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
P. O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-9009  
(202) 514-8395 (fax)

6/12/00

Dated:

J. Michael Bradford  
United States Attorney

By:

Andrea L. Parker

Andrea L. Parker  
Assistant United States Attorney  
Eastern District of Texas

CONSENT DECREE RE:

UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.

Civil Action No. \_\_\_\_\_

Eastern District of Texas

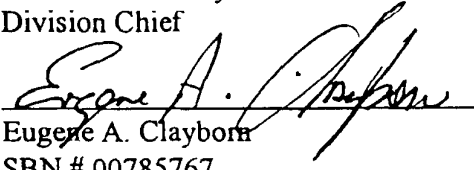
FOR THE STATE OF TEXAS:

John Cornyn  
Attorney General of Texas

Andy Taylor  
First Assistant Attorney General

Linda S. Eads  
Deputy Attorney General for Litigation

Karen W. Kornell  
Assistant Attorney General  
Division Chief

  
Eugene A. Clayborn  
SBN # 00785767  
Assistant Attorney General  
Natural Resources Division  
P.O. Box 12548  
Capital Station  
Austin, Texas 78711-2548  
(512) 463-2012  
(512) 320-0911 (fax)

10-12-99  
Dated:

On behalf of:

The Texas General Land Office,

The Texas Parks and Wildlife Department, and

The Texas Natural Resource Conservation  
Commission.

CONSENT DECREE RE:

UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.

Civil Action No. \_\_\_\_\_  
Eastern District of Texas

FOR BROWNING-FERRIS INDUSTRIES  
CHEMICAL SERVICES, INC.:

9-16-99  
Dated:

Op Lynn White  
Browning-Ferris Industries Chemical Services, Inc.  
SEAL

9-16-99  
Dated:

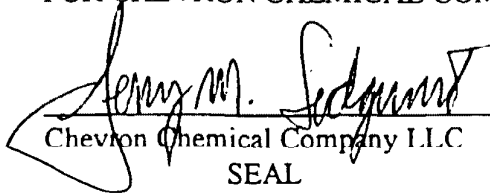
Op Lynn White

Counsel for Browning-Ferris Industries Chemical  
Services, Inc.

**CONSENT DECREE RE:**  
**UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS**  
**INDUSTRIES CHEMICAL SERVICES, INC., et. al.**  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas

FOR CHEVRON CHEMICAL COMPANY LLC:

9/21/99  
Dated:

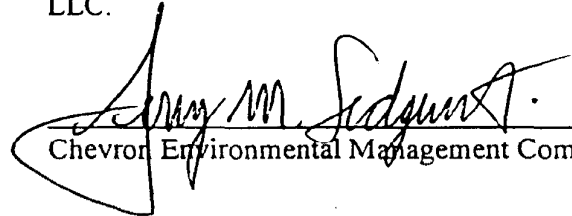
  
\_\_\_\_\_  
Chevron Chemical Company LLC  
SEAL

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Counsel for Chevron Chemical Company LLC

FOR CHEVRON ENVIRONMENTAL  
MANAGEMENT COMPANY as successor in  
interest to CHEVRON CHEMICAL COMPANY,  
LLC.

9/21/99  
Dated:

  
\_\_\_\_\_  
Chevron Environmental Management Company

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Counsel for Chevron Environmental Management  
Company

**CONSENT DECREE RE:**

**UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.**

Civil Action No. \_\_\_\_\_

Eastern District of Texas

FOR E. I. DUPONT DE NEMOURS &  
COMPANY:

9/27/99  
Dated:

David L. Wickham - CORPORATE  
E. I. DuPont De Nemours & Company REMEDIATION  
SEAL

10/8/99  
Dated:

John D. Allen

Counsel for E. I. DuPont De Nemours & Company


CONSENT DECREE RE:  
UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas



FOR ENTERGY GULF STATES, INC.:

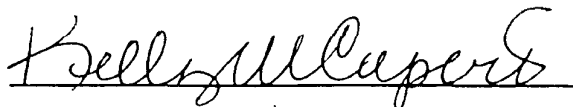
October 27, 1999

Dated:

  
\_\_\_\_\_  
Entergy Gulf States, Inc.  
SEAL

October 27, 1999

Dated:

  
\_\_\_\_\_

Counsel for Entergy Gulf States, Inc

CONSENT DECREE RE:

UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.

Civil Action No. \_\_\_\_\_

Eastern District of Texas

FOR PHILLIPS PETROLEUM COMPANY:

9/15/99  
Dated:

*MCW*   
\_\_\_\_\_  
Phillips Petroleum Company  
SEAL

\_\_\_\_\_  
Dated:

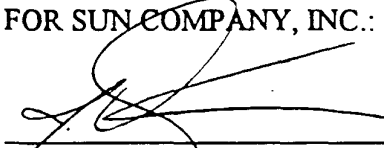
\_\_\_\_\_  
Michael C. Wofford  
Counsel for Phillips Petroleum Company

**CONSENT DECREE RE:**  
**UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS**  
**INDUSTRIES CHEMICAL SERVICES, INC., et. al.**  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas

FOR SUN COMPANY, INC.:

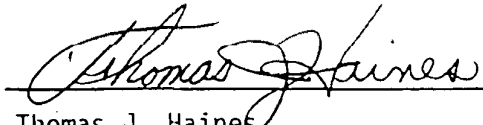
Sept. 21, 1999

Dated:

  
\_\_\_\_\_  
Sun Company, Inc. James R. Oppenheim  
SEAL

Sept. 21, 1999

Dated:

  
\_\_\_\_\_  
Thomas J. Haines  
Counsel for Sun Company, Inc.

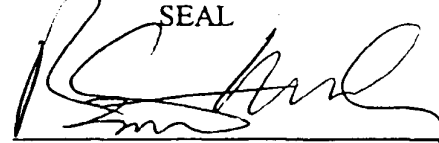
CONSENT DECREE RE:  
UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas

FOR TEXACO, INC.:

9-23-99  
Dated:

Roger K. Halley  
Texaco, Inc.

10/7/99  
Dated:


SEAL  


\* Counsel for Texaco, Inc.

CONSENT DECREE RE:  
UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas

FOR MICHELIN NORTH AMERICA, INC.,  
successor in interest to The Uniroyal Goodrich Tire  
Company and Uniroyal Goodrich Tire Company,  
Inc.:

\_\_\_\_\_  
Dated:

  
\_\_\_\_\_  
Michelin North America, Inc.  
SEAL

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Counsel for Michelin North America, Inc.

**CONSENT DECREE RE:**

**UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.**

Civil Action No. \_\_\_\_\_  
Eastern District of Texas

10/29/99  
Dated:

FOR ALLIED SIGNAL, INC.  
[Signature] DR  
Allied Signal, Inc.  
SEAL

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Counsel for Allied Signal, Inc.  
FOR MATADOR CHEMICAL COMPANY [a/k/a  
KOCH CHEMICAL COMPANY]

\_\_\_\_\_  
Dated:

*SEE P. 31 KWK*  
\_\_\_\_\_  
Matador Chemical Company [a/k/a Koch  
Chemical Company].  
SEAL

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Counsel for Matador Chemical Company a/k/a  
Koch Chemical Company].  
FOR MATADOR CHEMICAL COMPANY as  
successor to Allied-Signal, Inc., at the Bailey Site.

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Matador Chemical Company as successor to  
Allied-Signal, Inc., at the Bailey Site.  
SEAL

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Counsel for Matador Chemical Company

**CONSENT DECREE RE:**  
**UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS**  
**INDUSTRIES CHEMICAL SERVICES, INC., et. al.**  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas

\_\_\_\_\_  
Dated:

FOR KOCH INDUSTRIES, INC.,  
and KOCH PETROLEUM GROUP, L.P.  
as successor to MATADOR CHEMICAL  
COMPANY, at the Bailey Site.

 VAM

\_\_\_\_\_  
Koch Industries, Inc. and  
Koch Petroleum Group, L.P. as  
successor to MATADOR CHEMICAL  
COMPANY, at the Bailey Site

\_\_\_\_\_  
Counsel for Koch Industries, Inc. and  
Koch Petroleum Group, L.P. as  
successor to Matador Chemical  
Company, at the Bailey Site

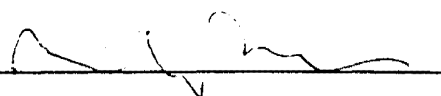
CONSENT DECREE RE:  
UNITED STATES AND The STATE of TEXAS v. BROWNING FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et al.  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas

7/28/99  
Dated:

For ATLANTIC RICHFIELD COMPANY:


  
Atlantic Richfield Company  
SEAL

9/28/99  
Dated:

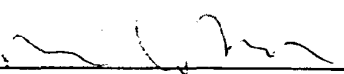
  
Counsel for Atlantic Richfield Company

FOR ARCO ENVIRONMENTAL  
REMEDICATION, L. L. C., as successor to Atlantic  
Richfield Company:

9/28/99  
Dated:

  
ARCO Environmental Remediation, L. L. C.  
SEAL

7/28/99  
Dated:

  
Counsel for ARCO Environmental Remediation.  
L.L.C.

**CONSENT DECREE RE:**  
**UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS**  
**INDUSTRIES CHEMICAL SERVICES, INC., et. al.**  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas



FOR THE DOW CHEMICAL COMPANY:

28, October 1999

Dated:

The Dow Chemical Company

SEAL

21 October 1999

Dated:

Counsel for The Dow Chemical Company

**CONSENT DECREE RE:**

**UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.**

Civil Action No. \_\_\_\_\_

Eastern District of Texas

THE  
FOR/GOODYEAR TIRE & RUBBER  
COMPANY:

\_\_\_\_\_ Dated:

October 28, 1999

Dated:

The Goodyear Tire and Rubber Company

& SEAL

K B KLECKNER, VICE PRESIDENT

Attest:

\_\_\_\_\_  
P A KEMPH, ASSISTANT SECRETARY

The  
Counsel for Goodyear Tire & Rubber Company  
Takashi Ito, Attorney

CONSENT DECREE RE:

UNITED STATES and The STATE of TEXAS v BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC. et al.

Civil Action No. \_\_\_\_\_  
Eastern District of Texas

FOR MOBIL OIL CORPORATION:

~~Dated: \_\_\_\_\_~~

11-1-99  
Dated:

~~Mobil Oil Corporation  
SEAL~~

*ESH*

*Step A. C.*

Counsel for Mobil Oil Corporation

CONSENT DECREE RE:  
**UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.**  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas



FOR PPG INDUSTRIES, INC.:

*Rae K. Burton*

PPG Industries, Inc.  
SEAL

11/8/99  
Dated:

*Paul Cannon*

Counsel for PPG Industries, Inc.

11/8/99  
Dated:

CONSENT DECREE RE:

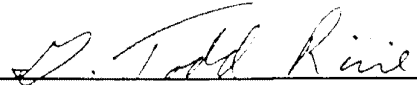
UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.

Civil Action No. \_\_\_\_\_

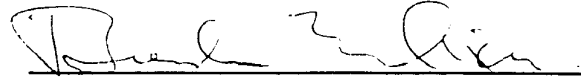
Eastern District of Texas

FOR UNION OIL COMPANY OF CALIFORNIA,  
d/b/a UNOCAL and UNOCAL CORPORATION:

10-4-99  
Dated:

  
Union Oil Company of California, d/b/a/ UNOCAL  
and UNOCAL Corporation  
SEAL

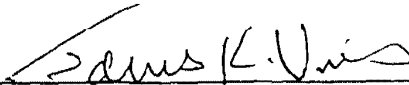
10-4-99  
Dated:

  
Counsel for Union Oil Company of California,  
d/b/a/ UNOCAL and UNOCAL Corporation

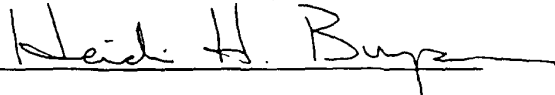
**CONSENT DECREE RE:**  
**UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS**  
**INDUSTRIES CHEMICAL SERVICES, INC., et. al.**  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas

FOR BRIDGESTONE/FIRESTONE, INC.,  
formerly d/b/a FIRESTONE TIRE AND RUBBER  
COMPANY, INC.:

10/4/99  
Dated:

  
\_\_\_\_\_  
Bridgestone/Firestone, Inc., formerly d/b/a  
Firestone Tire and Rubber Company, Inc.  
SEAL

10/7/99  
Dated:

  
\_\_\_\_\_  
Counsel for Bridgestone/Firestone, Inc., formerly  
d/b/a Firestone Tire and Rubber Company, Inc.

CONSENT DECREE RE:  
UNITED STATES and The STATE of TEXAS v. BROWNING-FERRIS  
INDUSTRIES CHEMICAL SERVICES, INC., et. al.  
Civil Action No. \_\_\_\_\_  
Eastern District of Texas