

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

GULF RESTORATION NETWORK,)	
LOUISIANA ENVIRONMENTAL)	
ACTION NETWORK, and SIERRA CLUB,)	CASE NO. 2:14-CV-00608
)	
Plaintiffs,)	Judge Africk
vs.)	Magistrate Judge Shushan
)	
UNITED BULK TERMINALS)	
DAVANT, LLC,)	
)	
Defendant.)	

**JOINT MOTION FOR A STAY PENDING A STATEMENT OF NON-OPPOSITION
FROM THE UNITED STATES REGARDING A PROPOSED CONSENT DECREE**

Plaintiffs Gulf Restoration Network, Louisiana Environmental Action Network, and Sierra Club and Defendant United Bulk Terminals Davant, L.L.C (“UBT”) have negotiated and drafted a proposed Consent Decree to settle this case (attached) and respectfully move for a stay of this case pending a statement of non-opposition from the U.S. Department of Justice. As grounds for their Motion, the Parties state:

1. The law prohibits entry of a Clean Water Act consent judgment “in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator [of EPA],” Clean Water Act § 505(c), 33 U.S.C. § 1365(c). Undersigned counsel certify that they have provided copies of this Consent Decree to the U.S. Department of Justice and EPA.

2. After the United States provides the Parties with its position on the Consent Decree, the Parties expect to request that this Court enter the Consent Decree. In the event that

the U.S. Justice Department expresses concerns regarding the proposed Consent Decree, the Parties are committed to working with the government to resolve any concerns.

3. The Parties believe and represent that the proposed Consent Decree is a fair, adequate, and reasonable settlement of this matter.

4. During the 45-day waiting period set by the Clean Water Act, a stay of this action would be appropriate.

5. After expiration of the 45-day waiting period and after receiving the government's statement of non-opposition, the Parties intend to move this Court for entry of the Decree.

Wherefore: This Court should stay this Action pending the Parties' Motion for Entry of the Consent Decree following receipt of the government's position.

Respectfully submitted on August 18, 2015,

Tulane Environmental Law Clinic

/s Adam Babich
Machelle Lee Hall, La. Bar No. 31498
Adam Babich, La. Bar No. 27177
Tulane Environmental Law Clinic
*Counsel for Plaintiffs Gulf Restoration
Network, Louisiana Environmental Action
Network, and Sierra Club*

Vinson & Elkins LLP

/s Lewis Sutherland*
Lewis Sutherland
1001 Fannin Street, Suite 2500
Houston, Texas 77002
Tel: (713) 758-2367
lsutherland@velaw.com
Counsel for United Bulk Terminals

Breazeale, Sachse & Wilson

/s John B. King*
John B. King, La. Bar No. 17004
Post Office Box 3197
Baton Rouge, Louisiana 70821-3197
Tel: (225) 381-8014
jbk@bswillp.com
Counsel for United Bulk Terminals

* By Adam Babich pursuant to e-mail authorization

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel of record by electronic means on August 18, 2015.

/s/ Adam Babich

Adam Babich, SBN: 27177

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GULF RESTORATION NETWORK,)	
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ACTION NETWORK, and SIERRA CLUB,)	
)	CASE NO. 2:14-CV-00608
Plaintiffs,)	
vs.)	Judge Africk
)	Magistrate Judge Shushan
UNITED BULK TERMINALS)	
DAVANT, LLC,)	
)	
Defendant.)	

Consent Decree

WHEREAS, Plaintiff Gulf Restoration Network is a nonprofit corporation organized under the laws of Louisiana;

WHEREAS, Plaintiff Louisiana Environmental Action Network is a nonprofit corporation organized under the laws of Louisiana;

WHEREAS, Plaintiff Sierra Club is a nonprofit corporation organized under the laws of California, with a chapter office in Louisiana;

WHEREAS, Defendant United Bulk Terminals Davant, L.L.C (“UBT”) owns and operates a bulk material storage and handling facility located at 14537 Louisiana Highway in Davant, Plaquemines Parish, Louisiana (the “Facility”). The Facility transfers and stores bulk materials, such as coal, petroleum coke, and phosphate. The Facility operates pursuant to LPDES Individual Permit LA0070606 (the “Permit”), among other permits. The Permit was originally issued in 1984 and has been renewed regularly over its 30-year history, most recently on May 1, 2015;

WHEREAS, Gulf Restoration Network, Louisiana Environmental Action Network, Sierra Club are the “Plaintiffs” as that term is used in this Consent Decree, and Plaintiffs and UBT collectively are the “Parties” to this Consent Decree;

WHEREAS, the Plaintiffs filed their Complaint (ECF No. 1) in this Court on March 18, 2014, having notified UBT of their intent to sue on November 20, 2013 (ECF No. 18-1);

WHEREAS, on February 25, 2015, UBT filed its Answer (ECF No. 59), denying liability in this matter;

WHEREAS, on January 6, 2015, UBT and the Louisiana Department of Environmental Quality entered into a settlement agreement (ECF No. 63-2);

WHEREAS, the Parties wish to resolve the issues in this lawsuit cooperatively, without further litigation or admission of liability, and without adjudication or admission of any fact or law other than jurisdiction and venue;

WHEREAS, UBT denies that it committed any violations of the Clean Water Act or any other state or federal law or regulation or that it is liable for any fines, forfeitures, and/or penalties. Nevertheless, solely in the interest of resolving ongoing litigation, UBT agrees to this resolution;

WHEREAS, the Parties have prepared this Consent Decree to accomplish their settlement and also agree that—only in the event that this Court does not approve this Consent Decree within 10 weeks of the Parties’ request for such approval—they shall withdraw the proposed decree, terminate their underlying agreement, and return to the status quo ante;

WHEREAS, the Parties agree that this Consent Decree may be signed in counterparts, all of which together shall constitute one original document, and that telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts;

WHEREAS, this Consent Decree constitutes a full and final settlement of this matter where each of the Parties expressly understands and agrees that the Consent Decree has been freely and voluntarily entered into with and upon advice of counsel;

WHEREAS, the Parties' undersigned representatives each certify that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Decree; and

WHEREAS, Plaintiffs and UBT accordingly request that the Court enter this Consent Decree following the waiting period provided by Clean Water Act § 505(c), 33 U.S.C. § 1365(c).

DECREE

NOW THEREFORE, the Parties agree and the Court hereby **ORDERS** as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the Parties and the subject matter of this action and venue is proper in the Eastern District of Louisiana.

Effective Date and Term

2. The term "Effective Date" shall mean the date that this Court approves and enters this Consent Decree.

3. The term of this Consent Decree, including without limitation UBT's obligations under Paragraph 8, shall be 2 years from the completion of the notification described in Paragraph 10.

Obligations

4. To eliminate to the maximum extent possible discharges of coal or petroleum coke to the Mississippi River or the bature, UBT shall modify existing operational practices to further minimize potential releases or spills of product from transfer and loading/unloading operations as specified below.

(a) UBT shall employ the following minimum Best Management Practices (BMPs):

(1) Conveyor belts, engineered chutes, and equipment associated therewith shall be routinely inspected, maintained on a regular and specified schedule, and promptly repaired if necessary.

(2) On an annual basis, all conveyor belts, engineered chutes, and equipment associated therewith shall be inspected by a professional engineer appointed by UBT, subject to the approval of the appointment by the Plaintiffs where such approval will not be unreasonably withheld. To the extent any deficiencies in maintenance or repair are noted, any such maintenance or repair shall be promptly completed.

(3) Spill pans located underneath conveyor systems shall be inspected every shift. Spill pans shall be emptied if found to be at least half-full.

(4) All supporting structures located over the river or batture and the batture itself shall be inspected at least once per shift. If any product is spilled on the supporting structures located over the river or batture or the batture itself, UBT shall begin the clean-up of the spilled product within the same shift in which the spill is discovered.

(5) UBT shall suspend loading and unloading coal or petroleum coke activities whenever the wind is above 45 mph and shall not resume these operations until the wind has fallen below 45 mph.

(6) Barges to be unloaded shall be wetted to minimize dust whenever operations without water sprays result in visible dust emissions leaving the barge.

(7) UBT shall use water truck(s) or an alternate system to minimize potential fugitive dust from the storage yard whenever visible dust emissions are present during

stacking or reclaiming operations. The system shall be in place and operational within 18 months of the effective date of the Consent Decree.

(8) Booms or other such containment devices shall be placed in the river, to the extent allowed by applicable permitting agency(ies) after reasonable and prompt efforts by UBT to obtain any necessary permits or permissions and in conjunction with reasonably efficient operation of the Facility, to contain products that may be released or spilled from transfer and loading/unloading operations. The placement of the booms shall commence when the river stage is such that work may safely be performed and upon receipt of all required permits and authorizations, including authorization from the U.S. Corps of Engineers, and shall be completed on or before 90 days from commencement. UBT shall inspect booms at least once each shift and remove any contained coal or petroleum coke within the same shift that it is discovered, or as soon as removal is safe given river conditions. UBT shall not store the coal or petroleum coke collected from the river in uncontained piles on the batture.

(9) As necessary UBT shall develop additional BMPs to achieve the above-mentioned goal.

(b) Unless otherwise noted, the BMPs noted herein shall be in place within six months of the Effective Date.

(c) UBT shall make reasonable and prompt efforts to obtain any necessary permits or permissions to implement the BMPs. Plaintiffs shall not submit adverse comments and/or request a public hearing regarding any permit or permit modification where the permit or permit modification is limited to requirements set forth in this Consent Decree. If UBT believes that a Plaintiff has submitted an adverse comment or request in violation of this provision, then (1) UBT shall provide written notice of any alleged breach that attaches a copy of the document containing the comment or request at issue and that describes the alleged breach with sufficient

information to allow the Plaintiffs an opportunity to cure; (2) UBT shall allow the Plaintiff 10 business days to cure the alleged breach by withdrawing or disavowing the offending comments or testimony; and (3) no party shall be entitled to monetary damages for an alleged breach of this provision.

(d) UBT shall apply to the LDEQ to incorporate the BMPs into UBT's stormwater discharge permit to the extent allowed by applicable permitting agency(ies) as soon as practicable, and no later than 18 months after the Effective Date.

(e) UBT shall incorporate the BMPs into its Stormwater Pollution Prevention Plan.

5. In the first three calendar months following the notification in Paragraph 10, UBT shall, at least once each shift when the Facility is in operation, observe all equipment installed in the upgrade project. UBT shall document discharges of coal or petroleum coke to the Mississippi River or the batture observed from any point in each system (e.g., conveyors, transfer points, new ship loader) through descriptions and/or photographs. At the completion of the 3 month period, UBT shall prepare a Memorandum (as that term is defined in Paragraph 12) that assesses if the equipment is functioning to eliminate to the maximum extent possible discharges of coal or petroleum coke to the Mississippi River or the batture, or if improvements, including without limitation capital improvements, are needed to achieve this goal. If the latter is the case, the Memorandum shall assess improvement options. UBT shall provide the Memorandum to Plaintiffs by the end of the fifth calendar month following the notification in Paragraph 10. The Parties shall evaluate any proposed Facility operating practice and/or equipment modifications necessitated by these assessments as well as modifications to the Facility's permit pursuant to the meet and confer and dispute resolution procedures described in Paragraphs 13 and 15. UBT shall

undertake such measures determined to be necessary to eliminate to the maximum extent possible discharge of coal or petroleum coke to the Mississippi River or the batture.

6. UBT shall donate \$75,000 directly to the Woodlands Conservancy on behalf of the Woodlands Trail and Bird Park Sanctuary as a Supplemental Environmental Project (SEP). The Woodlands Conservancy will utilize the funds to remove invasive species, such as Chinese Tallow, Chinese Privet, and Chinaberry, and reforest those areas with native trees in order to regain the habitat impacted by Hurricane Katrina. After payment, UBT's duties and obligations regarding the SEP are fulfilled. The payment shall be made within 30 days of the Effective Date and UBT shall provide the Plaintiffs with written notification of completion of this action after making the payment.

7. UBT shall pay to the Tulane Environmental Law Clinic attorneys' fees and reasonable expert witness fees and costs in the total amount of \$91,855 (consisting of \$50,000 attorneys' fees and costs and \$41,855 expert witness fees and costs). The payment shall be made within 30 days of the Effective Date. Otherwise, each Party shall bear its own litigation costs and expenses, including without limitation all costs associated with implementation of this Consent Decree, other than as specifically provided for in this Consent Decree.

8. UBT shall make potential additional payments to Woodlands Conservancy based on the particular conditions specified below:

(a) For a failure to review the Best Management Practices (BMPs) and/or develop, if necessary, additional BMPs within the time allotted in Paragraph 4(b), an additional payment of \$2,500 per day shall be paid until the BMPs are reviewed or developed.

(b) Upon documenting coal or petroleum coke on the surface of the river at a point equal to the downriver extent of UBT's owned or leased property, Plaintiffs shall provide UBT with documentation of the product on the surface of the river. Upon notification from

Plaintiffs that such product has been detected, UBT shall investigate and provide a Memorandum (as that term is defined in Paragraph 12) to Plaintiffs addressing the event within 30 days of the initial notification from Plaintiffs. The Parties shall evaluate any corrective actions related to the event as well as potential modifications to the Facility's permit pursuant to the meet and confer and dispute resolution procedures described in Paragraphs 13 and 15.

In addition, where an assessment of all of the evidence shows that products from transfer and/or loading/unloading operations were on the surface of the river at a point equal to the downriver extent of UBT's owned or leased property as a result of discharge of coal or petroleum coke to the Mississippi River or the batture from the UBT Facility, an additional payment of \$2,500 per each day of each event shall be paid to Woodlands Conservancy within 30 days.

(c) For a failure to make the SEP payment when due, an additional payment of \$2,500 per day shall be paid until the SEP payment is made.

9. To eliminate to the maximum extent possible discharges of coal or petroleum coke to the Mississippi River or the batture, UBT shall add curbs along all edges of Dock 1 to at least eight (8) inches high and repair any gaps that would allow material escape over the edges or through the dock floor and shall maintain and regularly employ a vacuum system for cleanup of the dock floor. This improvement shall be completed within 6 months of the Effective Date. Upon completion of this action, UBT shall provide written notification of completion to the Plaintiffs, including at least one photograph that documents compliance. No later than one year after the Effective Date, UBT shall prepare a Memorandum (as that term is defined in Paragraph 12) assessing the performance of the Dock 1 conveyers and discharges from the Dock 1 conveyers to the river and submit this memorandum to the Plaintiffs. The Memorandum shall also assess the effectiveness of the curbs and vacuum system in eliminating to the maximum extent possible discharges from Dock 1 and report on UBT's procedures including schedules for determining

when to clean spilled material from Dock 1. Upon written request, the Plaintiffs may then schedule one site visit by Plaintiffs and/or their designated representative(s) to observe the Dock 1 operations. The Parties shall evaluate any proposed Facility operating practice and/or equipment modifications or capital improvements necessitated by this assessment as well as modifications to the Facility's permit pursuant to the meet and confer and dispute resolution procedures described in Paragraphs 13 and 15. UBT shall undertake such measures determined to be necessary to eliminate to the maximum extent possible discharge of coal or petroleum coke to the Mississippi River or the batture. If it is determined through the dispute resolution procedure that the Dock 1 improvements are insufficient to eliminate to the maximum extent possible discharges of coal or petroleum coke to the Mississippi River or the batture, then UBT shall take such corrective action, including without limitation installation of any capital improvements that the Court deems necessary as part of the dispute resolution process.

10. Upon completion of the construction project undertaken to reduce discharges pursuant to UBT's settlement agreement with LDEQ (ECF No. 63-2), UBT shall notify Plaintiffs of completion in writing.

11. The Parties shall schedule at a mutually agreeable time, during each 1-year period in which the Consent Decree is in effect, one site visit by Plaintiffs and/or their designated representative(s) to observe the operations at issue in this case, including ship loading, barge unloading, the Dock 1 operations, and the vacuum system. To the extent that more than one site visit is necessary to observe operations during any year, the Parties will schedule additional site visits to permit observation of these operations. During these visits, the Plaintiffs or their representative(s) may inspect, upon their request, the records documenting compliance with the BMPs.

12. UBT shall prepare a written statement (“Memorandum”) in each case as specified in Paragraphs 5, 8(b), and 9 discussing:

(a) A description of the relevant assessment, a copy of the data collected, and conclusions from the assessment regarding discharges of coal or petroleum coke to the Mississippi River or the batture, including causes and sources of discharge;

(b) A description of any discharges of coal or petroleum coke to the Mississippi River or the batture or, if applicable, a statement that no discharges of coal or petroleum coke to the Mississippi River or the batture were observed;

(c) An explanation of the possible cause(s) and/or source(s) of each discharge of coal or petroleum coke to the Mississippi River or the batture, if any; and

(d) If discharges of coal or petroleum coke to the Mississippi River or the batture were observed, a description of the responsive or corrective actions that UBT will take to minimize discharges of coal or petroleum coke to water or the batture, if any, including modified or additional feasible BMPs, reasonable and necessary Facility modifications, the implementation schedule for same, and any applicable permit amendment requirements associated with the responsive or corrective actions.

13. Upon receipt of a Memorandum as described in Paragraph 12, Plaintiffs may review and comment on any identified or omitted additional measures. If requested by Plaintiffs within thirty (30) days of receipt of such Memorandum, Plaintiffs and UBT shall meet and confer to discuss the contents of the Memorandum and the adequacy of proposed measures to eliminate to the maximum extent possible discharges of coal or petroleum coke to the Mississippi River or the batture. If requested by Plaintiffs within thirty (30) days of receipt of such Memorandum, Plaintiffs and UBT shall meet and confer and conduct a site inspection within sixty (60) days after the due date of the Memorandum to discuss the contents of the Memorandum and the adequacy of

proposed measures to eliminate to the maximum extent possible discharges of coal or petroleum coke to the Mississippi River or the batture. If within twenty-one (21) days of the Parties meeting and conferring, the Parties do not agree on the adequacy of the additional measures set forth in the Memorandum, the dispute resolution procedures in Paragraph 15 shall apply. If Plaintiffs do not request a meet and confer regarding the Memorandum within the thirty (30) day period provided for in this Paragraph, Plaintiffs shall waive any right to object to such Memorandum. The Parties may agree in writing to extend any dates contained in this Paragraph in order to further this Paragraph's meet and confer procedure. For the meet and confer requirements as set out in this Paragraph 13, UBT shall evaluate possible Facility modifications with the potential to eliminate to the maximum extent possible discharges of coal or petroleum coke to the Mississippi River or the batture without regard to the authorizations for those discharges under its environmental permits and environmental law, and shall negotiate in good faith with Plaintiffs to implement reasonable and necessary modifications.

Receipt of a Memorandum shall be defined as receipt by each of the persons listed below:

Gulf Restoration Network, Senior
Policy Director
Attn: Matt Rota
P.O. Box 2245
New Orleans, LA 70176
matt@healthygulf.org

Sierra Club, Managing Attorney
Attn: Aaron Isherwood
85 Second St., 2d Floor
San Francisco, CA 94105-3441
aaron.isherwood@sierraclub.org

Louisiana Environmental Action
Network, Director
Attn: Marylee Orr
P.O. Box 66323
Baton Rouge, LA 70896
marylee@leanweb.org

Tulane Environmental Law Clinic, Director
Attn: Adam Babich
Tulane Law School
6329 Freret Street
New Orleans, LA 70118
ababich@tulane.edu

14. Once the Parties agree on the responsive or corrective actions and/or they are approved by the Magistrate and/or Court, the Plaintiffs shall not submit adverse comments and/or request a public hearing as to those specific responsive or corrective actions in any permit

application, amendment or modification proceeding. If UBT believes that a Plaintiff has submitted an adverse comment or request in violation of this provision, then (1) UBT shall provide written notice of any alleged breach that attaches a copy of the document containing the comment or request at issue and that describes the alleged breach with sufficient information to allow the Plaintiffs an opportunity to cure; (2) UBT shall allow the Plaintiff 10 business days to cure the alleged breach by withdrawing or disavowing the offending comments or testimony; and (3) no party shall be entitled to monetary damages for an alleged breach of this provision.

Dispute Resolution Procedures

15. The following dispute resolution procedures apply to any disputes under this Consent Decree:

(a) The Parties shall first meet and confer to resolve any dispute arising under this Consent Decree. In the event that such disputes cannot be resolved through this meet and confer process, the Parties shall request a settlement meeting before the Magistrate Judge assigned to this action. The Parties shall file any waivers necessary for the Magistrate Judge to preside over any settlement conference pursuant to this Paragraph. In the event that the Parties cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the Parties may submit the dispute via motion to this Court.

(b) Notwithstanding any other provision of this Consent Decree to the contrary, this Court shall not order any corrective action, nor order any additional payments under Paragraph 8, for any discharges or other conditions if the Court finds that such discharges or other conditions are in compliance with UBT's environmental permits and/or environmental law.

(c) In resolving any dispute arising from this Consent Decree, this Court shall have discretion to award attorneys' fees and costs to either party consistent with the next sentence in this subparagraph. The relevant provisions of the then-applicable Clean Water Act and Rule 11

of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the Court. This Court shall award relief limited to compliance orders (including, if warranted, requirements for modifications to the terminal) and awards of attorneys' fees and costs, subject to proof.

Force Majeure

16. Where implementation of any action set forth in this Consent Decree is delayed beyond the deadline set forth herein as a result of an event beyond the control of the relevant Party, despite the timely good faith efforts of the Parties, the party who is unable to comply shall notify the other in writing within seven (7) days of the date that the failure becomes apparent, and shall describe the reason for the non-performance. The Parties agree to meet and confer in good faith concerning the non-performance and, where the Parties concur that the non-performance was or is the result of an event beyond the control of the relevant Party, despite the timely good faith efforts of the Parties, new performance deadlines shall be established. In the event that the Parties cannot timely agree upon the terms of such a stipulation, either of the Parties shall have the right to invoke the dispute resolution procedure described in Paragraph 15.

General Provisions

17. Third Parties. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a Party to this Consent Decree.

18. Assignment. Subject only to the express restrictions contained in this Consent Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to the benefit of and be binding upon the Settling Parties, and their successors and assigns.

19. Integration Clause. This is an integrated agreement. This Consent Decree is intended to be a full and complete statement of the terms of the agreement between the Parties and

expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this Consent Decree.

20. Correspondence. All notices required herein or any other correspondence that the Parties send pertaining to this Consent Decree shall be sent by first class, certified, or overnight mail and by e-mail to each listed person as follows:

If to Plaintiffs:

Gulf Restoration Network
Senior Policy Director
Attn: Matt Rota
P.O. Box 2245
New Orleans, LA 70176
matt@healthygulf.org

Louisiana Environmental Action Network
Director
Attn: Marylee Orr
P.O. Box 66323
Baton Rouge, LA 70896
marylee@leanweb.org

Sierra Club, Managing Attorney
Attn: Aaron Isherwood
85 Second St., 2d Floor
San Francisco, CA 94105-3441
aaron.isherwood@sierraclub.org

Tulane Environmental Law Clinic
Director
Attn: Adam Babich
Tulane Law School
6329 Freret Street
New Orleans, LA 70118
Tel: (504) 862-8800
ababich@tulane.edu

If to UBT:

Scott Becnel
VP Terminal Operations and Chief Operating
Officer
United Bulk Terminals USA, Inc.
14537 Highway 15
Davant, LA 70040
Tel: (504) 333-7301
scott.becnel@unitedbulkterminals.com

Brian Keith
General Counsel
Oiltanking North America
333 Clay Street, Suite 2400
Houston, TX 77002
Tel: (832) 924-4157
brian.keith@oiltanking.com

John B. King
Breazeale, Sachse & Wilson, L.L.P.
Post Office Box 3197
Baton Rouge, Louisiana 70821-3197
Tel: (225) 381-8014
jbk@bswllp.com

Lewis Sutherland
Vinson & Elkins LLP
1001 Fannin Street, Suite 2500
Houston, Texas 77002
Tel: (713) 758-2367
lsutherland@velaw.com

Except as provided otherwise in Paragraph 13 of this Consent Decree, notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

Retention of Jurisdiction

21. This Court shall retain jurisdiction over this case until termination of this Consent Decree pursuant to Paragraph 3 for the purpose of (i) resolving disputes arising under the Consent Decree pursuant to Paragraph 15, and (ii) effectuating or enforcing compliance with the terms of the Consent Decree.

Final Judgment and Dismissal with Prejudice

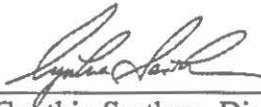
22. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court, subject to the Court's retention of jurisdiction as described in Paragraph 21. Plaintiffs' Complaint and all claims by all Parties asserted in this litigation are dismissed with prejudice.

AGREEMENT OF THE PARTIES

By their signatures below, the Parties hereby consent to entry of this Consent Decree:


For the Plaintiffs:

Gulf Restoration Network


Cynthia Sarthou, Director
P.O. Box 2245
New Orleans, LA 70176


Date: 8/17/15

Louisiana Environmental Action Network


Marylee Orr, Director
P.O. Box 66323
Baton Rouge, LA 70896

Date: 8/17/15

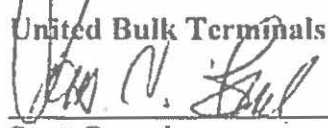
Sierra Club


Aaron Isherwood, Managing Attorney
85 Second St., 2d Floor
San Francisco, CA 94105-3441

Date: 8/18/15

For UBT:

United Bulk Terminals


Scott Becnel
VP Terminal Operations and Chief Operating Officer
United Bulk Terminals USA, Inc.
14537 Highway 15
Davant, LA 70040

Date: August 16, 2015

Approved as to form:

Tulane Environmental Law Clinic

Machelle Lee Hall Date: Aug 18, 2015

Machelle Lee Hall, La Bar No. 31498
Adam Babich, La Bar No. 27177
Tulane Environmental Law Clinic
Counsel for Plaintiffs Gulf Restoration
Network, Louisiana Environmental Action
Network, and Sierra Club

Vinson & Elkins LLP

Lewis Sutherland Date: 8/13/15

Lewis Sutherland
1001 Fannin Street, Suite 2500
Houston, Texas 77002
Tel: (713) 758-2367
lsutherland@velaw.com
Counsel for United Bulk Terminals

Breazeale, Sachse & Wilson

John B. King Date: 8/13/15

John B. King, La. Bar No. 17004
Post Office Box 3197
Baton Rouge, Louisiana 70821-3197
Tel: (225) 381-8014
jbk@bswllp.com
Counsel for United Bulk Terminals

ENTRY OF ORDER

This matter having come before this Court on the Parties' request for entry of this Consent Decree and the Court having reviewed the matter, the Court hereby finds that the terms and provisions of this Consent Decree are a fair, adequate, and reasonable settlement of this matter. **IT IS ORDERED** that the foregoing Consent Decree is adopted by and made an Order of this Court.

New Orleans, Louisiana, _____, 2015.

BY THE COURT:

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE