

SETTLEMENT AGREEMENT

LAKE WASHINGTON 2003

(NRDA Case File # LA2003_0302_0716)

MENDICANT ISLAND 2003

(NRDA Case File # LA2003_1202_1200)

WEST CHAMPAGNE BAY 2005

(NRDA Case File # LA2005_0419_1950)

AMONG

**LOUISIANA OIL SPILL COORDINATOR'S OFFICE, DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONS; LOUISIANA COASTAL PROTECTION AND
RESTORATION AUTHORITY; LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY; LOUISIANA DEPARTMENT OF NATURAL
RESOURCES; LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES;
AND EXXONMOBIL PIPELINE COMPANY**

July 2017

Settlement Agreement (LA2003_0302_0716; LA2003_1202_1200; LA2005_0419_1950)

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LWMIWCB Settlement Agreement (LA2003_0302_0716; LA2003_1202_1200;
LA2005_0419_1950)

Attachment 1: Draft Damage Assessment and Preliminary Restoration Plan

Attachment 2: Correspondence from U.S. Fish and Wildlife Service and National
Oceanic and Atmospheric Administration

**SETTLEMENT AGREEMENT FOR
NRDA CASE FILES #LA2003_0302_0716 (LAKE WASHINGTON 2003),
#LA2003_1202_1200 (MENDICANT ISLAND 2003), AND #LA2005_0419_1950
(WEST CHAMPAGNE BAY 2005) AMONG: THE LOUISIANA OIL SPILL
COORDINATOR'S OFFICE, DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS; LOUISIANA COASTAL PROTECTION AND
RESTORATION AUTHORITY; LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY; LOUISIANA DEPARTMENT OF NATURAL
RESOURCES; LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES;
AND EXXONMOBIL PIPELINE COMPANY**

I. INTRODUCTION

- A. The State of Louisiana, appearing through the Louisiana Oil Spill Coordinator's Office, Department of Public Safety ("LOSCO"), the Coastal Protection and Restoration Authority ("CPRA"), the Louisiana Department of Environmental Quality ("LDEQ"), the Louisiana Department of Natural Resources ("LDNR"), the Louisiana Department of Wildlife and Fisheries ("LDWF"), and ExxonMobil Pipeline Company ("EMPCo"), (each a "Party" and collectively, the "Parties") enter into this Settlement Agreement to settle, without litigation, the State of Louisiana's natural resource damage claims under the Oil Pollution Act (OPA), 33 U.S.C. §§ 2701 *et seq.*, and the Oil Spill Prevention and Response Act (OSPR), La. R.S. 30:2451 *et seq.*, and all other claims that may exist or arise under federal and state law for damages for injury to natural resources resulting from three separate unauthorized discharges of crude oil from pipelines owned and operated by EMPCo (hereinafter "the Incidents" as defined in Section II.F of this Agreement).
- B. LOSCO, CPRA, LDEQ, LDNR and LDWF are co-trustees of the natural resources and services that were injured as a result of the Incidents and duly authorized representatives of the State of Louisiana. This Settlement Agreement is executed on behalf of the State of Louisiana.
- C. The State of Louisiana, through LOSCO, CPRA, LDEQ, LDNR and LDWF, is authorized to seek natural resource damages, including the reasonable costs to assess the damages, pursuant to Section 1002 of OPA, 33 U.S.C. § 2702.
- D. This Settlement Agreement deals solely with any and all of the natural resource damages that may have resulted from the Incidents pursuant to 33 U.S.C. 2702(b)(2)(A) and La. R.S. 30:2480.

Now, therefore, the Parties enter into this Settlement Agreement, and mutually agree as follows:

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Settlement Agreement shall have the same definition given to them in OPA, OSPRA, and the Natural Resource Damage Assessment (NRDA) regulations promulgated under OPA and OSPRA (15 CFR Part 990 and LAC 43:XXIX.101 *et seq.*). In the event of a conflict between the definitions in this Settlement Agreement and the definitions in OPA, OSPRA, and the NRDA regulations, the definitions in this Settlement Agreement shall govern.

- A. “Agreement” shall mean this Settlement Agreement and Attachment 1 titled “Draft Damage Assessment and Preliminary Restoration Plan” for NRDA case files #LA2003_0302_0716 (Lake Washington 2003); #LA2003_1202_1200 (Mendicant Island 2003); and #LA2005_0419_1950 (West Champagne Bay 2005).
- B. “Cash Settlement Amount” means the dollar amount to be paid by EMPCo to the State of Louisiana, through LOSCO, to resolve all NRDA liabilities related to the Incidents. This dollar amount includes all Outstanding Past Assessment Costs and Future Restoration Project Implementation and Trustee Costs.
- C. “Effective Date” for purposes of this Agreement shall mean the date of the last signature of this Agreement.
- D. “EMPCo” shall mean ExxonMobil Pipeline Company and its associates, affiliates, subsidiaries, parent or related companies, business entities or corporations, including, without limitation, any former, present or future parent corporations, brother or sister corporations (that is, entities with a common parent), subsidiaries, unincorporated divisions, partners, general or limited partners, joint ventures and its former, present or future employees, officers, shareholders, directors, managers, insurers, representatives, adjusters, attorneys and agents.
- E. “Future Restoration Project Implementation and Trustee Costs” shall mean those costs incurred by the Trustees after the Effective Date of this Agreement for implementation and oversight of a compensatory restoration project for injuries to natural resources resulting from the Incidents.
- F. “Incidents” shall mean the three unauthorized discharges of crude oil into the surrounding estuarine habitats located (1) approximately 8 miles south-southwest of Port Sulfur, Louisiana, in the vicinity of Lake Washington,

Plaquemines Parish, that was reported on March 2, 2003 (NRDA case file #LA2003_0302_0716 (Lake Washington 2003)); (2) approximately 4 miles north of Grand Isle, Louisiana in the vicinity of Mendicant Island, Jefferson Parish, that was reported on December 2, 2003 (NRDA case file #LA2003_1202_1200 (Mendicant Island 2003)); and (3) approximately 4 miles north of Grand Isle, Louisiana, in the vicinity of Mendicant Island, Jefferson Parish, that was reported on April 19, 2005 (NRDA case file #LA2005_0419_1950 (West Champagne Bay 2005)).

- G. “Outstanding Past Assessment Costs” shall mean the reasonable costs, including but not limited to direct and indirect costs, incurred by the Trustees in assessing the natural resource damages and in restoration planning for the Incidents that have not been paid as of the Effective Date of this Agreement.
- H. “Party” or “Parties” shall mean EMPCo and the State of Louisiana.
- I. “Responsible Party” shall mean and include EMPCo.
- J. “Trustees” shall mean the State of Louisiana, by and through its duly authorized representatives the Louisiana Oil Spill Coordinator’s Office, Department of Public Safety (“LOSCO”), the Coastal Protection and Restoration Authority (“CPRA”)¹, the Louisiana Department of Environmental Quality (“LDEQ”), the Louisiana Department of Natural Resources (“LDNR”), and the Louisiana Department of Wildlife and Fisheries (“LDWF”).

III. STATEMENT OF FACTS

Lake Washington 2003 Spill

- A. On March 2, 2003, the Trustees were notified of an unauthorized discharge of crude oil from a subsurface pipeline located in the Barataria estuary approximately 8 miles south-southwest of Port Sulfur, Louisiana, in the vicinity of Lake Washington, Plaquemines Parish.
- B. The pipeline was owned and operated by EMPCo.
- C. An estimated 995 barrels of crude oil were released into the surrounding coastal waters exposing estuarine habitats in the vicinity to crude oil.
- D. EMPCo and its oil spill response contractor(s) timely initiated, conducted, and participated in response actions to contain and remove the discharged crude oil.
- E. Benthic organisms, marsh vegetation, and birds, as well as other flora and fauna,

¹ CPRA was designated a trustee in May, 2010.

were actually or potentially affected by the spill.

- F. The concentration and quantity of oil discharged were sufficient to actually or potentially cause injury to natural resources, including visible oiling of flora and fauna in the area.
- G. LOSCO, CPRA, LDEQ, LDNR, and LDWF are the designated State Trustees for the natural resources that have been affected by this spill.
- H. Response actions implemented by EMPCo and other entities mitigated the effects of the discharge, but provided no compensation for the natural resources and their services that were actually or potentially injured, lost, or destroyed as a result of the spill.
- I. On June 27, 2003, pursuant to Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5), 15 C.F.R. 990.14(c), La. R.S. 30:2480(C)(6)(b) and (c), and LAC 43:XXIX.115, the Trustees invited EMPCo to participate in the NRDA process. EMPCo accepted the Trustees' invitation on July 7, 2003.
- J. EMPCo worked cooperatively with the Trustees in assessing the natural resource injuries.

Mendicant Island 2003 Spill

- K. On December 2, 2003, the Trustees were notified of an unauthorized discharge of crude oil from a subsurface pipeline located in the Barataria estuary approximately 4 miles north of Grand Isle, Louisiana, in the vicinity of Mendicant Island, Jefferson Parish.
- L. The pipeline was owned and operated by EMPCo.
- M. EMPCo estimated that 356 barrels of crude oil were released into the surrounding coastal waters exposing estuarine habitats in the vicinity to crude oil.
- N. EMPCo and its oil spill response contractor(s) timely initiated, conducted, and participated in response actions to contain and remove the discharged crude oil.
- O. Marsh vegetation and birds, as well as other flora and fauna, were actually or potentially affected by the spill.
- P. The concentration and quantity of oil discharged were sufficient to actually or potentially cause injury to natural resources, including visible oiling of flora and fauna in the area.

- Q. LOSCO, CPRA, LDEQ, LDNR, and LDWF are the designated State Trustees for the natural resources that have been affected by this spill.
- R. Response actions implemented by EMPCo and other entities mitigated the effects of the discharge, but provided no compensation for the natural resources and their services that were actually or potentially injured, lost, or destroyed as a result of the spill.
- S. On December 15, 2004, pursuant to Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5), 15 C.F.R. 990.14(c), La. R.S. 30:2480(C)(6)(b) and (c), and LAC 43:XXIX.115, the Trustees invited EMPCo to participate in the NRDA process. EMPCo accepted the Trustees' invitation on January 7, 2005.
- T. EMPCo worked cooperatively with the Trustees in assessing the natural resource injuries.

West Champagne Bay 2005 Spill

- U. On April 19, 2005, the Trustees were notified of an unauthorized discharge of crude oil from a subsurface pipeline located in the Barataria estuary approximately 4 miles north of Grand Isle, Louisiana, in the vicinity of Mendicant Island, Jefferson Parish.
- V. The pipeline was owned and operated by EMPCo.
- W. An estimated 600 barrels of crude oil were released into the surrounding coastal waters exposing estuarine habitats in the vicinity to crude oil.
- X. The release point was located just off the northern tip of Mendicant Island within several yards of the Mendicant Island 2003 spill release point. However, due to a different prevailing wind field, the areas impacted by oil were different from those areas impacted during the Mendicant Island 2003 spill.
- Y. EMPCo and its oil spill response contractor(s) timely initiated, conducted, and participated in response actions to contain and remove the discharged crude oil.
- Z. Marsh vegetation and birds, as well as other flora and fauna, were actually or potentially affected by the spill.
- AA. The concentration and quantity of oil discharged were sufficient to actually or potentially cause injury to natural resources, including visible oiling of flora and fauna in the area.
- BB. LOSCO, CPRA, LDEQ, LDNR, and LDWF are the designated State Trustees for the natural resources that have been affected by this spill.

- CC. Response actions implemented by EMPCo and other entities mitigated the effects of the discharge, but provided no compensation for the natural resources and their services that were actually or potentially injured, lost, or destroyed as a result of the spill.
- DD. On July 28, 2005, pursuant to Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5), 15 C.F.R. 990.14(c), La. R.S. 30:2480(C)(6)(b) and (c), and LAC 43:XXIX.115, the Trustees invited EMPCo to participate in the NRDA process. EMPCo accepted the Trustees' invitation on August 3, 2005.
- EE. EMPCo worked cooperatively with the Trustees in assessing the natural resource injuries.

Incidents Combined

- FF. On January 17, 2006, EMPCo agreed to combine the NRDA's for the three Incidents into one collective NRDA and settlement. A joint settlement was preferred by the Trustees and EMPCo because of the inherent cost efficiencies associated with conducting one restoration planning effort versus three efforts and the resulting benefits to the environment.
- GG. EMPCo continued to work cooperatively with the Trustees to address injuries to natural resources and services related to the Incidents.
- HH. The Trustees have expended considerable time, funds, and resources in assessing the Incidents and any natural resource injuries and losses that may have resulted from the Incidents. Outstanding Past Assessment Costs incurred by the Trustees as of the Effective Date are as follows:
 - 1. LOSCO: \$62,893.65 in Outstanding Past Assessment Costs;
 - 2. CPRA: \$ 2,190.71 in Outstanding Past Assessment Costs;
 - 3. LDEQ: \$ 811.48 in Outstanding Past Assessment Costs;
 - 4. LDNR: \$ 304.33 in Outstanding Past Assessment Costs;
 - 5. LDWF: \$ 1,419.12 in Outstanding Past Assessment Costs.

Therefore, the remaining unpaid balance for Outstanding Past Assessment Costs is \$67,619.29.

- II. The Trustees will continue to incur Future Restoration Project Implementation and Trustee Costs in conjunction with implementation of this Agreement in the amount of \$2,014,500.00.

- JJ. The total Cash Settlement Amount including Outstanding Past Assessment Costs and Future Restoration Project Implementation and Trustee Costs is **\$2,082,119.29**.

IV. AGREEMENTS

- A. EMPCo and the Trustees agree that settlement without litigation is in the best interest of the public.
- B. The State of Louisiana, through the Trustees, and EMPCo agree that EMPCo will pay a cash settlement in lieu of performing a restoration project (as described in Attachment 1 of this document), in accordance with LAC 43:XXIX.131 as follows:
- | | | |
|----|--------------------------------------------------------------|------------------------------|
| 1. | Outstanding Past Assessment Costs: | \$67,619.29 |
| 2. | Future Restoration Project Implementation and Trustee Costs: | <u>\$2,014,500.00</u> |
| | | \$2,082,119.29 |
- C. Upon signature of this Agreement, the Parties agree that these costs (as defined in section IV.B of this Agreement) cannot be disputed and will be considered final.
- D. The Trustees agree that Future Restoration Project Implementation and Trustee Costs paid by EMPCo will be held in the Natural Resource Restoration Trust Fund in accordance with La. R.S. 30:2480.2 solely for use, as agreed by the Trustees, for implementation and oversight of a compensatory restoration project for injuries to natural resources resulting from the Incident.

V. NO ADMISSIONS OR DENIALS

- A. By entering into this Agreement, EMPCo shall not be deemed as admitting any liability arising out of or relating to the Incidents. EMPCo neither admits nor denies the facts cited in this Agreement and agrees to pay the Cash Settlement Amount set forth in this Agreement.

VI. STATEMENT OF OBLIGATIONS OF EMPCO

- A. Within ninety (90) days of the Effective Date of this Agreement, EMPCo shall pay the negotiated Cash Settlement Amount of **\$2,082,119.29** to LOSCO. Payment must be made by electronic transfer to the account specified by LOSCO following the execution of this Agreement.
- B. In the event that payments required by Paragraph VI.A are not made within ninety (90) days from the Effective Date of this Agreement, interest on the unpaid balance shall begin to accrue on the ninety-first (91st) day, and continue

to accrue through the date of payment. Interest will be calculated pursuant to La. R.S. 13:4202.

VII. RELEASE, COVENANT NOT TO SUE AND INDEMNITY

- A. Subject to EMPCo's complete payment of the Cash Settlement Amount according to Section VI of this Agreement, the Trustees hereby agree to release and not to file suit or take enforcement or other administrative actions against EMPCo for natural resource damages pursuant to OPA and OSPRA and all other claims that may exist or arise under federal and state law for injury to natural resources and services under their trusteeship that may have been injured, destroyed, or lost as a result of the Incidents. This release and covenant not to sue extends only to EMPCo and does not extend to any other person.
- B. EMPCo hereby covenants not to sue and agrees not to assert any claims or causes of action against the State of Louisiana for any claims arising from or relating to the Incidents, pursuant to any federal, state, or common law, including, but not limited to any claims based on the Trustees' selection and implementation of a compensatory restoration project for the purposes of compensating the public for injuries to natural resources resulting from the Incidents; and/or approval of plans for any such activities. Nothing herein shall be construed to constitute a waiver by the Trustees of Sovereign Immunity of the State of Louisiana.
- C. Nothing in this Agreement is intended to be, nor shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, for:
 - 1. Natural resource damages, in the event that EMPCo does not pay the Cash Settlement Amount described in this Agreement;
 - 2. Any other past releases, future releases, discharges, or spills;
 - 3. Any and all criminal liability; or
 - 4. Any other matter not expressly included in the release from liability for natural resource damage assessment costs set forth in paragraph A of this section.

VIII. AMENDMENT TO AGREEMENT

- A. This Agreement may be amended by mutual consent of the Trustees and EMPCo. Such amendments shall be in writing and shall have as their effective date the date on which they are signed by all of the parties to this Agreement.
- B. The Trustees may grant an extension of any deadline in this Agreement upon a written request showing good cause by EMPCo.

IX. CERTIFICATIONS

- A. EMPCo certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the Trustees all information requested by the Trustees that is currently in the possession of EMPCo's officers and employees, contractors, and agents relating to the Incidents.
- B. Correspondence from the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration are attached to this Agreement as Attachment 2. The Trustees certify that, to the best of their knowledge and belief, no other Trustee intends to present a claim for damages to natural resources and services that may have been injured, destroyed, or lost as a result of the Incidents

X. SEVERABILITY

Invalidation of any one of the provisions contained herein shall in no way affect any other provision, which shall remain in full force and effect.

XI. EXECUTION

This Agreement may be executed in one or more counterparts. All counterpart signature pages shall be considered part of the original document. Each party signing below covenants that he or she is duly authorized to bind the party for whom he or she is signing.

XII. VENUE

Venue of any action brought with regard to this Agreement shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

IN WITNESS WHEREOF, this Agreement is executed by each of the Parties as of the dates written below.

FOR THE STATE OF LOUISIANA

**LOUISIANA OIL SPILL COORDINATOR'S OFFICE,
DEPARTMENT OF PUBLIC SAFETY**

Name: Marty J. Chabert
Title: Louisiana Oil Spill Coordinator

Date: _____

COASTAL PROTECTION AND RESTORATION AUTHORITY

Name: Johnny B. Bradberry

Title: Chairman

Date: _____

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Name: Dr. Chuck Carr Brown

Title: Secretary

Date: _____

LOUISIANA DEPARTMENT OF NATURAL RESOURCES

Name: Thomas F. Harris

Title: Secretary

Date: _____

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

Name: Jack B. Montoucet

Title: Secretary

Date: _____

Settlement Agreement (LA2003_0302_0716; LA2003_1202_1200; LA2005_0419_1950)

EXXONMOBIL PIPELINE COMPANY

Name: _____

Title: _____

Date: _____

Settlement Agreement (LA2003_0302_0716; LA2003_1202_1200; LA2005_0419_1950)

ATTACHMENT 1

DRAFT DAMAGE ASSESSMENT AND PRELIMINARY RESTORATION PLAN

Settlement Agreement (LA2003_0302_0716; LA2003_1202_1200; LA2005_0419_1950)

ATTACHMENT 2

**CORRESPONDENCE FROM U.S. FISH AND WILDLIFE SERVICE AND
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**



United States Department of the Interior

FISH AND WILDLIFE SERVICE
646 Cajundome Blvd.
Suite 400
Lafayette, Louisiana 70506



February 7, 2017

Mark D. Weesner
EMPCo/USFO/AM Zone SSHE Manager
ExxonMobil Pipeline Company
22777 Springwoods Village Parkway
Energy 3-5A.571
Spring, Texas 77389

RE: Past Assessment Costs associated with three ExxonMobil Pipeline Company incidents in Barataria Bay, Louisiana

Dear Mr. Weesner:

The Fish and Wildlife Service (Service), on behalf of the Department of Interior, confirms that we do not have any past costs that may have been incurred during the investigation of injuries to natural resources for the incidents at Lake Washington, Plaquemines Parish, March 2, 2003; Mendicant Island, Jefferson Parish, December 2, 2003; and West Champagne Bay, Jefferson Parish, April 19, 2005. Our records indicate that the account(s) for these cases have already been closed. Therefore, the Service has no further claims related to those incidents.

If you have any questions, please contact Ms. Brigitte Firmin of this office at 337-291-3108.

Sincerely,

Joseph A. Ranson
Field Supervisor
Louisiana Ecological Services Office

cc: NOAA, National Ocean Service, Office of Response and Restoration, Silver Spring, MD
LOSCO, Baton Rouge, LA (Attn: Karolien Debusschere)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of Response and Restoration
Silver Spring, Maryland 20910

August 30, 2012

Brian Magruder
800 Bell Street
Room #603B
Houston, TX 77002

Re: Past Assessment Costs with respect to Three ExxonMobil Pipeline Company Incidents in Barataria Bay, Louisiana

Dr. Mr. Magruder:

NOAA acknowledges receipt of payment for past costs by check in the amount of \$31,327.09. This check reimburses NOAA fully for costs incurred to investigate the injuries to natural resources associated with the following EMPCo incidents: Lake Washington, Plaquemines Parish, March 2, 2003; Mendicant Island, Jefferson Parish, December 2, 2003; and West Champagne Bay, Jefferson Parish, April 19, 2005. This full payment of NOAA's past costs related to this incident represents full satisfaction of NOAA's claim.

If you have any questions, please contact Tony Penn at 301-713-4248, ext. 197.

Sincerely,

Robert Haddad, Chief
NOAA Assessment and Restoration Division

Cc: Tony Penn
Gina Saizan



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