UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA; STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; and DAVID STRUHS, as Natural Resources Trustee for the State of Florida, Plaintiffs, v. MULBERRY PHOSPHATES, INC., Defendant.	Civil Action No. 8-01-CV-692-T-23TGW CONSENT DECREE
ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY, Plaintiff-Intervenor, v. MULBERRY PHOSPHATES, INC., Defendant.	

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Plaintiffs, the United States of America ("United States"), on behalf of the National Oceanic and Atmospheric Administration ("NOAA") of the United States Department of Commerce and the Secretary of the Interior, acting through the United States Fish and Wildlife Service ("DOI/USFWS"), and the State of Florida Department of Environmental Protection ("FDEP"), and David Struhs, Secretary of FDEP and designated Natural Resources Trustee for the State of Florida ("STRUHS" or "State Trustee") (collectively the "State Plaintiffs") filed a Complaint on April 3, 2001, alleging that defendant Mulberry Phosphates, Inc. was liable for civil claims for natural resource damages, prohibited discharge, creation of imminent hazard and penalties arising from a release of hazardous substances and other pollutants into the Alafia River and into Tampa Bay, in the State of Florida, through a spill of approximately 50 million gallons of acidic process water from a phosphoric acid/fertilizer production facility owned and operated by Defendant Mulberry Phosphates, Inc., which occurred on or about December 7, 1997 (the "Spill"). The Environmental Protection Commission of Hillsborough County ("EPC") is concurrently filing a Complaint in Intervention also asserting claims against Mulberry Phosphates, Inc. for damages arising from the Spill.

On February 28, 2001, Mulberry Phosphates, Inc. filed a voluntary petition under Chapter 11 of the Bankruptcy Code. This action was subsequently converted to an action under Chapter 7. V. John Brook, Jr. is the Chapter 7 Trustee and, as such, solely in this capacity, is the representative for Mulberry Phosphates, Inc. for purposes of executing

this Consent Decree. Mr. Brook is in no other way a party to this Consent Decree and has no other responsibility hereunder. At the time of the Spill, Mulberry Phosphates, Inc. had a Commercial General Liability and Pollution Legal Liability Policy and a Commercial Umbrella Policy with AIU Insurance Company, a member company of American International Group Inc. ("AIG").

The United States, the State Plaintiffs, EPC and the Defendant have consented to the entry of this Consent Decree without trial of any issues, and the United States, the State Plaintiffs, EPC, and the Defendant hereby stipulate to the Court that in order to resolve the issues stated in the Federal and State Plaintiffs' Complaint, in EPC's Complaint in Intervention, and all other claims of the United States, the State Plaintiffs or EPC relating to consequences of the Spill, this Consent Decree should be entered. The United States, the State Plaintiffs, EPC and the Defendant assert, and the Court by entering this Decree finds, that the Decree has been negotiated in good faith, and that the Decree is fair, reasonable and in the public interest.

-NOW THEREFORE, it is ORDERED AND DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1367 and 1651, 33 U.S.C. § 1321(n), and 42 U.S.C. § 9613(b). This Court also has personal jurisdiction over the Defendant. Solely for the purpose of this Consent Decree and the underlying complaints, Defendant waives all objections and defenses

that it may have to jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State Plaintiffs, and EPC, and upon Defendant and its heirs, successors and assigns. Any change in ownership or corporate status of Defendant shall in no way alter Defendant's responsibilities under this Consent Decree. Each signatory to this Consent Decree certifies that she or he is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the parties to it.

III. OBJECTIVES

3. The parties to this Consent Decree agree that settlement of this action without further litigation is in the public interest and that entry of the Consent Decree is the most appropriate means of resolving this action.

4. The Defendant does not admit any of the allegations contained in the Complaints filed herein, and neither the Defendant's participation in this Decree nor any provision herein shall be construed as an admission of liability for any purpose.

5. By this Consent Decree, the parties intend to settle and resolve all claims related to this Spill within the authority of the parties under applicable federal, state and common law, except as specifically reserved.

IV. NATURAL RESOURCE DAMAGES - PAYMENT OF RESTORATION FUNDS

6. Defendant shall pay a total of $3,656,119.00 into the 1997 Alafia River Spill Restoration Account, an account established within DOI's Natural Resource Damage Assessment and Restoration Account (the "Restoration Account"), in accordance with the following schedule:

(a) $496,914.00 shall be paid into the Restoration Account no later than one year from the date of entry of this Consent Decree.

(b) $500,000.00 shall be paid into the Restoration Account no later than two years from the date of entry of this Consent Decree.

(c) $800,000.00 shall be paid into the Restoration Account no later than three years from the date of entry of this Consent Decree.

(d) $800,000.00 shall be paid into the Restoration Account no later than four years from the date of entry of this Consent Decree.

(e) $1,059,205.00 shall be paid into the Restoration Account no later than five years from the date of entry of this Consent Decree.

7. The funds paid into the Restoration Account will be held in that account solely for use as agreed by NOAA, DOI/USFWS, FDEP and EPC to plan, implement and oversee natural resource restoration actions identified in the Final Damage Assessment and Restoration Plan and Environmental Assessment for the December 7, 1997 Alafia River Spill dated July 21, 2000 ("Final DARP"), Sections 5.0 and 6.0, pages 35-53 (relevant sections attached hereto as

Attachment A).

8. Defendant shall make the payments identified in Paragraph 6 above by Electronic Funds Transfer ("EFT") through the United States Treasury Department's Automated Clearing House to the DOI account, in accordance with instructions to be provided by DOI. The addenda record for each such transfer shall be annotated "1997 Alafia River Spill Restoration Account" and list the name "Mulberry Phosphates, Inc."

9. Defendant shall provide notice of each payment under Paragraph 6 and a copy of the paperwork documenting each EFT to:

United States Department of Justice (DOJ):
Section Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
DOJ Case No. 90-11-2-1368

Overnight mail should be sent to the addressee at:
1425 New York Ave., N.W.
13th Floor
Washington, D.C. 20005

DOI/USFWS:
Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, N.W.
Mailstop 4449
Washington, D.C. 20240

Patricia Cortelyou-Hamilton
Office of the Solicitor
U. S. Department of the Interior

Russell Federal Bldg., Suite 304
75 Spring Street
Atlanta, GA 30303

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

FDEP:
Larry Morgan
Office of General Counsel
Florida Department of Environmental Protection
3900 Commonwealth Blvd.
Mail Station 35
Tallahassee, FL 32399-3000

EPC:
Richard Tschantz
General Counsel
Environmental Protection Commission of Hillsborough County
1900 9th Avenue
Tampa, FL 33605

Patton Boggs LLP
Daniel R. Addison
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

V. NATURAL RESOURCE DAMAGES - PAYMENT OF ASSESSMENT COSTS

10. Within 30 days of the entry of this Consent Decree, Defendant shall make the following payments to the agencies identified below to reimburse each agency for the costs it incurred in the natural resource damage assessment undertaken for the Spill:

(a) NOAA Assessment Costs: Defendant shall pay the United States $809,710.00 to reimburse the costs incurred by NOAA. Payment shall be made by electronic funds transfer to the United States in accordance with current electronic funds transfer procedures and instructions for same to be provided to Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Middle District of Florida within 10 days following the entry of this Consent Decree. Defendant shall provide notice of payment, referencing the "1997 Alafia River Spill", DOJ Case Number 90-11-2-1368, and this civil action case name and number to NOAA and DOJ at the addresses set forth in Paragraph 9 above and additionally to:

NOAA/NOS/OR&R
Attn: Kathy Salter, DARRF Manager
1305 East West Highway
Silver Spring, MD 20910-3281

(b) DOI/USFWS Assessment Costs: Defendant shall pay the United States $12,883.00 to reimburse the costs incurred by DOI/USFWS. Payment shall be made by EFT to the United States in accordance with current electronic funds transfer procedures and instructions for same to be provided to Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Middle District of Florida within 10 days following the entry of this Consent Decree. Defendant shall provide notice of payment, referencing the "1997 Alafia River Spill", DOJ Case Number 90-11-2-1368, and this civil action case name and number to DOJ and DOI/USFWS at the addresses set forth in Paragraph 9 above.

(c) FDEP Assessment Costs: Defendant shall pay $153,802.00 to FDEP to reimburse the

costs incurred by FDEP. Payment shall be made by electronic funds transfer to FDEP in accordance with current electronic funds transfer procedures. Information necessary to complete the electronic funds transfer shall be provided to Defendant by FDEP within 10 days following the entry of this Consent Decree. Defendant shall provide notice of payment, referencing the "1997 Alafia River Spill" and the "Ecosystem Management Trust Fund, OGC #98-0192", to FDEP at the address below:

Florida Dept. Env. Protection
c/o Larry Morgan
MS-35
3900 Commonwealth Blvd.
Tallahassee FL 32399-3000.

(d) Florida Fish and Wildlife Conservation Commission ("FFWCC") Assessment Costs: Defendant shall pay $8,412.00 to reimburse costs incurred by the Florida Marine Research Institute and other FFWCC staff in providing technical services to FDEP as part of the assessment. Payment shall be made by electronic funds transfer to FFWCC in accordance with current electronic funds transfer procedures. Information necessary to complete the electronic funds transfer shall be provided to Defendant by FFWCC within 10 days following the entry of this Consent Decree. Defendant shall provide notice of payment, referencing the "1997 Alafia River Spill", to FFWCC at the address below:

FFWCC
c/o Preston Robertson
620 S. Meridian St.
Tallahassee FL 32399-1600.

(e) Southwest Florida Water Management District ("SWFWMD") Assessment Costs: Defendant shall pay $1,057.00 to reimburse costs incurred by SWFWMD in providing technical services to FDEP as part of the assessment. Payment shall be made by electronic funds transfer to SWFWMD in accordance with current electronic funds transfer procedures. Information necessary to complete the electronic funds transfer shall be provided to Defendant by SWFWMD within 10 days following the entry of this Consent Decree. Defendant shall provide notice of payment, referencing the "1997 Alafia River Spill", to SWFWMD at the address below:

Legal Department
attn: William Bilenky
General Counsel
2379 Broad St.
Brooksville FL 34604.

(f) EPC Assessment Costs: Defendant shall pay $25,968.00 to EPC to reimburse the costs incurred by EPC. Payment shall be made by electronic funds transfer to EPC in accordance with current electronic funds transfer procedures. Information necessary to complete the electronic funds transfer shall be provided to Defendant by EPC within 10 days following the entry of this Consent Decree. Defendant shall provide notice of payment, referencing the "1997 Alafia River Spill", to EPC at the address below:

Environmental Protection Commission
c/o Richard Tschantz
General Counsel
Environmental Protection Commission of Hillsborough County
1900 9th Avenue
Tampa, FL 33605.

(g) Polk County Assessment Costs: Defendant shall pay $8496.00 to Polk County to reimburse the costs incurred by Polk County and the costs Polk County will incur in providing future assistance to the agencies as may be needed to plan and/or implement any restoration projects in Polk County. Payment shall be made by electronic funds transfer to Polk County in accordance with current electronic funds transfer procedures. Information necessary to complete the electronic funds transfer shall be provided to Defendant within 10 days following the entry of this Consent Decree. Defendant shall provide notice of payment, referencing the "1997 Alafia River Spill", to Polk County at the address below:

Polk County Board of County Commissioners
c/o Mike Mahler
Director of Natural Resources
4177 Ben Durrance Road
Bartow, FL 33830.

VI. STIPULATED PENALTIES

11. If Defendant fails to make the payments specified in Section IV (Payment of Restoration Funds) or Section V (Payment of Assessment Costs) when due, Defendant shall pay, in-addition to the unpaid balance of any amount due under Section IV or Section V and/or interest and enforcement expenses in accordance with Section VII (Late Payment/Non-Payment), stipulated penalties as follows:

(a) Failure to Pay Federal (NOAA and/or DOI/USFWS) Assessment Costs: If Defendant fails to pay the amounts specified in Paragraphs 10(a) and (b) of Section V (Payment of Assessment Costs) when due, Defendant shall pay to the United States five thousand dollars

($5,000) for each calendar day the payment of the amounts specified in Paragraphs 10(a) and (b) of Section V, or any portion thereof, are overdue. All penalties accruing under this Section shall be paid to the United States, in accordance with the procedures for payment to the United States specified in Paragraph 14 below.

(b) Failure to Pay State (FDEP, FFWCC and/or SWFWMD) Assessment Costs: If Defendant fails to pay the amounts specified in Paragraphs 10(c), (d) and (e) of Section V (Payment of Assessment Costs) when due, Defendant shall pay to the FDEP five thousand dollars ($5,000) for each calendar day the payment of amounts specified in Paragraphs 10(c), (d) and (e) of Section V, or any portion thereof, are overdue. All penalties accruing under this Section shall be paid to FDEP, in accordance with the procedures for payment to FDEP specified in Paragraph 14 below.

(c) Failure to Pay EPC Assessment Costs: If Defendant fails to pay the amount specified in Paragraph 10(f) of Section V (Payment of Assessment Costs) when due, Defendant shall pay to EPC five thousand dollars ($5,000) for each calendar day the payment amount specified in Paragraph 10(f) of Section V, or any portion thereof, is overdue. All penalties accruing under this Section shall be paid to EPC, in accordance with the procedures for payment to EPC specified in Paragraph 14 below.

(d) Failure to Pay Restoration Funds or Polk County's Assessment Costs: If Defendant fails to pay the amount specified in Section IV (Payment of Restoration Funds) or in Paragraph 10(g) of Section V (Payment of Assessment Costs) when due, Defendant shall pay

two thousand five hundred dollars ($2500) to the United States and two thousand five hundred dollars ($2500) to FDEP for each calender day the payment of the amount specified in Section IV or in Paragraph 10(g) of Section V, or any portion thereof, are overdue. All penalties accruing under this Section shall be paid to the United States and to FDEP in accordance with the procedures for payment to the United States and to FDEP specified in Paragraph 14 below.

12. All stipulated penalties under this Section shall automatically begin to accrue on the day after the payment is due, and shall continue to accrue until the date of full payment. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

13. Following the determination by the United States, FDEP and/or EPC that Defendant has failed to comply with a term or condition of this Consent Decree, the United States, FDEP and/or EPC may provide written notice describing the noncompliance to Defendant. The United States, FDEP and/or EPC may send Defendant a written demand for the payment of stipulated penalties. However, penalties shall accrue regardless of whether the United States, FDEP and/or EPC have provided notice to Defendant of its noncompliance.

14. All payments to the United States under this Section shall be made by Electronic Funds Transfer, made payable to "Treasurer, United States of America," and tendered to the United States Attorney, as provided in Paragraph 10 of this Decree. A transmittal letter summarizing the violation(s) for which the penalty payment is made shall accompany the

payment and a copy of said letter and proof of Electronic Funds Transfer shall be sent to DOJ, NOAA and DOI/USFWS in accordance with Section IX (Form of Notice).

All payments to FDEP under this Section shall be made by certified or cashier's check payable to the "Florida Department of Environmental Protection", and referencing the "Ecosystem Management Trust Fund, OGC #98-0192", sent to:

Florida Dept. Env. Protection
c/o Larry Morgan
MS-35
3900 Commonwealth Blvd.
Tallahassee FL 32399-3000.

A transmittal letter summarizing the violation(s) for which the penalty payment is made shall accompany the payment.

All payments to EPC under this Section shall be made by certified or cashier's check payable to "EPC Pollution Recovery Fund", and referencing the "1997 Alafia River Spill", sent to:

Environmental Protection Commission
c/o Richard Tschantz
General Counsel
Environmental Protection Commission of Hillsborough County
1900 9th Avenue
Tampa, FL 33605.

A transmittal letter summarizing the violation(s) for which the penalty payment is made shall accompany the payment.

15. The payment of stipulated penalties shall not alter in any way Defendant's obligation to comply with all of the terms and conditions of this Consent Decree.

16. Notwithstanding any other provision of this Section, the United States, FDEP or EPC may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued and are payable, in whole or in part, to it pursuant to this Consent Decree.

17. Payment of stipulated penalties as set forth in this Section shall be in addition to any other rights or remedies available to the United States, the State Plaintiffs or EPC by reason of the Defendant's failure to comply with the requirements of this Consent Decree.

VII. LATE PAYMENT/NONPAYMENT

18. If Defendant fails to make any payment, or portion thereof, as specified in Section IV (Payment of Restoration Funds) or Section V (Payment of Assessment Costs) or to pay any stipulated penalty accruing under Section VI (Stipulated Penalties) when due, Defendant shall pay, in addition to any amount or unpaid balance owed under Section IV, Section V, or Section VI, interest and enforcement expenses in accordance with this Section.

19. Interest shall accrue on the unpaid balance of any amount due under Paragraphs 6 and 10 or on any unpaid balance of stipulated penalties due under Section VI (Stipulated Penalties) at the rate of 3.2% per annum, calculated from the date such amount is due under this Consent Decree through the date of actual payment.

20. Interest on the unpaid balance of any amount due under Paragraphs 6 and 10 shall be paid by Defendant into the Restoration Account, in accordance with the payment procedures and directions set forth in Paragraph 8. Interest on the unpaid balance of any amount due under Section VI (Stipulated Penalties) shall be paid by Defendant in accordance with the

provisions of that Section, including the procedures and directions for payment set forth in Paragraph 14, except that such payment shall bear an annotation stating the payment is for interest on stipulated penalties under Section VI of the Consent Decree.

21. Notwithstanding Section XVI (Costs of Suit), Defendant shall pay the enforcement expenses incurred by the United States, FDEP, and EPC, including, but not limited to, attorneys' fees and costs, for any proceedings to collect any unpaid balance of any amount due under Section IV (Payment of Restoration Funds) or Section V (Payment of Assessment Costs) or to collect any unpaid balance of stipulated penalties due under Section VI (Stipulated Penalties).

VIII. SOURCE OF PAYMENT

22. The payments to be made pursuant to this Consent Decree are coming from insurance and are not coming from the bankruptcy estate of Defendant Mulberry Phosphates, Inc. Defendant and its insurer are providing a Reinsurance Agreement (Attachment B to this Consent Decree) assuring payment of certain amounts coming due under the terms of this Consent Decree. This Reinsurance Agreement provides for payment of amounts specified for payment pursuant to Section IV (Natural Resource Damages - Payment of Restoration Funds), Section VI (Stipulated Penalties) and Section VII (Late Payment/ Nonpayment) of this Consent Decree. This Reinsurance Agreement provides for and is to be directly enforceable under this Consent Decree. This Reinsurance Agreement also provides that the United States, the State Plaintiffs, and EPC are to be third-party beneficiaries of the

Reinsurance Agreement.

IX. FORM OF NOTICE

23. Except as specified otherwise, when written notification or reporting to, or communication with the United States or DOJ, NOAA, DOI/USFWS, the State Plaintiffs, EPC or the Defendant is required by the terms of this Consent Decree, it shall be addressed as follows:

United States or DOJ:

Ann C. Hurley
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ Case No. 90-11-2-1368

Overnight mail should be sent to the addressee at:
1425 New York Ave., N.W.
13th Floor
Washington, D.C. 20005

DOI/USFWS:
Patricia Cortelyou-Hamilton
Office of the Solicitor
U. S. Department of the Interior
Russell Federal Bldg., Suite 304
75 Spring Street
Atlanta, GA 30303

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

FDEP:
Larry Morgan
Office of General Counsel
Florida Department of Environmental Protection
3900 Commonwealth Blvd.
Mail Station 35
Tallahassee, FL 32399-3000

EPC:
Richard Tschantz
General Counsel
Environmental Protection Commission of Hillsborough County
1900 9th Avenue
Tampa, FL 33605

Defendant Mulberry Phosphates, Inc.:
c/o V. John Brook, Jr.
Bankruptcy Trustee
P.O. Box 7975
St. Petersburg, FL 33734-7975

Daniel R. Addison
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

Any party to this Consent Decree may change the address to which notices shall be sent by notifying all parties in writing at the above addresses.

24. Unless the parties to this Consent Decree agree to a different form of submission, notifications or communications shall be deemed submitted on the date they are (1) received or (2) sent, if sent by overnight express mail.

X. COVENANTS NOT TO SUE BY PLAINTIFFS

25. In consideration of the payments that will be made under the terms of this Consent

Decree, and except as specifically provided in Paragraph 30 (Reservations of Rights by Plaintiffs), the United States and the State Plaintiffs each hereby covenant not to sue or take administrative action against Defendant pursuant to Section 107(a)(1), (2) and (4)(C) of CERCLA, 42 U.S.C. § 9607(a)(1), (2) and (4)(C), and Section 311(f)(2), (4) and (5) of the CWA, 33 U.S.C. § 1321(f)(2), (4) and (5), or any other federal, state or common law to recover natural resource damages arising from the Spill. This covenant not to sue shall take effect upon the date of entry of this Consent Decree. However, it is expressly conditioned upon the Defendant's full compliance with all terms of this Consent Decree, including payment of all amounts specified for payment in Section IV (Payment of Restoration Funds), Section V (Payment of Assessment Costs), Section VI (Stipulated Penalties), and Section VII (Late Payment/Nonpayment).

26. In consideration of the payments that will be made under the terms of this Consent Decree, and except as specifically provided in Paragraph 30 (Reservations of Rights by Plaintiffs), the State Plaintiffs covenant not to sue or take administrative action against Defendant to recover natural resources damages pursuant to Section 403.161, Florida Statutes, or to recover natural resource damages arising from the Spill under any other state or common law. In addition, FDEP covenants not to sue or take administrative action against Defendant for any civil penalties arising from the Spill. This covenant not to sue shall take effect upon the date of entry of this Consent Decree. However, it is expressly conditioned upon Defendant's full compliance with all terms of this Consent Decree, including payment

of all amounts specified for payment in Section IV (Payment of Restoration Funds), Section V (Payment of Assessment Costs), Section VI (Stipulated Penalties), and Section VII (Late Payment/Nonpayment).

27. In consideration of the payments that will be made under the terms of this Consent Decree, and except as specifically provided in Paragraph 30 (Reservations of Rights by Plaintiffs), EPC covenants not to sue or take administrative action against Defendant pursuant to Chapter 403, Florida Statutes, the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida (EPC Act) and the rules promulgated thereunder at Chapters 1-1 and 1-5, Rules of the EPC, or any other state or common law, to recover natural resource damages arising from the Spill, as well as any investigative costs and expenses in maintaining such actions against the Defendant, including in EPC v. Mulberry Phosphates, Inc., Case No. 0110644, filed December 6, 2001, in the Circuit Court of the Thirteenth Judicial Circuit of the State of Florida, in Hillsborough County. This covenant not to sue shall take effect upon the date of entry of this Consent Decree. However, it is expressly conditioned upon the Defendant's full compliance with all terms of this Consent Decree, including payment of all amounts specified for payment in Section IV (Payment of Restoration Funds), Section V (Payment of Assessment Costs), Section VI (Stipulated Penalties), and Section VII (Late Payment/Nonpayment).

28. The Covenants Not to Sue by Plaintiffs set forth in this Section extend only to Defendant and Defendant's insurer, AIU Insurance Company, and not to any other person.

29. The Covenants Not to Sue by Plaintiffs set forth in this Section extend to and encompass all claims for civil monetary damages which may be recoverable on behalf of the public by either the United States, the State Trustees, or EPC under any legal authority, including the Clean Water Act, 33 U.S.C. §§ 1251, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., or any other federal or state statue or regulation, or under maritime or common law, as compensation for the injury to, loss, or destruction of, any and all natural resources resulting from the Spill, including claims for damages based on (1) the costs to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources; (2) compensation for the interim loss or diminution in value of injured natural resources pending restoration (including, but not limited to, lost use value, non-use value, option value, amenity value, bequest value, existence value, lost consumer surplus, and lost economic rent); and (3) costs incurred in assessing such damages.

30. Reservations of Rights by Plaintiffs. Notwithstanding any other provision of this Consent Decree, the United States, the State Plaintiffs and EPC reserve, and this Consent Decree is without prejudice to, all rights against the Defendant with respect to all matters other than those expressly specified in the covenants not to sue set forth in this Section, including, but not limited to: claims based upon a failure of the Defendant to meet a requirement of this Consent Decree; claims for response costs under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C § 9607;

any claims against Mulberry Phosphates, Inc. arising from facts unrelated to the Spill; and any criminal liability.

31. Nothing in this Consent Decree shall be deemed to limit the response authority of the United States, the State Plaintiffs or EPC under any law.

XI. COVENANT NOT TO SUE BY DEFENDANT

32. In consideration of the covenants not to sue contained in Section X (Covenants Not to Sue by Plaintiffs), the Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the Plaintiffs, their employees, agents, or contractors with respect to the Spill, including, but not limited to, any actions relating to the Spill taken thereafter by Plaintiffs.

XII. PUBLIC NOTICE

33. The parties to this Consent Decree acknowledge and agree that the final approval by the United States and the State Plaintiffs and the entry of this Consent Decree is subject to the requirement of 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 State Plaintiffs 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 Defendant agrees to entry of this Consent Decree without further notice and shall not challenge entry. If, for any reason, the Court should decline to approve this Consent Decree in the form presented, this

Consent Decree is voidable at the sole discretion of any party and the terms may not be used for any purpose, including as evidence in any litigation.

XIII. EFFECT OF SETTLEMENT

34. Upon approval and entry of this Consent Decree by the District Court, this Agreement shall constitute a final judgment between the Plaintiffs and the Defendant in accordance with its terms.

XIV. EFFECTIVE DATE, MODIFICATION, AND TERMINATION

35. This Consent Decree will take effect upon the date it is entered by the Court.

36. Except to change the identity or address of persons receiving notification in in Sections IV (Payment of Restoration Funds), V (Payment of Assessment Costs), VI (Stipulated Penalties) and IX (Form of Notice), any modification of this Consent Decree must be in writing and approved by the parties to this Consent Decree and the Court before it will be deemed effective.

37. This Consent Decree shall terminate when Defendant has (a) made all of the payments set forth in Sections IV (Payment of Restoration Funds), V (Payment of Assessment Costs) and VI (Stipulated Penalties) of this Consent Decree; (b) paid all interest and enforcement expenses, if any, as specified in Section VII (Late Payment/Non-Payment) and (c) no other monetary obligations due under this Consent Decree are outstanding.

38. Defendant shall initiate termination of this Consent Decree by providing written notice to the United States, the State Plaintiffs and EPC that all conditions necessary for termination

pursuant to Paragraph 37 have been satisfied. If the United States, the State Plaintiffs and EPC agree with Defendant's notification, the parties shall file a joint motion or stipulation for termination of this Consent Decree.

XV. RETENTION OF JURISDICTION

39. Until the termination of this Consent Decree pursuant to Section XIV (Effective Date, Modification, and Termination), this Court shall retain jurisdiction over this action and all disputes arising hereunder for the purpose of implementing and enforcing the terms and conditions of this Consent Decree.

XVI. COSTS OF SUIT

40. Each party shall bear its own costs and attorneys' fees incurred in this action through the date upon which the Consent Decree is entered.

XVII. SERVICE

41. With regard to matters relating to this Consent Decree and its enforcement and the filing of EPC's Complaint, the Defendant shall identify on the attached signature page the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that entity with respect to all matters arising under or relating to this Consent Decree and the filing of EPC's Complaint. Defendant hereby agrees to accept service of process by mail and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and in any applicable local rules of this court, including, but not limited to, service of a summons.

ORDERED, Dated and ENTERED this 31st day of July, 2002.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

"Consent Decree" in 8:01-CV-692
U.S.D.C for MIDDLE DIST. FLORIDA
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FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: 5.14.02

THOMAS L. SANSONETTI
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FOR PLAINTIFFS STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION and DAVID STRUHS, AS NATURAL RESOURCES TRUSTEE FOR THE STATE OF FLORIDA:

Dated: May 20, 2002

DAVID B. STRUHS
Secretary
Florida Department of Environmental Protection

FOR PLAINTIFF-INTERVENOR ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

Dated: 5-17-05

RICHARD GARRITY, Ph.D
Executive Director
Hillsborough County Environmental Protection Commission
1900 9th Avenue
Tampa, FL 33605

FOR DEFENDANT MULBERRY PHOSPHATES, INC.

Dated: May 20, 2002

V. JOHN BROOK, JR.
Chapter 7 Bankruptcy Trustee
Signing for Defendant Mulberry Phosphates, Inc.

Agent for Service of Process:

NAME

ADDRESS

ATTACHMENT A

FINAL

DAMAGE ASSESSMENT AND RESTORATION PLAN AND ENVIRONMENTAL ASSESSMENT FOR THE DECEMBER 7, 1997 ALAFIA RIVER SPILL

PREPARED BY

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
POLK COUNTY, NATURAL RESOURCES
UNITED STATES FISH & WILDLIFE SERVICE

July 21, 2000

5.0 OVERVIEW OF ASSESSMENT AND RESTORATION PLAN

Sections 5.0 and 6.0 present the strategy, restoration alternatives and scaling methods which the Agencies have identified to use to provide for the restoration, rehabilitation, replacement or acquisition of natural resources or resource services to compensate for the natural resource injuries resulting from the spill.

5.1 Restoration Planning Strategy

State, federal and local liability frameworks for natural resource damages share a common objective -- to provide for expeditious restoration, replacement, or acquisition of equivalent resources or services when injuries to natural resources result from unauthorized discharges of hazardous substances, pollutants or contaminants. Under these laws, the Agencies are responsible for determining the actions needed to restore injured resources and lost resource services to baseline (termed 'primary restoration') and to compensate for interim losses (termed 'compensatory restoration'). The costs of implementing those actions represent a primary measure of an RP's natural resource damages liability.

Consistent with this legal and policy framework, the Agencies' strategy in developing this DARP/EA has been to define compensation for the natural resource injuries or losses which resulted from the spill based the restoration actions which are necessary or appropriate to return resources or services to baseline levels or to compensate for interim losses. Consideration of restoration actions favors the use of on-site, in-kind restoration approaches, wherever possible, to ensure the most direct relationship between resource injuries or service losses and the benefits of restoration actions. The choice of assessment methodologies outlined in this DARP/EA is consistent with this restoration-focus.

In restoration planning, the Agencies' emphasis has been on the areas or resources directly affected by the spill; however, the approach also takes into account the fact that the resources injured are part of a larger ecological system - the Alafia River basin watershed and the Tampa Bay estuary. In identifying and evaluating restoration alternatives, the Agencies have considered, where appropriate, the extent to which restoration actions offer multiple ecological or human use benefits to the larger ecosystem in addition to the benefits to a specific injured resource. Benefits to other resources injured or potentially injured as a result of this spill incident are taken into account under this approach.

Finally, the Agencies' strategy in developing this DARP/EA has also been to use simplified, cost-effective procedures and methods wherever feasible to document resource injuries and to define restoration-based compensation. Accordingly, depending on the injury category, the DARP/EA uses, alone or in combination, relevant scientific literature, scientifically-based models, and focused injury or quantification analyses. Throughout, the Agencies have endeavored to arrive at the most accurate estimate of the injuries caused by the spill, based on the best scientific information and most reliable methods available, at reasonable cost.

5.2 Framework for Identifying Preferred Restoration Alternatives

Restoration alternatives were identified through a two step process. First, a Restoration Workgroup comprised of representatives of the Agencies consulted with or contacted various agencies and private groups, such as SWFWMD, NAS and the Alafia River Basin Stewardship Council (ARBSC), to identify potential restoration alternatives. The Agencies also published a notice in the Tampa Tribune seeking input on restoration alternatives directly from the public.

Through these activities, the Agencies identified ten potential restoration alternatives. These ten alternatives are listed in Table 3 along with examples of potential projects that may be consistent with each alternative.

Table 3

Restoration Alternative	Generic Description and Examples of Potential Projects
Natural Recovery	Allow injuries to recover w/o human intervention • No Action
Enhancement via Nuisance Control	Eliminate nuisance or exotic vegetation from wetland habitats • Application of herbicides • Controlled burns • Mechanical removal of vegetation
Restoration of Estuarine Wetlands[5]	Create or restore wetlands in estuarine areas of the Alafia River • Saltmarsh restoration • Seagrass restoration • Mangrove restoration • Open water habitat creation
Fish Stocking	Rear and release recreationally or commercially important fish species • Freshwater fish stocking • Estuarine fish stocking
Restoration of Riverine Habitat	Create or restore wetlands in freshwater areas of the Alafia River • Freshwater marsh restoration • Emergent and submergent vegetation restoration • Floodplain habitat creation or restoration
Land Acquisition	Acquire environmentally sensitive land for public use or benefit • Fee simple purchase of environmentally sensitive land • Purchase of conservation easements

[5] This alternative is labeled or referred to as 'Restoration of Low Salinity Habitat' in agency records from this screening period.

Surface Water Improvement Projects	Any project that will improve the quality of surface water entering the Alafia River watershed. • Stormwater retention/detention systems • Site specific pollution abatement projects • Construction of filter marshes • Removal of agricultural lands from production • Creation of wetland buffer areas
Stream Enhancement Projects	Projects that improve existing freshwater stream habitats • Stream channel modifications • Bank stabilization projects
Recreational Projects	Projects that increase or improve public recreational opportunity on the Alafia River • Boat ramps • Build canoe rest stops launches • Repair/recondition recreational facilities (i.e., shelters, benches, picnic areas) • Boardwalks and nature trails
Reef Creation[6]	Projects that create underwater, intertidal or shoreline habitat that directly benefit fish and/or invertebrates • Create/restore oyster reefs • Deploy Reefballs™ • Deploy freshwater snags

All restoration alternatives were then screened by the Agencies based on the restoration criteria outlined below at 5.2.1. A primary consideration in this initial screening process was the relationship of the alternative and its potential benefits to the natural resource injuries that occurred due to this spill event. This initial screening resulted in the identification of five restoration alternatives that, in the judgment of the Agencies, could reasonably be expected to achieve objectives for the restoration of injured resources, in light of all the criteria to be applied: Restoration of Riverine Habitat, Restoration of Estuarine Wetlands, Reef Creation, Land Acquisition, and Surface Water Improvement Projects.

These alternatives were then considered more carefully by the Agencies based on the criteria outlined below. These alternatives and the results of that evaluation, with preferred restoration alternatives identified, were presented for public review and comment in Section 6.0 of the Draft DARP/EA released on July 22, 1999. Section 6.0 of this DARP/EA presents the Agencies' final evaluation and selection of restoration alternatives. Additional information on the screening process is presented below at 5.3.

[6] This alternative is labeled or referred to as 'Artificial Reef' in some agency records from this screening period, but encompassed potential restoration or creation of oyster reefs.

5.2.1 Selection Criteria

The following criteria have been used by the Agencies to screen and to evaluate the listed restoration alternatives:

Relationship of Restoration Action to Type and Quality of Resources and/or Services Injured - Considers the nature and extent to which a restoration action would address the natural resource injuries that occurred as the result of the spill. This includes the extent to which benefits of the action would be on-site, in-kind, or would be otherwise comparable in nature, scope, and location to injuries that occurred. Evaluation of each restoration action also considered the full range of potentially affected resource categories, even if no injury assessment was completed for that category.

Consistency with Restoration Strategy - Considers the degree to which a restoration action relates to the identified restoration strategy of providing on-site, in-kind restoration whenever possible and, if not possible, of providing appropriate restoration consistent with larger ecosystem restoration plans.

Consistency with Community Objectives - Considers the degree to which a given restoration action is consistent with known or anticipated community objectives. Community objectives are derived from larger ecosystem restoration plans as well as concerns for restoration planning articulated by members of the public, such as through the ARBSC or from public review and comment on the draft restoration plan.

Multiple Benefits - Considers the extent to which a given restoration action will address more than one natural resource injury or loss or benefit other resources, including those potentially affected.

Technical Feasibility - Considers both the likelihood that a given restoration action will succeed in a reasonable period of time, and the availability of technical expertise, programs and contractors to implement the considered action. This factor includes, but is not limited to, consideration of prior experience with methods or techniques proposed for use, availability of equipment and materials, site availability and logistical difficulty.

Restoration Site Requirements - Considers the extent to which the scientific, engineering or legal requirements of proposed restoration action can be met by available sites.

Potential for Additional Natural Resource Injury - Considers the risk that a proposed action may aggravate or cause additional natural resource injuries.

Restoration is Self-sustaining - Considers the degree to which a restoration action will achieve success without human intervention.

Consistency with Applicable Laws and Policies - Considers the extent to which a restoration action is consistent with relevant State, Federal and County policies and would be implemented in accordance with State, Federal and County laws.

Potential Effects on Human Health and Safety - Considers the potential adverse impacts a restoration action may have to human health and safety.

Costs Effective - Considers the relationship of costs associated with a given restoration alternative to the benefits of that alternative and the ability to achieve restoration objectives. Other factors being substantially equal, a less costly restoration approach is rated higher.

Based on this evaluation, this DARP/EA identifies the restoration alternatives which have been selected for use to achieve restoration objectives for the injured resources and, in turn, will be used as the basis for defining compensation for these injuries.

5.3 Screening Restoration Alternatives

The Agencies used a numerical scoring approach in screening the broader list of restoration alternatives. This approach accomplished several objectives. First, numerical scoring provides a means by which criteria can be applied to a specific restoration approach. Second, it allows for comparison among dissimilar restoration approaches. Once all restoration approaches are scored, it is easier to compare one, many, or all evaluation factors between potential approaches. Finally, numerical scoring provides an objective basis upon which to narrow the list of restoration alternatives for detailed consideration.

The numeric scale is based upon qualitative descriptors, not quantitative measures. Restoration alternatives were evaluated on a 0 to 3 scale depending on how well a restoration alternative fit a criterion. Using the scale and a worksheet developed for this purpose, each Agency as well as MPI scored all ten (10) of the potential restoration alternatives on each of the eleven (11) selection criteria identified in Section 5.2.1. Upon completion, the scores for each restoration alternative, per criterion, were combined and averaged and recorded on a final worksheet. In this final worksheet, a cumulative total score for each restoration approach is calculated by adding the eleven (11) averaged, per criterion scores for each alternative. The restoration alternatives with the highest five overall scores were selected for further consideration in development of an appropriate restoration plan for injured resources. As noted previously, these five alternatives were Restoration of Riverine Habitat, Restoration of Estuarine Wetlands, Reef Creation, Land Acquisition, and Surface Water Improvement Projects.

6.0 RESTORATION PLAN

The Agencies considered each of the five restoration alternatives with reasonable potential to achieve restoration objectives for resources injured by this incident (identified as described in Section 5.0) and the "no action" alternative. Consideration of the "no action" alternative in the restoration planning process is required by NEPA. The Agencies evaluation of these alternatives has taken into account the relationship to primary and compensatory restoration objectives applicable to each resource injury or loss, the selection criteria identified in Section 5.2.1, the benefits to other resources which were or may have been affected by the spill (i.e. benthic invertebrates, birds, recreational fishing, and oysters/mussels) and, consistent with its dual role as an EA under NEPA, other information bearing on the environmental setting for restoration and the potential environmental, social, or economic consequences of each alternative.

This section of the DARP/EA identifies those restoration alternatives which, based on that evaluation, have been selected for use to restore the natural resources or resource services which were injured or lost as a result of this incident. The alternatives evaluated by the Agencies and the rationale supporting the choice of the selected alternatives are presented in this section.

6.1 Restoration Objectives for Injured Resources

Primary Restoration Objectives

The goal of a primary restoration action is to facilitate recovery or otherwise assist an injured natural resource or service return to its baseline or pre-spill condition. Agencies may rely on the natural recovery process where injured resources or services will recover within a reasonable period without further action, or in situations where feasible or cost-effective primary restoration actions are not possible. As part of their assessment, the Agencies considered whether actions to assist injured freshwater wetlands, fishery species and surface waters recover to baseline were needed or appropriate.

For each injury category, the Agencies generally found natural recovery processes would allow resources and services to return to baseline conditions without human intervention, within a reasonable period of time. Surface water monitoring data indicates pH levels in the Alafia River returned to normal within weeks of the spill and that chlorophyll *a* concentrations related to the spill were nearing normal levels in Tampa Bay by May 1998. With respect to the injured freshwater vegetation, the Agencies believe, based on technical literature, expertise, and information from limited additional field work in early 1999, that ground cover, which comprised most of the freshwater wetland vegetation injury, will recover naturally within 2 years and subcanopy species will recover naturally in 5 years. Lastly, as noted in section 3.2.3, the assessed losses of Fish, Crab, and Shrimp are, for a number of reasons, not considered large enough to significantly alter future reproduction or recruitment in the river. Consequently, dedicated action to facilitate an overall return to pre-spill population levels is not required. However, after weighing many factors, a limited early stocking effort to directly replace snook of greater than 10" was approved as an appropriate primary restoration action. As described in Section 3.2.2, this early restoration action served to partially offset the kill of similar-sized snook and assist in reducing future production

losses attributable to the fish kill. With the exception of this early action to replace dead snook, no other need or appropriate action to facilitate or assist the recovery of any injured resource or service has been identified by the Agencies.

Compensatory Restoration Objectives

The goal of compensatory restoration in this DARP/EA is to restore, replace or acquire natural resources or services like those injured as a result of the spill as a basis for compensating for the interim losses of natural resources and resource services which occurred. The scale of a compensatory restoration action depends on both the nature and extent of the resource injury and how quickly each resource and its associated services return to baseline.

For resource injuries addressed in this plan, the following objectives were used in identifying compensatory restoration actions:

(1) Provide freshwater vegetation services of higher quality (higher diversity) as a basis for compensating for the interim loss of freshwater wetland services;

(2) Replace the biomass of fish, crabs and shrimp lost due to the spill through creation or enhancement of habitat(s) capable of generating an equivalent biomass over time.

(3) Provide for the removal of nitrogen from surface waters over time in a manner sufficient to offset the amount of nitrogen introduced into the system by the spill.

6.2 No Action Alternative

Under this alternative, the Agencies would take no direct action to restore injured resources or to compensate for lost resource services pending their ecological recovery. Only natural recovery occurs under this option. Interim losses are not compensated.

Under laws applicable to public natural resource damage claims, the Agencies are responsible for seeking compensation for interim losses where these losses are significant and where feasible, cost-effective alternatives are available for use to define restoration-based compensation. While natural recovery will appropriately meet primary restoration objectives for all injured resources but one in this instance (i.e., early restoration action re: snook), the no action alternative will not satisfy any of the compensatory restoration objectives outlined above and was rejected on that basis.

6.3 Restoration of Riverine Habitat - Selected Alternative for Restoration of Freshwater Wetlands and Surface Water Services

Restoration of riverine habitat may be accomplished by converting non-native uplands, such as agricultural lands or filled historic riverine habitat, into freshwater floodplain wetlands, or returning disturbed vegetative communities (i.e., nuisance or exotic species dominated) back to an original or more desirable wetland community structure. Excavation, planting and monitoring to achieve restoration success are the major components of such projects. The Agencies have selected

restoration of riverine habitat as the best approach for restoring interim losses associated with the injured freshwater vegetation described in Section 3.1 and the injury to surface waters described in Section 3.3.

Restoration of riverine habitat, for the purposes of this DARP/EA, shall not include the conversion of native coastal uplands, native riparian river buffers, or other types of native wetlands habitats into another less common wetlands type of less maturity. This decision is based on the desire to preserve the integrity of existing native habitats with important wildlife habitat services.

6.3.1 Evaluation of Alternative

For Freshwater Wetlands

The die-off of freshwater wetland vegetation caused by the spill represents an interim loss of ecological services associated with that vegetation. Action to restore or create riverine habitat is the most direct way to restore or replace ecological services comparable to those lost due to the spill. Pre-spill, the ecological services in these areas were largely provided by nuisance vegetation, with minimal habitat diversity.

Current permitting practices ensure the restoration or creation of riverine habitat will achieve the restoration objective for the lost freshwater wetland services by allowing only native, non-nuisance vegetation to be used in a riverine habitat project. This is an efficient means of replacing or acquiring ecological services like those lost as it will compensate for the services lost by improving the quality of wetland vegetation and, in turn, enhance the future flow of ecological services provided by restored areas. The increased quality of ecological services provided through riverine habitat restoration can be captured by measures of vegetative diversity.

Florida's mandatory program for the reclamation of mined lands has greatly advanced the science of freshwater wetland restoration. Many of the advances in wetland restoration technology on mined lands comes from work sponsored by the Florida Institute of Phosphate Research (FIPR) or phosphate mining companies undertaking reclamation in Florida. As a result, projects to restore or create riverine habitat are feasible and have been successful in meeting restoration goals. The expertise necessary to plan, implement or oversee such a project is also available. The Agencies have identified a number of areas in the Alafia River watershed suitable for siting a potential riverine restoration project. The available restoration technology and the opportunity to conduct meaningful riverine restoration constitute an important basis for selecting this approach as the preferred alternative.

A riverine habitat project dominated by herbaceous vegetation may be at risk of reverting to undesirable or nuisance species over time. The long-term sustainability of a riverine restoration or creation project is important and requires consideration of the future management of nuisance vegetation. The desire for such a project to be self-sustaining after a reasonable period of time, however, can be achieved through appropriate project design features. Richardson et al. (1994 and 1998) suggests that long term nuisance species control may be achieved by incorporating trees capable of shading out nuisance species. Nuisance species such as primrose willow can be

controlled in 4 to 5 years using this approach. Accordingly, a mixed forested wetland may be the most appropriate target community to achieve long-term project success.

For Surface Waters

The imbalance in natural aquatic fauna in the Alafia River and in Tampa Bay through May of 1998, due in part to the increased nitrogen loadings from the spill, represent an interim loss ecological services associated with surface waters. Restoration projects that actively assimilate and remove nitrogen from surface waters are the most direct way to restore or replace ecological services comparable to the those lost.

The ability of both natural and created wetlands to remove nitrogen, as well as other pollutants, from surface waters has been well documented in the literature (Carr and Rushton 1995, Kadlec and Knight, 1996). Although some freshwater wetland community types are better at removing nitrogen than others, the Agencies believe there is strong evidence indicating that restored riverine habitat will function efficiently to remove nitrogen from surface waters and, therefore, represents the best and most sustainable approach for restoring surface water services in the Alafia River watershed. Measures of nitrogen removal can be used to capture the enhancement of surface water services. .

A riverine restoration project need not be sited in areas directly affected by the spill to provide improved surface water services in the affected riverine system. Any tributary with elevated levels of nitrogen and other pollutants could be targeted to maximize the improvements to surface water. A riverine restoration project located anywhere in the Alafia River watershed would enhance surface water services in the affected system and compensate for the interim lost surface water services in both the Alafia River and Tampa Bay. Utilizing vegetation with the highest capacity for or siting restoration in areas with the greatest need or potential for nitrogen removal, however, may increase restoration efficiency and help minimize the scale required to achieve restoration objectives.

Implementation of restoration of riverine habitat for either freshwater wetland or surface water injuries may require land acquisition.

6.3.2 Restoration Scaling

For Freshwater Wetlands

Potential riverine restoration projects for ground cover and subcanopy injuries would provide a higher quality level of vegetation services than those that were lost.[7] Instead of providing the less desirable monotypic vegetation characteristic of the injury site, the selected restoration approach would provide a wider array of more desirable species. Because the restoration will provide higher

[7] The restoration for the canopy injuries will provide similar quality resources and services as those that were lost.

quality vegetation, it is necessary to credit the restoration with the added quality. A diversity measure that was reported at the BOMR sampling stations (see description at Section 3.1.1) enables the Agencies to quantify the added quality of restoration. A measure of diversity – the Hill's ratio, which is a function of the Shannon Wiener index – was calculated for ground cover and subcanopy in Area A and Area B.[8] The measure is the average of the diversity indices for ground cover and subcanopy classes at the appropriate stations. With a measure of vegetation quality at the injury sites and also anticipated at the restoration sites, it is possible to determine the trade off of restoration habitat for injured habitat.[9] Lost diversity is closely correlated with other service losses (for example, suitability to support habitat functions declines as diversity diminishes). Diversity measures can also capture quality differences between injured and compensatory restoration sites.

The restored or replacement services would be of comparable value to the lost services. The restoration is likely to occur within the same landscape context as the injury area so the restoration will have the opportunity to provide the ecological services that were lost, e.g., nutrient uptake, habitat, and diversity. The ability of the restoration to provide the same opportunity for services relative to the injury site subsequently influences the value of services. Under these conditions, HEA is appropriate for determining the size of the restoration projects. Given parameters of the restoration projects, including year of implementation, years to functional maturity, and level of quality (or diversity), the scale of restoration that provides the equivalent of the lost vegetation services can be determined.

For Surface Water

HEA will also be used to determine the size of the restoration project necessary to address the surface water injury, consistent with the preferred restoration alternative. The quantity of nitrogen released into the surface water will be used as a metric, or unit of analysis. For the selected restoration action, the analysis will determine the project scale necessary to remove an equivalent amount of nitrogen from surface water runoff over the expected lifespan of the restoration project. The calculation of restoration scale will be dependent, in part, on the treatment efficiency of the restoration action (i.e., the ability of the restoration action to remove nitrogen from surface water) and will be based upon literature values. The use of HEA is appropriate since, under the preferred restoration alternative, restoration actions are expected to result in the uptake of nitrogen from surface waters, an ecological function of the same type and quality, and of value comparable to the interim injury to surface water caused by the spill.

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[8] The Hill's ratio is $\frac{1/\lambda}{e^{H'}}$ where H' is the Shannon-Wiener index and λ is $\sum_{i=1}^{S} P_i^2$; P_i is the proportional abundance of the ith species and was estimated using the relative abundance of a species as a proportion of total cover for each cover class. The ratio is decreasing in diversity and converges toward one as one species dominates. We report the diversity measure as one minus the Hill's ratio so the diversity index is increasing in diversity.

[9] For the canopy injury and restoration, no quality measurements are needed since the restoration for the canopy injury is expected to provide the same quality of vegetation as that which was lost.

Implementation of Scaling

In scaling for freshwater vegetation losses and surface water injuries under this alternative, the Agencies recognize that restoration projects selected to restore or replace the lost vegetative services will also function to provide for nitrogen removal and that the extent to which this occurs must be taken into account in the scaling process. In scaling the restoration required to compensate for the surface water service losses, credit must be given for any nitrogen removal contributed by projects selected to address the lost vegetation services. This is necessary to avoid overcompensating for surface water losses under the proposed restoration plan.

6.3.3 Environmental and Socio-Economic Impact

Restoration of riverine habitat is likely to involve the temporary use of equipment, such as trucks or other machinery, which will potentially increase noise, dust, and traffic in the immediate project vicinity. The site would be transformed from a non-native upland or degraded wetland into a freshwater marsh, forested floodplain wetland or similar habitat. The ecological benefits of such a riverine project will support or contribute to the overall health of the ecosystem in the Alafia River basin and in Tampa Bay. This indirectly benefits humans by enhancing opportunities for recreation and enjoyment of these areas through activities such as boating, bird watching, and fishing and by helping to support property values and use, tourism and water dependent commercial activities. This alternative, however, would not have any significant socio-economic impacts.

6.4 Restoration of Estuarine Wetlands - Co-Selected Alternative for Restoration of Fish, Crab, and Shrimp Biomass Lost

This alternative involves converting non-native uplands or previously filled wetlands into tidally-influenced habitat, or replacing nuisance or exotic-dominated vegetation communities in estuarine areas with more productive estuarine vegetation. The Agencies have selected estuarine habitat restoration as one of two alternatives for use to restore the biomass of fish, crab, and shrimp lost as a result of the spill, as described in Section 3.2.

6.4.1 Evaluation of Alternative

Restoration of estuarine wetlands is a proven and successful strategy for increasing the types of habitat, such as salt marsh, considered critical to the life history of many species of fish, shellfish and shrimp found in the estuary and to the recruitment and production of such species in the estuarine environment. The linkage between fishery productivity and estuarine wetlands, such as smooth cordgrass (*Spartina alterniflora*) marshes, is generally accepted, with productivity values or estimates associated with spartina marshes considered to be among the highest for estuarine habitats. As such, the Agencies consider action to restore or create estuarine wetlands as one of the most direct and ecologically efficient ways to restore or replace the fishery biomass lost due to the spill.

Restoration of estuarine wetlands is feasible both from a technical standpoint and in its ability to restore injured resources. The Agencies consulted with the SWFWMD, which has an existing estuarine habitat restoration program, during development of this DARP/EA and found that there are present opportunities to successfully create or restore estuarine wetlands within one to two miles of the mouth of the Alafia River. These opportunities involve the creation or restoration of salt marsh habitat, with gradual transition over time to a mixed wetland community dominated by mangroves. These projects are also believed to function well when compared to natural systems. Although potentially well suited to the restoration objectives for fishery losses, restoration projects which are ongoing or in an advanced state of planning, such as those identified by SWFWMD, would be ineligible for use to implement restoration under this alternative if funding to implement these actions is or becomes available from other sources. Further, the planning, funding and schedule for implementation of these projects is not within the control of the Agencies. As such, determining the costs to implement estuarine habitat restoration for public claim purposes requires the Agencies to identify such costs based on the development and implementation of new restoration projects. These, however, may be patterned after other successfully designed projects and the scientific, engineering and legal requirements associated with most new restoration projects can be efficiently addressed at reasonable cost by partnering with SWFWMD or others to assist in the design and implementation of this restoration alternative. Based on experience with other estuarine wetland restoration projects, it is anticipated this restoration alternative will be self-sustaining after 5 to 7 years, with limited maintenance activities or other active intervention required during that period. Because such projects are primarily designed to benefit or improve ecological resources, no human health or safety issues would exist beyond the construction phase.

Restoration of estuarine wetlands is consistent with other identified ecosystem restoration objectives (i.e., the Comprehensive Conservation and Management Plan for Tampa Bay [CCMP] and the Surface Water Improvement & Management Program [SWIM]). Indeed, restoration of estuarine wetlands is a key part of several larger ecosystem restoration plans for the Tampa Bay estuary, in part, because such habitats are so essential to healthy fisheries.

As with any restoration action, implementation may adversely affect natural resources for some period of time, particularly if it involves earth moving or other physical activities in or adjacent to existing wetlands. Short-term negative impacts may include loss of non-native upland vegetation, temporary increases in water turbidity and temporary losses of water quality services. Such impacts are generally minimized through planning and during implementation. In the longer term, the benefits of restoring or creating estuarine wetlands - i.e., providing habitat essential to healthy fisheries, bird nesting and foraging areas and other wildlife habitat, assisting in maintaining surface water quality, and supporting recreational activities - outweigh any short term impacts.

The costs of restoring estuarine wetlands may be less on a per acre basis than for restoration such as reef creation. However, if estuarine wetlands do not restore the fishery biomass more efficiently, the cost of implementing this alternative may be comparable to the cost of other alternatives because more estuarine acreage would be needed to restore the fish biomass loss. Cost efficiencies may be achieved through partnering with pending restoration projects, which would tend to further minimize the costs of this option. It is more likely, however, that the Agencies must

proceed with new projects that may for instance, require land acquisition, which would drive up restoration costs dramatically.

The Agencies determined that restoration of estuarine wetlands in combination with the creation of new oyster reef habitat is the most efficient and best means to provide for the restoration of the fish biomass lost. This determination is supported by work undertaken since release of the Draft DARP/EA. This work took into account available scientific data and evidence bearing on the relative annual secondary productivity between oyster reef habitat and artificial reefs in light of similar information on estuarine wetlands. It also took into account the data and evidence regarding species utilization associated with these habitats and the species killed by the spill. The work indicated oyster reef would likely be the most productive of the habitats under consideration and would provide habitat and ecological services to the greatest number of the species killed. It also indicated estuarine wetland habitat services would likely better support those species lost which are not supported by oyster reef habitat. The combination of oyster reef and estuarine habitat restoration, therefore, will benefit more of the fish species lost than either restoration alternative alone or any other combination of restoration alternatives, including artificial reefs and seagrass restoration.

6.4.2 Restoration Scaling

Estuarine wetlands restoration will provide the same type of and quality of resources and services as were lost as a result of the spill (e.g., production of fish, blue crab and pink shrimp). HEA will be used to determine the size of the restoration project. Where fish, blue crab and pink shrimp losses are quantified in terms of the biomass (kg wet weight) directly lost or not produced, HEA allows the scale of the selected restoration to be based on the anticipated production of fishery biomass. The use of HEA is appropriate since the selected restoration alternatives are expected to produce or enhance fish, blue crab and pink shrimp productivity, providing resources and services of the same type and quality, and of value comparable to those lost. Further, where the services lost and those provided at restoration sites might differ, HEA can account for those differences and, thus, remains an appropriate scaling tool.

6.4.3 Environmental and Socio-Economic Impact

Restoration of estuarine wetlands is also likely to involve the temporary use of equipment, such as trucks or other machinery, which will potentially increase noise, dust, and traffic in the immediate project vicinity. The site would be transformed from a non-native upland or degraded wetland into an intertidal salt marsh or mangrove habitat. The ecological benefits of such a project will also support or contribute to the overall health of the ecosystem in the Alafia River basin and in Tampa Bay and indirectly benefit humans by contributing to opportunities for recreation and enjoyment of these areas through activities such as boating, bird watching, and fishing and by helping to support property values and use, tourism and water dependent commercial activities. This alternative, however, would not have any significant socio-economic impacts.

6.5 Oyster Reef Creation - Co-Selected Alternative for Restoring Fish Biomass Lost

As outlined in the Draft DARP/EA, this alternative includes the placement of hard substrate as three dimensional structure in open water, on shorelines or in intertidal areas for the purpose of creating productive fish habitat. Restoration actions of this nature could be located in either freshwater or estuarine portions of the Alafia River or in Tampa Bay in the vicinity of the river. Artificial reef material can be anything from engineered or designed concrete structures to fossilized oyster shells, subject to consistency with government regulatory and/or resource enhancement programs.

Based on the Agencies' consideration of such factors as the relative productivity of oyster reef and artificial reef habitats, the ecological support for species killed by the spill and public comments on the Draft DARP/EA, the Agencies have identified oyster reef creation as the co-selected restoration alternative to provide for restoration of the fish biomass lost.

6.5.1 Evaluation of Alternative

Reef creation - whether accomplished through reestablishment or creation of oyster reefs or the creation of three dimensional artificial reef structures - can provide fish habitat, contribute to improving surface water quality, enhance recreational opportunities and result in the production of new fishery biomass. The primary benefits of reef creation and the resources served, however, may be somewhat different, depending on the type of reef created. Artificial reef structures primarily serve to provide three dimensional habitat for fish and other aquatic fauna. Encrusting or fouling communities such as sponges, bryozoans, corals, oysters and mussels will rapidly colonized hard, artificial reef substrates and such habitats will attract fish, a function which enhances recreational fishing opportunities. Created reef areas can enhance the availability of prey items or create new foraging opportunities. Schooling fish associated with reefs, for instance, provide prey items for larger fish species and intertidal or shallow reefs will support worms, crabs, shrimp, small fish and other organisms which are a forage base for wading and shore birds. Where created reefs are designed to recruit and support oysters, in addition to re-establishing or creating historic oyster reef communities, these reef would improve surface water quality directly since oysters are filter feeders and assist in removing suspended sediments from the water column. Similarly, different types of reefs may vary in terms of their potential contribution to fishery production.

The nature and extent to which a created reef is capable, through fishery production, of restoring the fish biomass lost is a key consideration in this restoration plan. For artificial reef structures in particular, much has been written and debated about their 'fish attraction' versus 'fish production' function. Without resolving larger issues implicated in debate over these functions, the Agencies recognize that reef habitats, including those utilizing artificial substrates, support complex interactions in the marine or estuarine environment and that significant fisheries production may, in fact, occur. Further, created reefs, particularly if sited in shallower, low energy areas in the estuarine portion of the Alafia River or in Tampa Bay, have the potential to support a mix of species similar to those lost due to the spill.

In general, all reef creation projects are technically feasible, with designs ranging from simple oyster bars to complex artificial structures designed by interdisciplinary teams of biologists, engineers, and oceanographers. The creation of reefs, and oyster reefs in particular, has been specifically identified as a part of a larger ecosystem restoration strategy for Tampa Bay (Tampa Bay National Estuary Program, 1996), which encourages the identification, protection and restoration of hardbottom communities. Reef creation actions, particularly artificial reefs, are also generally popular with the recreational fishing community. Although cost will be dependent on a number of factors including design, size, location, material type, transportation or deployment costs, reef creation may be comparable on a per acre basis to other restoration alternatives. Areas suitable for creation of oyster reefs appear to exist in the Alafia River and in other nearby areas of Tampa Bay. Created reef habitat would be self sustaining in the long term, given a type or design appropriate to the depth and physical extremes (e.g., current velocity, wave energy, etc.) to which it will be subject. Conditions affecting stability can also be minimized through sound site selection.

Created reefs are usually permanent habitats which displace some other type of submerged habitat. Reefs are usually sited in sand or relatively 'barren' bottom areas to ensure that the action results in greater or enhanced services to the environment. Existing regulatory (permitting) processes normally will restrict reef creation to areas with a low potential for additional resource injury. Habitat displacement/replacement, however, would likely be a critical factor weighing against use of this restoration alternative if the scale of reef creation required to restore the fish biomass lost proves to be very large. In that event, the costs associated with a large reef project may also weigh against use of this alternative.

Work undertaken since release of the Draft DARP/EA indicates that reef creation actions encompassed by this alternative are not equivalent in terms of their ability to provide for the production of fish biomass or to achieve restoration objectives for the species killed by the spill. This work considered available scientific data and evidence bearing on the relative annual secondary productivity between oyster reef habitat and artificial reefs. Productivity estimates based on that information indicated that oyster reefs were likely to be more efficient at restoring fish biomass than constructed artificial reefs, accounting for fishing pressure (225 $g/m^2/yr$ vs. 171.0 $g/m^2/yr$). In addition, data and evidence regarding species utilization associated with these different reef types and the species killed by the spill indicates oyster reef would ecologically support more of the species killed by the spill than constructed artificial reef habitat. Together with public comments on the Draft DARP/EA which also favored its use, this information led the Agencies to identify oyster reef creation as the most efficient type of reef creation for use, in combination with the restoration of estuarine wetlands, to provide for restoration of the fish biomass lost.

6.5.2 Restoration Scaling

Oyster reef creation would provide the same type of and quality of resources and services that were injured as a result of the spill e.g., production of fish, blue crab and pink shrimp. HEA will be used to determine the size of the restoration project. Where fish, blue crab and pink shrimp losses are quantified in terms of the biomass (kg wet weight) directly lost or not produced, HEA

allows the scale of the selected restoration to be scaled based on its anticipated production of fishery biomass. The use of HEA is appropriate since, under the selected restoration alternatives, restoration actions are expected to produce or enhance fish, blue crab and pink shrimp productivity, which are services of the same type and quality, and of value comparable to those lost. Further, where lost services and those provided at restored sites might differ, HEA can account for those differences and, thus, remains an appropriate scaling tool.

6.5.3 Environmental and Socio-Economic Impact

Depending upon the scale necessary to compensate for fishery losses, an oyster reef could substantially alter the bottom characteristics of the area of deployment. Typically, artificial reefs are located on sandy, featureless bottom, thereby displacing the existing flora and fauna that depend upon that habitat, replacing it with those that depend on a hard substrate. Because there were historically oyster reef bars in the lower Alafia River and in Tampa Bay, restoration of these habitats or conditions is desirable. Depending on the type of reef and its location, marking of reef structures may be required to minimize navigation hazards, which would be an additional cost consideration. Some artificial reef structures may be inherently hazardous to recreational users such as SCUBA divers. Oyster reef habitat is also inherently hazardous to swimmers or waders because it is a sharp, uneven, and unconsolidated substrate. If the reef is unauthorized or not approved for taking of shellfish for consumption, eating shellfish from the area presents a potential health threat.

6.6 Surface Water Improvement Projects - Non-Selected Alternative

This alternative encompasses projects specifically designed or constructed to substantially improve the quality of surface waters entering or within an environmental system. Projects to address "point" sources, such as sewage or industrial wastes, are not included because these pollutant sources are controlled through regulatory programs. Projects that address "non-point" sources, i.e. pollutants entering water bodies through more general pathways, particularly stormwater runoff, are included. Untreated stormwater runoff is considered by federal, state, and bay mangers to be one of the major sources of water pollution due to it high nitrogen content (EPA Florida Surface Water Quality Report, 1999) (T.B. Estuary Program, 1999).

A number of approaches or technologies may be used to achieve removal of pollutants from surface waters. In considering these varied approaches, the Agencies have focused on structural or constructed facilities, rather than passive or indirect strategies (such as reducing or eliminating farming fertilization or community education to reduce residential herbicide/pesticide use). Structural or constructed stormwater management facilities include detention and retention systems as described by Harper (1995). Detention and retention systems are characterized by sloped sides or berms that retain stormwater and control structures, such as culverts or weirs, that allow the water to enter or exit. Some wetland vegetation may be associated with detention and retention systems.

Isolated natural wetlands and some constructed wetlands have been integrated into some stormwater treatment systems in recent years. In this restoration plan, the use of natural or

constructed wetlands is not considered under this alternative. Rather, restoration actions of this nature are encompassed by and considered as part of the restoration of riverine habitat alternative at 6.3.

6.6.1 Evaluation of Alternative

Constructed or structural facilities to improve the character or composition of surface waters within the Alafia River watershed are feasible and appropriate projects could be expected to provide for nitrogen removal. However, other restoration objectives would not be served by this alternative. Such facilities would not provide for the replacement of the fishery biomass lost in any direct or measurable way and the ecological services associated with wetlands vegetation in these facilities is diminished by its isolation from the functional landscape.

These facilities generally involve more complex implementation scenarios, which would increase restoration costs. The implementation of constructed facilities in Florida is based on guidelines and regulations developed by SWFWMD's Stormwater Research Program and these guidelines do not coincide with compensatory restoration objectives for this incident. Substantial controls could be required at project sites to ensure that compensatory restoration objectives would be achieved. Such measures could include land acquisition or ongoing management actions to preserve the project's integrity and function. For instance, a management action might include weir or culvert debris removal to ensure consistent structural function. The higher costs associated with such facilities or controls may not be justified where appropriate riverine restoration actions avoid some of these cost elements while still meeting the restoration objective for surface waters.

Two water quality monitoring projects have been submitted by the public for consideration as part of the restoration planning process, an action which indicates that surface water quality and services are generally important to the public. Surface water improvement projects are also consistent with some larger ecosystem restoration objectives as outlined in the CCMP and SWIM plans. However, the restoration of riverine habitats provides an opportunity to achieve restoration objectives for surface waters as well as freshwater vegetation losses and, therefore, provides for greater consistency with assessment and ecosystem objectives, likely at less cost than the surface water improvement projects alternative.

6.6.2 Environmental and Socio-Economic Impact

Surface water improvement projects would provide positive social and economic benefits and would have minimal negative impacts on the environment. Surface water improvement projects support or contribute to a healthy ecosystem. Water-dependent human uses, such as swimming, boating and recreational fishing, benefit from improved surface water quality and would not suffer adverse impacts from implementation of such projects. Similarly, economic activities derived from the Alafia River and Tampa Bay, including commercial fishing, bait and tackle shop businesses, and boat rental operations, would also be expected to benefit from surface water improvements. It is

possible that surface water improvements could come at the expense of minor impacts to natural resources, but any anticipated impacts would be more than offset by the net environmental benefit of improved surface water.

6.7 Land Acquisition - Non-Selected Alternative

Land acquisition involves the purchase of lands or conservation easements, with an accompanying change in land management, ensuring that future use of such lands are compatible with preservation and conservation of its environmental functions, consistent with public land management objectives.

6.7.1 Evaluation of Alternative

Land acquisition activities primarily function to improve or maintain ecological resources and water quality. Such actions have little potential to cause additional injury to natural resources, to pose human health or safety issues or to be inconsistent with general laws or policies. However, to serve compensatory restoration objectives under authorities applicable to this spill, the purchase of land or easements must be capable of offsetting interim resource or resource services losses through the preservation, conservation or enhancement (through land management changes) of those lands. As compared to other alternatives, land acquisition activities are a much less direct means of satisfying restoration objectives for the injured resources. Such activities would not directly provide or create new habitat to restore or replace the fishery losses. Similarly, land acquisition activities alone would not provide or create new or more diverse freshwater wetlands. Ecological services gained under this alternative would accrue only to the extent that activities will prevent or otherwise protect fishery or freshwater wetland habitat from future loss or injury due to development or other committed uses. Land acquisition activities may be better suited to achieving the restoration objective for the injury to surface waters (ex: reduce nitrogen runoff to surface waters through reduced fertilizer/pesticide use attributable to removing land from agricultural use), but is still an indirect means for meeting that goal.

Only incremental improvements over baseline conditions would be expected from most land acquisition activities since most lands targeted under this alternative would be undeveloped and not presently adversely affecting natural resources such as freshwater wetland services or fisheries. Consequently, to sufficiently compensate for resource losses, use of this alternative would likely require a large amount of land and, further, to provide the necessary linkage to injured resources, such lands would need to be contiguous with the Alafia River or Tampa Bay (i.e, waterfront property). The potential costs involved in the purchase of large amounts of such lands, or rights thereto, indicate this alternative may be the least cost-effective restoration alternative in this instance. The costs of implementing this alternative may also include the necessary cost to alter land use or management or otherwise apply and enforce management controls.

Public land acquisition programs do exist which seek to preserve critical ecosystem functions or threatened habitat (e.g., the Hillsborough County Environmental Lands Acquisition and Protection Program [ELAPP]). An existing land acquisition program may facilitate implementation of this restoration alternative and help minimize costs to some degree. It also suggests some general public support for this type action exists in the community, however, it is not clear that the public would accept land acquisition activities alone as sufficient "restoration" to compensate for resource losses, particularly since the linkage and benefits accruing to injured resources from this restoration alternative are indirect.

Land acquisition activities can result in other benefits, including long term environmental and recreational benefits provided by the creation of natural buffers, wildlife corridors, and prevention of urban sprawl. While positive, these type of benefits either bear little to no relation to the resource injuries being addressed in this plan or cannot be quantified in a manner that permits scaling restoration to the injuries assessed.

6.7.2 Environmental and Socio-Economic Impact

No adverse environmental or economic impacts are expected from this alternative. By preventing development on land adjacent to the Alafia River, the alternative could provide substantial long term environmental benefits.

ATTACHMENT B

REINSURANCE AGREEMENT
FACULTATIVE REINSURANCE AGREEMENT OF
PERIODIC PAYMENTS
(Without Release Language)

AGREEMENT NUMBER: 408377

THIS FACULTATIVE REINSURANCE AGREEMENT ("Agreement") made as of

THIS DATE, MAY 24, 2007 by and between

REINSURED, AIU Insurance Company
a duly authorized insurance company existing under the laws of the State of New York (hereinafter referred to as the "Reinsured") and

REINSURER, **AMERICAN GENERAL LIFE INSURANCE COMPANY**, an insurance company domiciled in the State of Texas (hereinafter referred to as the "Reinsurer").

WHEREAS, the Reinsured is liable to make periodic payments to the Claimants, which relates to causes of action asserted by the Claimants (the periodic payment liability being hereafter referred to as the "Obligations");

WHEREAS, under the Obligations, the Reinsured is required and legally bound to make certain periodic payments to or for the benefit of the Claimants as described in **Exhibit 1** attached hereto entitled "**Addendum of Payment Information**" (the "Periodic Payments"); and

WHEREAS, the Reinsured desires to assign and transfer to the Reinsurer the obligation to make the Periodic Payments to, or on behalf of, the Claimants, and the Reinsurer, upon receipt of the applicable premium, agrees to accept the liability of the Reinsured to make the Periodic Payments.

NOW, THEREFORE, the Reinsured and the Reinsurer hereby agree as follows:

1. In consideration of the premium paid to the Reinsurer by the Reinsured, the Reinsured shall cede, and the Reinsurer shall accept, the liability of the Reinsured under the Obligations to pay the Periodic Payments to, or for the benefit of, the Claimants.

2. The Reinsurer hereby agrees to pay to or for the benefit of the Claimants the Periodic Payments set forth in Exhibit 1. The Reinsurer further agrees to indemnify the Reinsured, for all amounts up to but not exceeding the present value of the aggregate of all Periodic Payments (which present value shall be determined in the same manner as described in paragraph 9 of this Agreement), against all losses sustained by the Reinsured resulting from the claims of or through the Claimants to the Periodic Payments due and payable under the Obligation. The Reinsurer assumes no liability to make any payment not specified in Exhibit 1.

The Reinsurer will not be liable for any changes, revisions or future claims arising out of the Claimants' cause of action resulting in the Obligation.

3. The Periodic Payments cannot be accelerated, deferred, increased or decreased by the Claimants or by any person or entity claiming an interest in such Periodic Payments through the Claimants, except to the extent required by law.

4. No interest in the Periodic Payments may be sold, mortgaged, encumbered, pledged, assigned, hypothecated, transferred or anticipated by assignment or otherwise. If attempted said action will be void.

5. The Periodic Payments, if any, payable after the death of an individual Claimant shall be made to the person(s) or entity(ies) designated in the Obligation or Exhibit 1 as the beneficiary(ies). The Claimant may designate or change the beneficiary at any time by delivering such designation or change of beneficiary in writing to the Reinsurer if such designation or change is not otherwise prohibited by law or agreement (including the Obligation). If no person or entity is so designated by the Claimant, or if the person designated is not living at the time of the Claimant's death, such remaining Periodic Payments shall be made to the estate of the Claimant as they become due and not in a lump sum unless the Obligation or this Agreement expressly provides for a lump sum or cash refund payment. No such designation of a beneficiary, or payee by the Claimant, nor any revocation thereof shall be effective unless it is in writing and delivered to the Reinsurer. The designation must be in a form acceptable to the Reinsurer and received by the Reinsurer before such Periodic Payments are made.

Not Applicable

Not Applicabl

6. The Reinsurer's liability to make the Periodic Payments to or on behalf of the Claimants is no greater than that of the obligation of the Reinsured to make such Periodic Payments immediately preceding this Agreement. The Reinsurer shall not set aside specific assets to secure the Periodic Payments. The Claimants has no greater rights against the Reinsurer for the payment of the Periodic Payments than those of a general creditor.

7. Except as otherwise provided herein, the Reinsured hereby directs the Reinsurer to make all Periodic Payments hereunder to the Claimants, or any beneficiary designated by a Claimant pursuant to paragraph 5 hereof. To the extent allowed by law, such payments shall continue to the Claimant even in the event of the insolvency of the Reinsured.

8. The Reinsurer shall make the Periodic Payments by forwarding funds to a Claimant (or beneficiary) in the specified amount to the Claimant's (or beneficiary's) last known address or account of record on or before the due date of each Periodic Payment. The Reinsured shall provide notice to the Claimant (a copy of which shall be provided to Reinsurer) that the Claimant shall be responsible for maintaining current mailing addresses, account information, and beneficiary/s designation/s with the Reinsurer. If a Claimant (or beneficiary) reports a lost check, a replacement check will be issued, provided that a stop payment order is issued prior to actual negotiation and presentment of such lost check to the bank on which it is drawn.

Not Applicable

Before making any payment under this Agreement, the Reinsurer may ask for proof that the claimant (or beneficiary) is still living. If proof is requested, no payment will be made or considered due until the Reinsurer receives such proof.

Not Applicable

9. In the event that the Obligation or this Agreement is rescinded, invalidated, nullified or terminated by a court of law or any governmental agency or instrumentality having appropriate jurisdiction, or other similar body, or upon any other disqualification under any applicable law of the Claimant's right to receive the Periodic Payments, the Reinsurer shall pay the Reinsured either the Periodic Payments as they become due or in a single lump sum, at the option of the Reinsured. In the event that the Reinsured elects payment in a lump sum, the amount shall be calculated by the Reinsurer based upon the present value of the remaining Periodic Payments due under the Obligation. The lump sum present value shall be based upon:

a. interest rates which are the larger of:
   (1) those used in determining the premium under this Agreement, and
   (2) those used by the Reinsurer for similar reinsurance agreements or structured settlements on the date that the Claimant's right to future Periodic Payments is rescinded, invalidated, nullified, or terminated as described above.

b. appropriate mortality rates as determined by the Reinsurer.

If the Reinsurer and the Reinsured are unable to agree on the appropriate amount of the lump sum payment, then payments will be made as they become due. Payment of such amounts by the Reinsurer to the Reinsured shall constitute a complete discharge of the Reinsurer's obligations under this Agreement.

10. The Reinsurer and the Reinsured hereby acknowledge that the premium paid hereunder may have been based upon the information regarding the age or sex of each Claimant and/or other certain material information, provided by the Reinsured. If the Reinsured later learns such information was incorrect, the Reinsured will promptly notify the Reinsurer of such error. In the event any error in age, sex or other material information provided by the Reinsured to the Reinsurer would have caused the premium to be greater than that paid by the Reinsured, the Reinsured shall pay such additional amount, together with interest at one percent (1%) over the statutory valuation rate for single premium annuity contracts in effect on the date hereof, from the date the original premium was paid. In the event that the error in age or sex or other material information would have caused the premium to be less, the Reinsurer will pay the Reinsured the difference between the premium paid and the amount that should have been paid.

11. The Reinsurer and the Reinsured each hereby acknowledge that it understands the legal effects of this Agreement and it has not relied upon any representations of the other party, except those set forth herein, and Exhibit 1.

12. This Agreement shall be binding, and of full force and effect, on the successors and assigns of the Reinsurer and the Reinsured, respectively, and upon any person or entity that may assert any right hereunder or to any Periodic Payments.

13. This Agreement shall be interpreted and construed in accordance with the laws of the State of Texas.

14. The invalidity or unenforceability of any provision in this Agreement shall not impact the other provisions hereof, and this Agreement shall be construed as if such invalid or unenforceable provision were omitted.

15. The Reinsurer has made no representations to the Reinsured with respect to any tax implications regarding this Agreement. The Reinsured is responsible for determining the tax effect of this Agreement solely from its own respective tax advisors or consultants.

16. The Reinsurer has made no representations to the Reinsured as to the application of generally accepted accounting procedures or statutory accounting procedures with respect to this Agreement and the substance thereof, nor whether or not this Agreement will provide any surplus relief, release of reserves or any other impact on the Reinsured's statutory annual statement, the determination of which rests solely with the Reinsured.

17. This Agreement embodies the entire representations, agreements, premises and understandings between the parties hereto, supersedes any and all prior correspondence, conversations, memoranda, or agreements, whether oral or written, between the parties hereto, and shall remain in full force and effect until terminated as provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the 24th day of MAY, 2002

REINSURED: AIU Insurance Company

By: _____

Title: _____

AMERICAN GENERAL LIFE INSURANCE COMPANY

By: _____

Title: S.V.P.

EXHIBIT I

Payee: DOI Restoration Fund
Tax ID No. 53-0196949

Address: 1849 C St. NW
Mailstop 1313
Washington, D.C. 20240

Payments:

$496,914.00 shall be paid into the Restoration Account no later than one (1) year from the date of entry of the Consent Decree.

$500,000.00 shall be paid into the Restoration Account no later than two (2) years from the date of entry of the Consent Decree.

$800,000.00 shall be paid into the Restoration Account no later than three (3) years from the date of entry of the Consent Decree.

$800,000.00 shall be paid into the Restoration Account no later than four (4) years from the date of entry of the Consent Decree.

$1,059,205.00 shall be paid into the Restoration Account no later than five (5) years from the date of entry of the Consent Decree.

If American General Life Insurance Company files bankruptcy, is declared insolvent by the insurance commissioner (or comparable official) of any state, or defaults on any payment required under this reinsurance agreement or the Consent Decree without curing such default within 15 days, AIU Insurance Company and American General Life Insurance Company consent to the entry of a judgment, in the U.S. District Court for the Middle District of Florida, in favor of the claimants for all funds, including stipulated penalties, interest, and enforcement expenses, remaining to be paid to the claimants under this reinsurance agreement or the Consent Decree. Notwithstanding a cure of the default, AIU Insurance Company and American General Life Insurance Company shall pay stipulated penalties as provided in the Consent Decree. The parties to this reinsurance agreement intend that the claimants are third-party beneficiaries of this contract.

The title "Claimant" in this agreement refers to the recipient of payments pursuant to this agreement and the Consent Decree, and should be read as appropriate to the entity receiving payments. It is understood that certain provisions of this agreement that refer to the age, sex or beneficiary of the Claimant may not be applicable to the entity receiving payments.

REINSURED: AIU INSURANCE COMPANY

By: _____

Title: V.P. Ameun Hous Claim Mgr to

AMERICAN GENERAL LIFE INSURANCE COMPANY

By: _____

Title: S.V.P.

Agent Use Only: I represent that the information given above is true and complete to the best of my knowledge and belief.

_____
Signature of Agent

Ringler Associates
Agent or Company Name

5/22/2002
Date

AMERICAN
GENERAL

American General Life Insurance Company

DIRECT DEPOSIT OF FUNDS INVOLVING ONLY GUARANTEED PAYMENTS

***IMPORTANT INSTRUCTIONS*: THIS FORM MAY *NOT* BE USED IF ANY ANNUITY PAYMENTS ARE PAYABLE ONLY IF YOU ARE LIVING.**

ELECTRONIC TRANSFER OF PAYMENTS TO YOUR BANK OR CREDIT UNION IS AVAILABLE TO BEGIN THIS SERVICE. PLEASE PROVIDE THE INFORMATION REQUESTED BELOW AND RETURN TO OUR OFFICE.

BANK_____

MAILING ADDRESS _____

TRANSIT ROUTING # _____ ACCOUNT #_____

CHECKING _____ SAVINGS _____ (PLEASE CHECK ONE)

ATTACH A VOIDED CHECK TO THIS REQUEST

_____	_____	_____
SIGNATURE	SOCIAL SECURITY NUMBER	DAYTIME PHONE

Note: By signing this request, annuitant agrees to keep payor advised of any change of home address. Please allow 60 to 90 days for this change to become effective.

American General Structured Settlements
P.O. Box 15367 • Amarillo, TX 79105-1536 • 800.288.4088 Extension 8006