

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA;  
ALABAMA DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES, AND THE  
GEOLOGICAL SURVEY OF  
ALABAMA, AS AGENCIES OF THE  
STATE OF ALABAMA AND AS  
TRUSTEES FOR NATURAL  
RESOURCES,

Plaintiffs,

v.

BASF CORPORATION,

Defendant.

CIVIL ACTION NO. 13-00372-KD-M

**CONSENT DECREE**

**TABLE OF CONTENTS**

I. JURISDICTION ..... -3-

II. PARTIES BOUND ..... -3-

III. OBJECTIVES ..... -3-

IV. DEFINITIONS ..... -4-

V. SETTLEMENT PAYMENTS ..... -6-

VI. STIPULATED PENALTIES ..... -10-

VII. COVENANTS NOT TO SUE BY PLAINTIFFS ..... -11-

VIII. COVENANT NOT TO SUE BY DEFENDANT ..... -15-

IX. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION . -17-

X. FORM OF NOTICE ..... -18-

XI. EFFECTIVE DATE ..... -20-

XII. RETENTION OF JURISDICTION ..... -20-

XIII. RETENTION OF RECORDS ..... -21-

XIV. MODIFICATION ..... -22-

XV. PUBLIC NOTICE ..... -22-

XVI. SIGNATORIES/SERVICE ..... -23-

XVII. COSTS OF SUIT ..... -24-

XVIII. INTEGRATION ..... -24-

XIX. TERMINATION ..... -25-

XX. FINAL JUDGMENT ..... -25-

A. Plaintiffs, the United States of America (“United States”), on behalf of the Secretary of the United States Department of the Interior, acting through the U.S. Fish and Wildlife Service (“DOI/USFWS”) and the National Oceanic and Atmospheric Administration (“NOAA”) of the United States Department of Commerce, and the Alabama Department of Conservation and Natural Resources (“ADCNR”) and the Geological Survey of Alabama (“GSA”) are concurrently filing a complaint alleging that Defendant BASF Corporation, as successor in interest to BASF Performance Products LLC (f/k/a Ciba Corporation, f/k/a Ciba Specialty Chemicals Corporation), is liable for Natural Resource Damages arising from releases of Hazardous Substances at and from the Ciba-Geigy Superfund Site (the “Site”) in McIntosh, Alabama.

B. In the Complaint, the United States and the State assert that Defendant, or its legal predecessors in interest, has released Hazardous Substances, including the pesticide dichlorodiphenyltrichloroethane (“DDT”) and its degradation products dichlorodiphenyldichloroethane (“DDD”) and dichlorodiphenyldichloroethylene (“DDE”), at and from the Site and that such Hazardous Substances have caused injury to, destruction of, or loss of Natural Resources.

C. NOAA, DOI/USFWS, ADCNR and GSA (collectively, the

“Trustees”) have each been designated a natural resource trustee pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321, and Subpart G of the National Contingency Plan (“NCP”), 40 C.F.R. §§ 300.600 - 300.615. As a designated Trustee, each agency is authorized to act on behalf of the public to assess injuries to those Natural Resources under its trusteeship resulting from the releases of Hazardous Substances at and from the Site and to recover damages to make the environment and the public whole.

D. The Plaintiffs and the Defendant (collectively, “the Parties”) have consented to the entry of this Consent Decree without trial of any issues in order to resolve the issues stated in the Complaint. The Plaintiffs and the Defendant assert, and the Court by entering this Consent Decree finds, that the Consent Decree has been negotiated in good faith, and that the Consent Decree is fair, reasonable, and in the public interest, and is consistent with the purposes of the federal statute pursuant to which the claims presented in the Complaint were brought.

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 and 1345, 33 U.S.C. § 1321(n), and 42 U.S.C. § 9613(b).

2. This Court also has personal jurisdiction over the Defendant. Solely for the purpose of this Consent Decree and the underlying Complaint, 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**

3. This Consent Decree applies to and is binding upon Plaintiffs and upon Defendant and its successors and assigns. Any change in ownership or corporate status of a Party shall in no way alter that Party'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**

4. The Parties' objective in entering into this Consent Decree is to resolve the claims of the Plaintiffs against the Defendant for Natural Resource

Damages with respect to the Site without further litigation and on terms sufficient to compensate the public for the injury and loss of Natural Resources and resource services caused by the Hazardous Substances released at and from the Site and the response actions previously conducted at the Site.

5. The Defendant does not admit any of the allegations contained in the Complaint, nor any liability to the Plaintiffs as alleged in the Complaint. Neither the Defendant's participation in this Consent Decree nor any provision herein shall be construed as an admission of liability for any purpose. The Defendant retains the right to controvert any of the factual or legal statements or determinations made herein in any judicial or administrative proceeding except in an action to enforce this Consent Decree.

#### **IV. DEFINITIONS**

6. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, or in related regulations promulgated under CERCLA, shall have the meaning assigned to them in CERCLA or such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply.

"Damage Assessment Costs" shall mean all costs of the natural resource

damage assessment (“NRDA”) process for the Site that are recoverable from the Defendant pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C.

§ 9607(a)(4)(C), 43 C.F.R. § 11.15(a)(3), and Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4).

“Defendant” shall mean BASF Corporation, as successor in interest to BASF Performance Products LLC (f/k/a Ciba Corporation, f/k/a Ciba Specialty Chemicals Corporation).

“Hazardous Substances” shall mean any substance, contaminant or pollutant defined as hazardous pursuant to Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14), including but not limited to DDT, DDE, and DDD.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Natural Resource Damages” shall mean compensatory relief or damages, including the reasonable costs of assessing such damages, that are recoverable



pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C); Section 311(f) of the CWA, 33 U.S.C. § 1321(f); 43 C.F.R. § 11.15; or state or federal common law, by the Trustees on behalf of the public for injury to, destruction of, loss of, or loss of use of Natural Resources resulting from the disposal, release or discharge of Hazardous Substances at and from the Site and from past response actions conducted at the Site. “Natural Resource Damages” shall not include future costs or expenses of “remedial action” or “response” as those terms are defined in Section 101(24 and 25) of CERCLA, 42 U.S.C. § 9601(24 and 25).

“Natural Resources” shall have that meaning set forth in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral.

“Site” shall mean the Ciba-Geigy Superfund Site, which EPA, acting pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed on the National Priorities List at 40 C.F.R. Part 300, Appendix B, by notice publication in the *Federal Register* on September 8, 1983. 48 Fed. Reg. 40674.

“State” shall mean ADCNR and GSA, collectively and on behalf of the State of Alabama.

## **V. SETTLEMENT PAYMENTS**

7. Within thirty (30) days of the Effective Date of this Consent Decree, Defendant shall pay the sum of three million, two hundred thousand dollars (\$3,200,000) into the Mobile Bay Watershed/Ciba-Geigy Site (AL) Restoration Account (the "Restoration Account"), a subaccount to be established within the United States Department of the Interior's ("DOI's") Natural Resource Damage Assessment and Restoration Fund (the "NRDAR Fund"). DOI will assign these funds a special project number to allow the funds to be maintained as a segregated account within the NRDAR. Such funds shall be held in the Restoration Account solely for use as agreed by the Trustees to plan for, implement, conduct, finance and oversee one or more restoration actions or projects within the Mobile Bay watershed that are appropriate to restore, replace or acquire the equivalent of Natural Resources or services like those injured or lost due to releases of Hazardous Substances at or from the Site. Such actions or projects shall be identified in a written restoration plan to be developed in the future by the Trustees, with opportunity for public review and comment. Defendant shall make this payment by electronic fund 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 Southern District of Alabama following entry of this

Consent Decree. Defendant shall provide notice of payment, referencing the Giba-Geigy Site (AL) NRDA, DOJ Case Number 90-11-2-781/1, and this civil action case name and number to DOJ, DOI/USFWS, NOAA, ADCNR, and GSA at the addresses set forth in Section X (FORM OF NOTICE).

8. Within thirty (30) days of the Effective Date of this Consent Decree, Defendant shall pay a total of five hundred thousand dollars (\$500,000) to Alabama Department of Conservation and Natural Resources, Game and Fish Fund for the purpose of ecosystem restoration in the Mobile Bay watershed through support of the Aquatic Biodiversity Center. Defendant shall make payment by electronic transfer in accordance with instructions provided by the Director of Wildlife and Freshwater Fisheries. Defendant shall provide notice of payment, referencing the Giba-Geigy Site (AL) NRDA, DOJ Case Number 90-11-2-781/1, and this civil action case name and number to DOJ, DOI/USFWS, NOAA, ADCNR, and GSA at the addresses set forth in Section X (FORM OF NOTICE). Such funds shall be used by the State as described above.

9. Within thirty (30) days of the Effective Date of this Consent Decree, Defendant shall pay a total of one million, three hundred thousand dollars (\$1,300,000) to reimburse Damage Assessment Costs incurred by DOI/USFWS and NOAA. Of this total sum, \$750,000 dollars represents and will be allocated to

reimburse the Damage Assessment Costs incurred by DOI/USFWS and \$550,000 dollars represents and will be allocated to reimburse the Damage Assessment Costs incurred by NOAA. Defendant shall make this payment by electronic fund 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 Southern District of Alabama following entry of this Consent Decree. Defendant shall provide notice of payment, referencing the Ciba-Geigy Damage Assessment, DOJ Case Number 90-11-2-781/1, and this civil action case name and number to DOJ, DOI/USFWS, NOAA, ADCNR, and GSA at the addresses set forth in Section X (FORM OF NOTICE).

10. Interest on Late Payments. In the event any payment required by this Section is not made when due, Interest on the unpaid balance shall be paid commencing on the thirty-first (31<sup>st</sup>) day after the Effective Date of the Consent Decree and shall accrue through the date of full payment. Interest payments shall be paid in the same manner as the overdue principal amount, and shall be directed to the same fund or account as the overdue principal amount. Interest is in addition to any Stipulated Penalties accruing for late payments under Section VI (STIPULATED PENALTIES).

## **VI. STIPULATED PENALTIES**

11. If Defendant fails to timely pay the sum as due and required by Paragraph 7 above, Defendant shall pay to the United States and to the State a stipulated penalty of \$500 per day for each day that such payment is late. Such stipulated penalties shall be paid one half (50%) to the United States, one quarter (25%) to ADCNR, and one quarter (25%) to GSA.

12. If Defendant fails to timely pay the sum as due and required by Paragraph 8 above, Defendant shall pay to the State a stipulated penalty of \$500 per day for each day that such payment is late. Such stipulated penalties shall be paid one half (50%) to ADCNR and one half (50%) to GSA.

13. If Defendant fails to timely pay the sum as due and required by Paragraph 9 above, Defendant shall pay to the United States a stipulated penalty of \$500 per day for each day that such payment is late.

14. Any stipulated penalties, as described above, owing to the United States shall be due within thirty (30) days of receipt by Defendant of a written demand, and shall be paid by EFT in accordance with instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Alabama. Payment of stipulated penalties shall be accompanied by transmittal correspondence stating that any such payment is for late payment of

amount(s) due under this Consent Decree and shall reference DOJ No. 90-11-2-781/1 and the case name and number.

15. Any stipulated penalties, as described above, owing to the State shall be due within thirty (30) days of receipt by Defendant of a written demand and shall be paid in accordance with the following instructions:

- a. Payments to ADCNR shall be made as instructed in said written demand.
- b. Payments to GSA shall be made as instructed in said written demand.

16. Defendant shall not deduct any stipulated penalties paid under this Section in calculating its federal or state income taxes.

17. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment becomes due.

#### **VII. COVENANTS NOT TO SUE BY PLAINTIFFS**

18. In consideration of the payments that will be made by Defendant under Section V (SETTLEMENT PAYMENTS), and except as specifically provided in Paragraph 20 (Reservation of Rights) of this Section, the Plaintiffs covenant not to sue or to take any civil judicial or administrative action against Defendant pursuant to the Comprehensive Environmental Response, Compensation

and Liability Act, 42 U.S.C. § 9607(a)(4)(C) and (f), the Clean Water Act, 33 U.S.C. § 1321(f)(4), or any other applicable law, or commence any other judicial or administrative action, to recover Natural Resource Damages. This covenant not to sue is expressly conditioned upon the payment by Defendant of all sums due under this Consent Decree. Notwithstanding the terms of the preceding two sentences, nothing in this Paragraph is intended to preclude or limit the United States or the State of Alabama from taking response actions or exercising authorities that may be available to them under CERCLA, the Clean Water Act, or other applicable statutory or common law to undertake actions or seek relief other than Natural Resource Damages, including, but not limited to, permitting and enforcement under the National Pollutant Discharge Elimination System program, adoption and implementation of TMDLs, issuance of cleanup or abatement orders, waste discharge requirements, and water quality certifications. These covenants not to sue shall take effect upon the Effective Date of this Consent Decree. However, they are conditioned upon Defendant's satisfactory performance of its obligations under this Consent Decree.

19. The covenant not to sue in Paragraph 18 extends only to Defendant: provided, however, that this covenant not to sue (and the reservations thereto) shall also apply to: (i) Novartis Corporation (f/k/a Ciba-Geigy Corporation), Syngenta

Crop Protection, Inc., and the successors and assigns of each of them and the successors and assigns of Defendant, but only to the extent that the alleged liability of Novartis Corporation (f/k/a Ciba-Geigy Corporation), Syngenta Crop Protection, Inc. or the successors or assigns of each of them or the successors and assigns of Defendant is based on the alleged facts supporting the alleged liability of the Defendant; and (ii) the officers, directors, and employees of Novartis Corporation (f/k/a Ciba-Geigy Corporation), Syngenta Crop Protection, Inc. and the Defendant and the successors or assigns of each of them, but only to the extent that the alleged liability of the officer, director or employee is based on said person's status as an officer, director or employee of that entity.

20. Reservation of Rights

a. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action seeking recovery of Natural Resource Damages: (i) based on injury to, destruction of, or loss of Natural Resources as a result of the release of Hazardous Substances at or from the Site which resulted from conditions that were unknown to the Trustees as of the date of lodging of this Consent Decree, or could not have been reasonably ascertained by the Trustees from information known to the Trustees as of the date of lodging of



this Consent Decree; or (ii) based on information received by the Trustees after the date of lodging of this Consent Decree which indicates that there was injury to, destruction of, or loss of Natural Resources as a result of the release of Hazardous Substances at or from the Site that was of a type different than or of a magnitude significantly larger than that known to the Trustees as of said date.

b. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 18. The Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights of the United States and the State against Defendant with respect to all other claims or matters, including but not limited to:

- (i) claims based on Defendant's failure to comply with any requirement of this Consent Decree;
- (ii) claims brought on behalf of the United States and the State for costs, damages, expenses or relief of any sort, other than for Natural Resource Damages that are the subject of this Consent Decree, including for response costs or the performance of response actions or other cleanup activity in connection with the Site pursuant to CERCLA, the Clean Water Act, or any other applicable law;
- (iii) liability arising from any releases of Hazardous Substances from any

site or location that is not the subject of this Consent Decree, including but not limited to, any Hazardous Substance taken from the Site and disposed of at another site or location;

- (iv) liability based upon the Defendant's future ownership or operation of the Site, or upon the Defendant's future transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage or disposal of Hazardous Substances at or in connection with the Site;
- (v) civil penalties imposed under the Clean Water Act or any other applicable law; and
- (vi) criminal liability.

#### **VIII. COVENANT NOT TO SUE BY DEFENDANT**

21. Except as provided in Paragraph 23 below, the Defendant hereby covenants not to sue or assert any administrative claims or causes of action against the Plaintiffs with respect to this Consent Decree or with respect to Natural Resource Damages resulting from the release of Hazardous Substances at or from the Site, including but not limited to:

- a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or

113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim against Plaintiffs, including any department, agency or instrumentality of the United States or the State, under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613, relating to Natural Resource Damages resulting from the release of Hazardous Substances at and from the Site; and

c. Any claims under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law relating to Natural Resource Damages resulting from the release of Hazardous Substances at and from the Site.

22. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

23. The Defendant reserves its right to contest any claim allowed by Section VII (COVENANTS NOT TO SUE BY PLAINTIFFS) of this Consent Decree, and the Defendant does not by consenting to this Consent Decree waive any other rights or defenses with respect to such claims, including the right to assert counterclaims, except that the Defendant covenants not to assert, and may not maintain, any defense based upon principles of waiver, res judicata, collateral

estoppel, claim preclusion, issue preclusion, claim-splitting, or other defense based upon the contention that the claims that are allowed by Section VII of this Consent Decree were or should have been brought in the instant case.

**IX. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION**

24. Except as set forth herein, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have against any person not a Party hereto.

25. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Defendant, and the other persons and entities included under the Covenant Not to Sue in Paragraphs 18 and 19 of this Consent Decree, are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for

“matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Natural Resource Damages, as that term is defined in Paragraph 6 of this Consent Decree.

26. The Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify DOJ and the State in writing no later than 60 days prior to the initiation of such suit or claim.

27. The Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing DOJ and the State within 10 days of service of the complaint on Defendant. In addition, Defendant shall notify DOJ and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

#### **X. FORM OF NOTICE**

28. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To DOJ

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
Re: DOJ No. 90-11-2-781/1  
P.O. Box 7611, Ben Franklin Station

Washington, DC 20044-7611

To DOI/USFWS

Regional Solicitor's Office  
U.S. Department of the Interior  
Attn: Harriet M. Deal  
75 Spring Street, SW  
Rm. 304  
Atlanta, GA 30303

To NOAA

NOAA Office of General Counsel  
Attn: Stephanie L. Willis  
263 13<sup>th</sup> Ave. S., Suite 177  
St. Petersburg, FL 33701

To the State

Alabama Attorney General  
Environmental Division  
500 Dexter Ave.  
Montgomery, AL 36130-0152

To GSA

Office of the State Geologist  
Geological Survey of Alabama  
420 Hackberry Lane  
P.O. Box 869999  
Tuscaloosa, AL 35486-6999

To ADCNR

Commissioner of ADCNR  
c/o State Lands Director  
64 N. Union Street

Montgomery, AL 36130

To Defendant

Nan Bernardo  
Senior Environmental Counsel  
BASF Corporation  
100 Campus Drive  
Florham Park, NJ 07932

cc:

Tom Collier  
Steptoe & Johnson LLP  
1330 Connecticut Avenue NE  
Washington, DC 20036

29. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

30. Notices submitted pursuant to this Section shall be deemed submitted upon mailing unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

**XI. EFFECTIVE DATE**

31. The Effective Date of this Consent Decree shall be the date of the entry of this Consent Decree by the Court or the date a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

**XII. RETENTION OF JURISDICTION**

32. The Court shall retain jurisdiction over this case until termination of

this Consent Decree for the purpose of effectuating or enforcing compliance with the terms of this Consent Decree.

### **XIII. RETENTION OF RECORDS**

33. Until three years after termination of this Consent Decree pursuant to Section XIX (TERMINATION), the Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into it or its contractors' or agents' possession or control, that relate in any manner to the Natural Resource Damages. At any time during this information-retention period, upon request by the Plaintiffs, Defendant shall promptly provide copies of any documents, records, or other information required to be maintained under this Paragraph.

34. For any documents requested by Plaintiffs pursuant to Paragraph 33, Defendant may assert that certain documents, records, or other information are privileged under state or federal law. If Defendant asserts any such privilege, it shall provide Plaintiffs with a privilege log relating to the subject documents, records or other information. Defendant shall retain the documents, records or other information that are withheld as privileged until any privilege disputes



relating to those documents are resolved. Except as provided in this Paragraph with respect to assertedly privileged documents, records or other information, at the conclusion of the information retention period provided in Paragraph 33 Defendant may, subject to its obligations under Paragraph 35, destroy or otherwise dispose of any documents required to be maintained under Paragraph 33 without further obligation to provide notice to NOAA, DOI/USFWS, GSA, or ADCNR.

35. This Consent Decree in no way limits or affects any right to obtain information held by the United States or the State pursuant to other applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations or permits.

#### **XIV. MODIFICATION**

36. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties or as ordered by the Court upon the noticed motion of any Party. Where any modification constitutes a material change to any terms of this Consent Decree, it shall be effective only upon approval by the Court.

#### **XV. PUBLIC NOTICE**

37. This Consent Decree shall be lodged with the Court for a period of not

less than thirty (30) days for public notice and comment. Plaintiff the United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the Plaintiffs have notified Defendant in writing that they no longer support entry of the Consent Decree.

#### **XVI. SIGNATORIES/SERVICE**

38. This Consent Decree may be signed in counterparts, and facsimile, photocopy or PDF signatures shall be deemed the same as original signatures. The validity of this Consent Decree shall not be challenged on the basis of counterparts or non-original signatures.

39. With regard to matters relating to this Consent Decree and its enforcement and the filing of the Complaint, 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 the Complaint. Defendant agrees to accept service of process by mail with

respect to all matters arising or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

#### **XVII. COSTS OF SUIT**

40. The Parties shall bear their own costs of this action, including attorneys' fees, except that the Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce this Consent Decree.

#### **XVIII. INTEGRATION**

41. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the matters addressed in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any other representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

**XIX. TERMINATION**

42. This Consent Decree shall terminate upon granting of a motion duly filed by the Defendant, demonstrating that Defendant has satisfactorily completed the payments required by Section V (SETTLEMENT PAYMENTS) and payment of any outstanding stipulated penalties or interest under Section VI (STIPULATED PENALTIES). The provisions and effect of Section II (PARTIES BOUND), Section VII (COVENANTS NOT TO SUE BY PLAINTIFFS), Section VIII (COVENANT NOT TO SUE BY DEFENDANT), Section IX (EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION) and Section XIII (RETENTION OF RECORDS) shall survive termination of the Consent Decree.

**XX. FINAL JUDGMENT**

43. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties and matters addressed herein.

SO ORDERED

Dated and entered this 2<sup>nd</sup> day of October, 2013

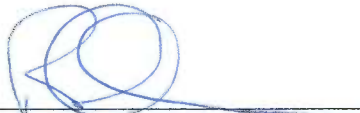
s/ Kristi K. DuBose

United States District Judge

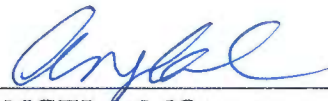
We hereby consent to the Entry of the foregoing Consent Decree in the matter of *United States, et al. v. BASF Corporation*, subject to the notice and comment provisions of Section XV of this Consent Decree:

FOR PLAINTIFF THE UNITED STATES:


DATED: 6/20/13

  
\_\_\_\_\_  
ROBERT G. DREHER  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice

DATED: 6/21/13

  
\_\_\_\_\_  
ANGELA MO  
Trial Attorney  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Telephone: (202) 514-1707  
Facsimile: (202) 616-2427  
Email: [angela.mo@usdoj.gov](mailto:angela.mo@usdoj.gov)

DATED: 6/25/13


  
\_\_\_\_\_  
GARY ALAN MOORE (MOORG6851)  
Assistant United States Attorney

63 South Royal Street, Suite 600  
Mobile, Alabama 36602  
Telephone: (251) 441-5845  
Facsimile: (251) 441-5051  
Email: [gary.moore2@usdoj.gov](mailto:gary.moore2@usdoj.gov)

We hereby consent to the Entry of the foregoing Consent Decree in the matter of  
*United States, et al. v. BASF Corporation:*

FOR PLAINTIFF THE GEOLOGICAL SURVEY OF ALABAMA:


DATED: 13 SEPTEMBER 2012

  
BENNETT L. BEARDEN (BEA040)  
General Counsel  
Geological Survey of Alabama  
P.O. Box 869999  
Tuscaloosa, AL 35486-6999  
Telephone: (205) 247-3683  
Facsimile: (205) 349-2861  
Email: bbearden@gsa.state.al.us

We hereby consent to the Entry of the foregoing Consent Decree in the matter of  
*United States, et al. v. BASF Corporation:*

FOR PLAINTIFF THE ALABAMA DEPARTMENT OF CONSERVATION  
AND NATURAL RESOURCES:

DATED: 6 Nov 2012

  
WILLIAM A. GUNTER (GUN005)  
General Counsel  
Alabama Department of Conservation  
and Natural Resources  
Room 474  
64 North Union Street  
Montgomery, AL 36130  
Telephone: (334) 242-3165



We hereby consent to Entry of the foregoing Consent Decree in the matter of *United States, et al. v. BASF Corporation*:

FOR SETTLING DEFENDANT, BASF CORPORATION:

DATED: September 4, 2012



---

Fried-Walter Munstermann  
Executive Vice President and  
Chief Financial Officer  
BASF Corporation

Counsel for Defendant:

Tom Collier  
Steptoe & Johnson LLP  
1330 Connecticut Avenue NE  
Washington, DC 20036  
Telephone: (202) 429-6242  
Facsimile: (202) 429-3902  
Email: TCollier@steptoe.com

Name and address of agent for service of process:

Nan Bernardo  
Senior Environmental Counsel  
BASF Corporation  
100 Campus Drive  
Florham Park, NJ 07932