# NORTH PASS SETTLEMENT AGREEMENT AMONG: THE UNITED STATES NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND THE FISH AND WILDLIFE SERVICE OF THE DEPARTMENT OF THE INTERIOR; LOUISIANA OIL SPILL COORDINATOR'S OFFICE, OFFICE OF THE GOVERNOR; LOUISIANA DEPARTMENT OF NATURAL RESOURCES; LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES, LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY; AND DEVON LOUISIANA CORPORATION

## I. INTRODUCTION

A. The United States National Oceanic and Atmospheric Administration and the Fish and Wildlife Service, the Louisiana Oil Spill Coordinator's Office, Office of the Governor, the Louisiana Department of Natural Resources, the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Environmental Quality, and Devon Louisiana Corporation ("Devon"), (each, a "Party" and collectively, the "Parties") enter into this Settlement Agreement to settle, without litigation, the United States' and the State of Louisiana's civil claims alleged under the Oil Pollution Act (OPA), 33 U.S.C. §§ 2701 *et seq.*, and all other claims that may exist or arise under federal and state law for damages for injury to natural resources resulting from the accidental discharge on September 22, 2002, of an estimated 300 barrels (12,600 gallons) of crude oil into the environment from an aboveground storage tank located at Ocean Energy's, now Devon's, storage and transfer facility at North Pass in the Mississippi River delta, Plaquemines Parish, Louisiana.

B. The United States and the State of Louisiana are co-trustees of the injured natural resources and services. This Settlement Agreement is executed on behalf of the United States and the State of Louisiana and Devon.

C. This Settlement Agreement deals solely with the natural resource damages that may have resulted from the Incident.

## II. DEFINITIONS

A. Unless otherwise expressly provided, terms used in this Settlement Agreement that are defined in OPA or in the natural resource damage assessment regulations (15 CFR Part 990) promulgated under OPA, shall have the meaning assigned to them in OPA or in such regulations.

B. "Agreement" means this Settlement Agreement and Attachment 1 (Restoration

Implementation and Monitoring Plan).

C. "*Force majeure*" is defined as any storm, flood, natural disaster, act of war, public disturbance, strike, act of Congress or other legislative or administrative body, or any other event arising from causes beyond the control of Devon, or any entity controlled by Devon, or of Devon's contractors, that reasonably delays or prevents Devon's performance of any obligation under this Agreement.

D. "Incident" means the accidental discharge on September 22, 2002, of an estimated 300 barrels (12,600 gallons) of crude oil into the environment from an aboveground storage tank located at Ocean Energy's, (Devon's predecessor) storage and transfer facility at North Pass in the Mississippi River delta, Plaquemines Parish, Louisiana.

E. "Trustees" means the United States National Oceanic and Atmospheric Administration (NOAA), the United States Fish and Wildlife Service (USFWS), the Louisiana Oil Spill Coordinator's Office, Office of the Governor (LOSCO), the Louisiana Department of Natural Resources (LDNR), the Louisiana Department of Wildlife and Fisheries (LDWF), and the Louisiana Department of Environmental Quality (LDEQ).

F. "Plan" means the Restoration Implementation and Monitoring Plan approved by Devon and the Trustees, attached to and incorporated into this Agreement as Attachment 1.

G. "Work" means the activities and responsibilities contained in the Restoration Implementation and Monitoring Plan.

H. "Effective Date" for purposes of this Agreement shall be the date of the last signature to this Agreement.

III. STATEMENT OF FACTS

A. On September 22, 2002, the bottom unexpectedly ruptured on a 10,000 barrel above-ground storage tank in Main Pass Block 69 in the Mississippi River Delta, Plaquemines Parish, Louisiana.

B. The storage tank was located at a storage and transfer facility owned and operated by Ocean Energy, Inc.

C. An estimated 300 barrels of crude oil was discharged from the storage tank into

the surrounding waters and marshes of North Pass in the Mississippi River Delta.

D. Birds, fish, and other fauna, as well as their habitats (hereinafter, "Natural Resources"), were actually or potentially affected by the discharged oil.

E. The concentration and quantity of oil discharged were sufficient to actually or potentially cause injury to Natural Resources, including visible oiling of marsh vegetation on certain shorelines in the area.

F. NOAA, USFWS, LOSCO, LDNR, LDWF, and LDEQ are designated Trustees for the Natural Resources actually or potentially affected by the Incident.

G. Ocean Energy and its oil spill response contractor promptly initiated, conducted, and participated in response actions to contain and remove the discharged oil.

H. Response actions implemented by Ocean Energy and other parties provided no compensation for the natural resources or their services that were actually or potentially injured, lost, or destroyed as a result of the Incident.

I. Ocean Energy accepted responsibility for the costs of conducting a natural resource damage assessment, as well as the costs of performing the Work.

J. Ocean Energy worked cooperatively with the Trustees in assessing the injuries and planning the restoration actions for those injuries.

K. In 2004, Ocean Energy merged with and changed its name to, Devon Louisiana Corporation.

L. Devon has assumed the responsibility for completing the natural resource damage assessment and implementing the Work.

M. Devon and the Trustees agree that settlement without litigation is in the public interest.

N. The Trustees have expended considerable time, funds, and resources in assessing the Incident and any Natural Resource injuries and losses that may have resulted from this Incident. The Trustees will continue to incur future restoration costs in conjunction with implementation of this Agreement. Federal future restoration costs are based on an anticipated five (5) year effort.

O. The Trustees' costs incurred as of the Effective Date are as follows:

1. LOSCO: $2,522.26 in assessment costs;
2. LDEQ: $4,837.92 in assessment costs;
3. LDNR: $836.49 in assessment costs;
4. LDWF: $439.34 in assessment costs;
5. USFWS: $ 21,169.22 in assessment costs and anticipated future restoration costs; and
6. NOAA: $66,765.10 in assessment costs and $21,370.00 as anticipated future restoration costs.

IV. DENIALS

A. Devon and the Trustees may dispute the liability, or the amount of liability of Devon for any of the allegations set forth herein. By reason of such disputes Devon and the Trustees agree to settle and compromise these matters without litigation and, as part of the settlement and compromise, to undertake the actions and obligations set forth below.

B. By entering into this Agreement, Devon shall not be deemed as admitting any violation of the OPA or any rules or regulations promulgated thereunder.

V. STATEMENT OF OBLIGATIONS OF DEVON

A. Devon shall pay the State Trustees' undisputed assessment and future restoration costs as follows:

1. For the State Trustees' assessment costs:

a. As to LOSCO, a check for $2,522.26 payable to LOSCO and referencing North Pass NRDA case #LA2002_0922_0600;

b. As to LDEQ, a check for $4,837.92 payable to LDEQ, to the attention of Darryl Serio, Fiscal Director Office of Management and Finance, and referencing North Pass NRDA case #LA2002_0922_0600;

c. As to LDNR, a check for $836.49 payable to LDNR, to the attention of Richard Stanek and referencing North Pass NRDA case #LA2002_0922_0600;

d. As to LDWF, a check for $439.34 payable to LDWF, to the attention of James Patton, the Undersecretary, Office of Management and Finance, and referencing North Pass NRDA case #LA2002_0922_0600.

**All State Trustee checks shall be sent for distribution to:**

Louisiana Oil Spill Coordinator's Office,
Office of the Governor
Gina Muhs Saizan
150 Third Street, Suite 405
Baton Rouge, Louisiana 70801
Phone: 225-219-5800

2. State Trustees' future restoration costs will periodically be billed to Devon along with supporting documentation. Devon shall pay the undisputed State future costs as directed by the State Trustees within thirty (30) days of receipt of the State Trustees' bill and cost summary. In the event that any undisputed payments required by this Paragraph are not made within thirty (30) days, interest on the unpaid balance shall be paid commencing on the thirty-first (31st) day after Devon's receipt of such bill and cost summary, and accruing through the date of payment. Interest will be calculated pursuant to section 1005 of OPA (33 U.S.C. § 2705).

3. For State Trustees' future restoration costs invoices for reimbursement shall be made annually at the end of each fiscal year, which ends June 30, or as close to June 30 as possible. Each State Trustee shall utilize State and agency travel policies and procedures, including Division of Administration PPM 49 and LDEQ PPM 3001-88 (to the extent applicable). Each State Trustee shall provide LOSCO with an annual statement and a copy of the cost documentation. LOSCO shall forward a consolidated statement and a copy of the cost documentation to Devon Energy. Devon shall pay undisputed restoration costs within thirty (30) days of receipt of the amount due by separate payment made payable to each State Trustee, as follows:

   LDWF, to the attention of the Undersecretary, Office of Management and Finance;
   LDEQ, to the attention of the Fiscal Director Office of Management and Finance;
   LDNR, to the attention of the Undersecretary;
   LOSCO, to the attention of the Oil Spill Coordinator, LOSCO.

   Each check shall reference the North Pass NRDA Restoration Project.

**All State Trustee checks shall be sent for distribution to:**

Louisiana Oil Spill Coordinator's Office,

Office of the Governor
Charles Armbruster
150 Third Street, Suite 405
Baton Rouge, Louisiana 70801
Phone: 225-219-5800

B. For the Federal Trustees' undisputed assessment costs and anticipated future restoration costs:

1. As to USFWS, a payment for $21,169.22, payable to the Department of the Interior and sent to:

   Department of the Interior
   NBC/Division of Financial Management Services Branch of Accounting Operations
   Mail Stop D-27777401
   West Mansfield Avenue
   Lakewood, CO 80235

   The following information must be provided with the payment:

   The account number: 14X5198
   The site name: North Pass
   The site location: Plaquemines Parish, Louisiana
   Name of the paying party: Devon Louisiana

2. As to NOAA, a check for $88,135.10, payable to the National Oceanic and Atmospheric Administration and sent to:

   NOAA/Department of Commerce
   ATTN: Kathy Salter, DARRF MANAGER
   1305 East West Highway
   SSMC4/ Room 10139
   Silver Spring, MD 20910-3281

   The following information must be provided with the check:

   NOAA account number: 1RK3EE3POO
   The site name: North Pass
   The site location: Plaquemines Parish, Louisiana
   Name of the paying party: Devon Louisiana

C. Charles Armbruster of LOSCO (see contact information above) will be the project manager and contact point for the Trustees during restoration implementation.

D. Devon agrees to fully implement the Plan approved by the Trustees.

E. The Trustees do not, by consenting to this Agreement, warrant in any manner that actions taken by Devon pursuant to this Agreement will result in satisfactory performance of the Work.

F. The Trustees shall not be responsible or liable for any adverse impacts that are directly or indirectly related to Devon's performance of its obligations under this Agreement. Devon shall implement the Plan in such a way as to minimize any adverse effects of the Work. In addition, Devon shall be liable for any property damage or personal injury to third-parties caused by its implementation of the Plan. Further, Devon shall conduct the Work in a good and workmanlike manner and in compliance with all applicable laws, regulations, ordinances, permits, and authorizations required for the Work. Devon agrees to release, defend, indemnify and hold harmless the Trustees from and against any and all costs, expenses, claims, judgments, damages, losses, penalties, fines, or liabilities arising from Devon's implementation of the Plan and the performance of the Work.

G. Devon shall obtain, at its sole cost, risk and expense, any permits or authorizations necessary for implementation of the Plan and the performance of the Work.

H. In the event the Work is suspended or delayed due to *force majeure*, Devon shall, upon written notice of force *majeure* event to the Trustees, have an additional amount of time equal to the period of delay resulting from the *force majeure* event to complete the Work and such additional and reasonable amount of time to complete the Work as mutually agreed to by the Parties hereto.

I. In the event that Devon disputes any of the Trustees' assessment or future restoration costs, Devon shall provide written notice thereof to the Trustees' project manager within thirty (30) days of Devon's receipt of the invoice including the disputed costs. The Parties shall thereafter diligently and in good faith negotiate to resolve such dispute to the mutual satisfaction of the Parties.

J. The Trustees may grant an extension of any deadline in the Agreement or in the Plan upon a written showing of good cause by Devon.

## VI. COVENANT NOT TO SUE

A. Subject to Devon's complete payment of the sum of $117,940.23 for Trustee assessment costs, anticipated future federal restoration costs, reimbursement of State restoration costs, and satisfactory completion of the Work according to Attachment 1, the Trustees hereby agree not to file suit or take enforcement or other administrative action against Devon for any and all civil or administrative claims for natural resource damages pursuant to the Oil Pollution Act of 1990 for natural resources and services under their trusteeship that may have been injured, destroyed, or lost as a result of the Incident. This covenant not to sue extends only to Devon and any parent, subsidiary, or affiliated entity, and each of their officers, directors, and employees.

B. Once the Plan has been fully implemented and the Work completed to the satisfaction of the Trustees, LOSCO, acting on behalf of the Trustees, shall, within thirty (30) days of Devon's completion of the Work, provide Devon with a written statement that the Work has been completed in a satisfactory manner.

C. Nothing in this Agreement is intended to be, nor shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, for:

1. Natural resource damages, in the event that Devon does not pay the Trustees' undisputed assessment costs or anticipated future restoration costs described in section V. of this Agreement or does not perform the Work under this Agreement;
2. Any claim for response costs;
3. Any other past releases, future releases, discharges, or spills;
4. Any and all criminal liability related to the Incident; or
5. Any other matter not expressly included in the release from liability for natural resource damages set forth in paragraph A of this section.

## VII. CERTIFICATIONS

A. Devon certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the Trustees all information requested by the Trustees that is currently in the possession of Devon's officers and employees relating to the Incident.

B. The Trustees certify that, to the best of their knowledge and belief, no other Trustee intends to present a claim for the Natural Resources and their services that may have been injured, destroyed, or lost as a result of the Incident.

## VIII. EXECUTION

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

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

FOR THE STATE OF LOUISIANA

Michael Wascom

Name: Michael Wascom
Title: LOSCO Special Counsel

Date: May 3, 2006

LOUISIANA OIL SPILL COORDINATOR'S OFFICE,
OFFICE OF THE GOVERNOR

Roland Guidry

Name: Roland J. Guidry
Title: Louisiana Oil Spill Coordinator

Date: 30 March 06

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

_____

Name: Michael D. McDaniel, Ph.D.
Title: Secretary

Date: _____

LOUISIANA DEPARTMENT OF NATURAL RESOURCES

_____

Name: Scott A. Angelle
Title: Secretary

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

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

LOUISIANA OIL SPILL COORDINATOR'S OFFICE,
OFFICE OF THE GOVERNOR

_____
Name: Roland J. Guidry
Title: Louisiana Oil Spill Coordinator

Date: _____

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Mike D. McDaniel
Name: Mike D. McDaniel, Ph.D.
Title: Secretary

Date: 12/21/05

LOUISIANA DEPARTMENT OF NATURAL RESOURCES

_____
Name: Scott A. Angelle
Title: Secretary

*North Pass Settlement Agreement*

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

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

LOUISIANA OIL SPILL COORDINATOR'S OFFICE,
OFFICE OF THE GOVERNOR

_____
Name: Roland J. Guidry
Title: Louisiana Oil Spill Coordinator

Date: _____

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

_____
Name: Michael D. McDaniel, Ph.D.
Title: Secretary

Date: _____

LOUISIANA DEPARTMENT OF NATURAL RESOURCES

_____
Name: Scott A. Angelle
Title: Secretary

*North Pass Settlement Agreement*

Date: November 22, 2005

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

_____

Name: Dwight Landreneau
Title: Secretary

Date: _____

UNITED STATES DEPARTMENT OF THE INTERIOR

_____

Name: Horace G. Clark
Title: Regional Solicitor

Date: _____

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

_____

Name: Craig R. O'Connor
Title: Special Counsel for Natural Resources

Date: _____

*North Pass Settlement Agreement*

Date: _____

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

_____
Name: Dwight Landreneau
Title: Secretary

Date: 4/25/06

UNITED STATES DEPARTMENT OF THE INTERIOR

_____
Name: Horace G. Clark
Title: Regional Solicitor

Date: _____

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

_____
Name: Craig R. O'Connor
Title: Special Counsel for Natural Resources

Date: _____

DEVON LOUISIANA

*North Pass Settlement Agreement*

Date: _____

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

_____
Name: Dwight Landreneau
Title: Secretary

Date: _____

UNITED STATES DEPARTMENT OF THE INTERIOR

_____
Name: Horace G. Clark
Title: Regional Solicitor

Date: _____

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

_____
Name: Craig R. O'Connor
Title: Special Counsel for Natural Resources

Date: 11/23/05

*North Pass Settlement Agreement*

Date: _____

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

_____
Name: Dwight Landreneau
Title: Secretary

Date: _____

UNITED STATES DEPARTMENT OF THE INTERIOR

Horace G. Clark
Name: Horace G. Clark
Title: Regional Solicitor

Date: Nov. 23, 2005

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

_____
Name: Craig R. O'Connor
Title: Special Counsel for Natural Resources

Date: _____

*North Pass Settlement Agreement*

DEVON LOUISIANA

Alan Davies

Name: Alan Davies
Title: Operations Manager and Attorney-in-Fact, Devon Louisiana Corporation

Date: 3-21-06