IN THE

# United States District Court

FOR THE DISTRICT OF KANSAS

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| IN RE: THE DEPARTMENT OF ENERGY STRIPPER WELL EXEMPTION LITIGATION | M.D.L. No. 378 |

# FINAL SETTLEMENT AGREEMENT

# SETTLEMENT AGREEMENT


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# SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter this Agreement) is entered into as of the 5th day of May, 1986 between the United States Department of Energy (hereinafter DOE), the States, the Refiners, the Resellers, the Retailers, the Airlines, the Agricultural Cooperatives, the Surface Transporters, the Utilities (as defined hereinafter), and others who become signatories hereto.

WITNESSETH THAT:

WHEREAS, certain parties have been engaged for several years in complex and protracted litigation, entitled *In Re Department of Energy Stripper Well Exemption Litigation* (hereinafter M.D.L. 378);

WHEREAS, certain parties are or will be involved in other proceedings, both judicial and administrative, involving alleged violations of DOE's price and allocation controls applicable to crude oil (hereinafter the Alleged Crude Oil Violations) including but not limited to: (1) the first sale and the resale of crude oil under 10 C.F.R. Part 212, Subparts D, F, and L and (2) the Domestic Crude Oil Allocation Program (hereinafter the Entitlements Program);

WHEREAS, these violations may have had an effect on the Entitlements Program which affected all participants in that Program and thereafter all purchasers of refined petroleum products, or otherwise may have had effects on such purchasers;

WHEREAS, certain parties have been engaged for several years in complex and protracted litigation involving the conclusion of the Entitlements Program administered by DOE;

WHEREAS, the parties desire to compromise and settle certain pending lawsuits and other proceedings, as well as avoid future controversy, by establishing a mutually agreeable method of disbursing certain funds that have been or will be collected as a result of the alleged violations in issue; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein the parties agree as follows:

## I. PARTIES

The parties to this Agreement are those Persons, including any individual, firm, corporation, partnership, joint stock company, joint venture, business trust, cooperative, voluntary association, or government or department thereof (herein called a Person), who are or who become signatories to or bound by this Agreement and their predecessors, successors and assigns (hereinafter the Parties). The Parties and recipients of monies pursuant to this Agreement include:

A. *DOE.* DOE is the United States Department of Energy, including the Economic Regulatory Administration (hereinafter the ERA) and the Office of Hearings and Appeals (hereinafter the OHA).

B. *States.* The States include the fifty sovereign States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of American Samoa, Guam, the Northern Marianas, and the U.S. Virgin Islands on behalf of themselves and their citizens.

C. *Refiners.* The Refiners include all participants in the Entitlements Program based on actual or deemed runs-to-stills, which are identified in DOE's draft Entitlements Adjustment Notice published in the Federal Register on November 3, 1983, 48 *Fed. Reg.* 50824.

D. *Resellers.* The Resellers include all marketers and distributors of domestically refined petroleum products during any part of the period August 19, 1973 through January 27, 1981 (hereinafter the Settlement Period) with the exception of the groups which are specifically excluded in the Resellers Order referenced below.

E. *Retailers.* The Retailers include all independent marketers of domestically-refined motor fuels (branded and unbranded gasoline and diesel fuels) who made 50 percent or more of their sales at retail during any part of the Settlement Period, with the exception of those specifically excluded in the Retailers Order referenced below.

F. *Airlines.* The Airlines include all United States-certificated air carriers holding a certificate issued pursuant to 49 U.S.C. §1371 and purchasing domestically-refined kerosene jet fuel during any part of the Settlement Period.

G. *Agricultural Cooperatives.* Subject to the provisions of the Cooperatives Order referenced below, the Agricultural Cooperatives (hereinafter the Co-ops) include all national, regional and inter-regional "cooperative associations" and "cooperatives" (under 12 U.S.C. §1141j or any state agricultural marketing or association law), including and acting on behalf and for the mutual benefit of all their member-patrons, which Co-ops (1) were engaged in refining or resale of petroleum products to their own member-patrons during any part of the Settlement Period, and (2) presently operate and actively transact business with or for member-patrons on a cooperative basis.

H. *Surface Transporters.* The Surface Transporters include all commercial motor vehicle surface transporters of persons or property including "for hire" carriage and private fleet transportation, regulated and unregulated, and specifically including, without limitation, trucks, buses and taxicabs, who utilized oil products in such operation at any time during the Settlement Period.

I. *Utilities.* The Utilities include all investor-owned electric utilities utilizing oil or oil products in the generation of electricity at any time during the Settlement Period with the exception set forth in the Utilities Order. Neither cooperatively owned nor governmentally owned utilities are included as Utilities.

## II. M.D.L. 378

### A. Settlement.

1. *Approval of Agreement.* By execution of or becoming Parties to this Agreement, and subject to Paragraph VI.F, the Parties intend to compromise and settle all claims to the funds in escrow in M.D.L. 378 and any additional funds which are subsequently deposited therein (hereinafter the M.D.L. 378 Escrow), and the funds attributable to injection well issues which were paid by Amoco to DOE on February 1, 1985, in compliance with the February 14, 1980 Amoco consent order, plus interest accrued through the date of disbursement pursuant to this Agreement (hereinafter the DOE/Amoco Stripper Fund). The Parties agree to use their best efforts to obtain approval of this Agreement by the U.S. District Court for the District of Kansas (hereinafter the District Court) and distribution of the M.D.L. 378 Escrow in accordance with this Agreement as expeditiously as possible. A Party who is not otherwise a party to M.D.L. 378 shall not become or be considered a party to M.D.L. 378 by reason of having executed this Agreement nor shall execution hereof be probative of making any Party a party to M.D.L. 378, although all Parties are bound by the terms of this Agreement and agree to be bound by an order of the District Court approving and enforcing the Agreement.

2. *Cooperation on Discovery.* The Parties recognize that there are certain remaining unresolved discovery matters in M.D.L. 378. The Refiners agree to cooperate with DOE in resolving these issues as expeditiously as possible and to facilitate the production of documents and answers to interrogatories to the greatest extent practicable without waiving any substantive rights or claims of privilege which any Refiner may have.

3. *Cooperation on Other Issues.* The Refiners which are or which become parties to M.D.L. 378 agree to cooperate with DOE in obtaining speedy judicial resolution of any liability issues remaining in the litigation. Each Refiner which is or which becomes a party to M.D.L. 378 agrees to pay into the M.D.L. 378 Escrow, within 30 days after the Payment Date as hereinafter defined, within 30 days after

becoming a party, or within 30 days after a demand for payment by DOE, whichever is later, any monies or portions of monies being held by it which DOE claims should be paid into the M.D.L. 378 Escrow which claims or portions of claims are no longer contested in good faith by such Refiner.

4. *Waiver of Civil Penalties.* DOE agrees to waive and release any claim for civil penalties against any of the Parties arising out of, or relating to, counting injection wells to qualify a property as a stripper property.

5. *Dismissal of Litigation.* Upon District Court approval of this Agreement, and the occurrence of the Payment Date as hereinafter defined, each of the cases making up M.D.L. 378 will be dismissed with prejudice individually when all remaining issues concerning any alleged monetary liability are finally resolved in that particular case and all money owed in that case has been paid into the M.D.L. 378 Escrow. DOE agrees not to assert against a Party whose case has been dismissed under this paragraph any additional claim arising out of, or relating to, counting injection wells to qualify a property as a stripper well property for the same production and time period covered by the dismissed case. Each of the Parties agrees to bear its own costs incurred in the prosecution or defense of M.D.L. 378 litigation.

6. *Remaining Issues.* Nothing in this Agreement may be read to enlarge, abridge, limit or otherwise affect the ability of the parties to M.D.L. 378 to litigate the issues remaining in M.D.L. 378 concerning the determination and collection of the amount of remaining liability, if any, of any party to M.D.L. 378 for counting injection wells to qualify a property as a stripper well property, or to seek the imposition of sanctions for failure to comply with proper discovery requests.

**B. Distribution of Funds.**

1. *Initial Distribution.*

a. *Segregation of Initial Accounts.* Upon District Court approval of this Agreement (hereinafter the Approval Order), funds in the M.D.L. 378 Escrow shall be segregated into the following Accounts in the amounts specified in the following paragraphs of this Agreement:

| | |
|---|---|
| i. Refiners Account | II.B.2.a. |
| ii. Resellers Account | II.B.2.b.i. |
| iii. Retailers Account | II.B.2.c.i |
| iv. Airlines Account | II.B.2.d.i |
| v. Co-ops Account | II.B.2.e.i |
| vi. Surface Transporters Account | II.B.2.f |
| vii. Utilities Account | II.B.2.g |
| viii. States Account | II.B.3 |
| ix. DOE Account | II.B.3 |

b. *Distribution of Initial Accounts.* Distribution of funds from Accounts i through ix above, including interest as provided in Paragraph II.B.1.c, to the respective Parties, or to their Escrows (as hereinafter provided) for further distribution in accordance therewith, shall proceed, subject to District Court approval, upon the earliest date provided below:

i. if no opposition to this Agreement is filed with the District Court, as soon as that court may permit;

ii. if no appeal is taken from the Approval Order, upon expiration of the time for appeal;

iii. if an appeal is taken from the Approval Order which solely concerns the process or procedural mechanism for payments of funds in one or more of the Accounts i through ix above, or a determination of eligibility for payment to a party who claims that it is eligible under the terms of this Agreement for payment from such Account(s), or respective Escrow(s), as soon as the District Court may permit, except to the extent distribution of some or all of the funds in the Account(s) or Escrow(s) which is the subject of such appeal(s) is stayed pending appeal; or

iv. if not earlier distributed, upon a final judgment or order approving this Agreement which judgment or order is not subject to further appellate review (hereinafter Final Court Approval).

The date on which funds are distributed to all of the Parties or their Escrows, except any Party or Escrow as may be subject to a stay as described in (iii) above, shall hereinafter be referred to as the Payment Date.

c. *Interest.* A proportionate share of any earnings of the M.D.L. 378 Escrow shall accrue to the benefit of, and be included in, each Account segregated under Paragraph II.B.1 effective from the date of the Approval Order until the date of disbursement of that Account as provided under this Agreement.

2. *Distributions to Non-Governmental Parties.*

a. *Refiners.* The amount of $298,514,000 (hereinafter the Refiners Distribution) shall be segregated pursuant to Paragraph II.B.1.a, into the Refiners Account for disbursal, pursuant to Paragraph II.B.1.b, to the Refiners Escrow Agent for further distribution in accordance with the Refiners Escrow Agreement (attached hereto as Exhibit A).

b. *Resellers.*

i. *Initial Distribution.* The amount of $44,690,371 shall be segregated, pursuant to Paragraph II.B.1.a, into the Resellers Account for disbursal, pursuant to Paragraph II.B.1.b, to the Resellers Escrow (hereinafter the Resellers Initial Distribution) for further distribution pursuant to the Order Establishing Resellers Escrow and Prescribing Provisions for Administration of the Fund (hereinafter the Resellers Order attached as Exhibit B). In the event the total amount in the M.D.L. 378 Escrow and the DOE/Amoco Stripper Fund, irrespective of any funds set aside pursuant to Paragraph II.C (hereinafter the Total Fund), is less than $1.433 billion at the time of the Approval Order, then 2.25 percent of the difference between $1.433 billion and the Total Fund shall be deducted from the Resellers Initial Distribution. In the event the Total Fund exceeds $1.433 billion on the date of the Approval Order, then 2.25 percent of the amount by which the Total Fund exceeds $1.433 billion, plus interest thereon, not to exceed $13,790,323 (hereinafter the Resellers Excess Fund), shall be segregated for disbursal to the Resellers Escrow on the first anniversary of the Resellers Initial Distribution and shall not be disbursed to any other Party or otherwise depleted from the M.D.L. 378 Escrow.

ii. *Second Distribution.* One year after the Resellers Initial Distribution and subject to Paragraph II.B.2.h, the sum of (i) the amount of $13,790,323, which shall include the Resellers Excess Funds, if any, and (ii) the amount of any deduction made from $44,690,371 under the Resellers Initial Distribution pursuant to Paragraph II.B.2.b.i, (hereinafter the Resellers Second Distribution) shall be disbursed from the M.D.L. 378 Escrow to the Resellers Escrow for further distribution pursuant to the Resellers Order.

c. *Retailers.*

i. *Initial Distribution.* The amount of $44,690,371 shall be segregated, pursuant to Paragraph II.B.1.a, into the Retailers Account for disbursal, pursuant to Paragraph II.B.1.b, to the Retailers Trustee (hereinafter the Retailers Initial Distribution) for further distribution pursuant to the Order Approving Independent Retailers of Motor Fuels Group Administration and Trust Agreement (hereinafter the Retailers Order attached hereto as Exhibit C). In the event the Total Fund is less than $1.433 billion on the date of the Approval Order, then 2.25 percent of the difference between $1.433 billion and the Total Fund shall be deducted from the Retailers Initial Distribution. In the event the Total Fund exceeds $1.433 billion at the time of the Approval Order, then 2.25 percent of the amount by which the Total Fund exceeds $1.433 billion, plus interest thereon, not to exceed $13,790,323 (hereinafter the Retailers Excess Funds), shall be segregated for disbursal to the Retailers Trustee on the first anniversary of the Retailers Initial

Distribution, and shall not be disbursed to any other Party or otherwise depleted from the M.D.L. 378 Escrow.

ii. *Second Distribution.* One year after the Retailers Initial Distribution and subject to Paragraph II.B.2.h, the sum of (i) the amount of $13,790,323, which shall include the Retailers Excess Funds, if any, and (ii) the amount of any deduction made from $44,690,371 under the Retailers Initial Distribution pursuant to Paragraph II.B.2.c.i (hereinafter the Retailers Second Distribution) shall be disbursed from the M.D.L. 378 Escrow to the Retailers Trustee for further distribution pursuant to the Retailers Order.

d. *Airlines.*

i. *Initial Distribution.* The amount of $29,793,581 shall be segregated, pursuant to Paragraph II.B.1.a, into the Airlines Account for disbursal, pursuant to Paragraph II.B.1.b, to the Airlines Escrow (hereinafter the Airlines Initial Distribution) for further distribution pursuant to the Order Establishing Airlines Escrow and Prescribing Escrow Instructions (hereinafter the Airlines Order attached hereto as Exhibit D). In the event the Total Fund is less than $1.433 billion at the time of the Approval Order, then 1.50 percent of the difference between $1.433 billion and the Total Fund shall be deducted from the Airlines Initial Distribution. In the event the Total Fund exceeds $1.433 billion on the date of the Approval Order, then 1.50 percent of the amount by which the Total Fund exceeds $1.433 billion, plus interest thereon, not to exceed $9,193,548 (hereinafter the Airlines Excess Funds), shall be segregated for disbursal to the Airlines Escrow on the first anniversary of the Airlines Initial Distribution, and shall not be disbursed to any other Party or otherwise depleted from the M.D.L. 378 Escrow.

ii. *Second Distribution.* One year after the Airlines Initial Distribution and subject to Paragraph II.B.2.h, the sum of (i) the amount of $9,193,548, which shall include the Airlines Excess Funds, if any, and (ii) the amount of any deduction made from $29,793,581 under the Airlines Initial Distribution pursuant to Paragraph II.B.2.d.i (hereinafter the Airlines Second Distribution) shall be disbursed from the M.D.L. 378 Escrow to the Airlines Escrow for further distribution pursuant to the Airlines Order.

e. *Agricultural Co-ops.*

i. *Initial Distribution.* The amount of $34,751,177 shall be segregated, pursuant to Paragraph II.B.1.a, into the Co-ops Account for disbursal, pursuant to Paragraph II.B.1.b, to the Co-ops Escrow (hereinafter the Co-ops Initial Distribution) for further distribution pursuant to the Order Establishing Agricultural Cooperatives Settlement Fund and Prescribing Provisions for the Administration and Distribution of the Fund (hereinafter the Co-ops Order attached hereto as Exhibit E). In the event the Total Fund is less than $1.433 billion on the date of the Approval Order, then 1.75 percent of the difference between $1.433 billion and the Total Fund shall be deducted from the Co-ops Initial Distribution. In the event the Total Fund exceeds $1.433 billion at the time of the Approval Order, then 1.75 percent of the amount by which the Total Fund exceeds $1.433 billion, plus interest thereon, not to exceed $10,725,806 (hereinafter the Co-ops Excess Funds), shall be segregated for disbursal to the Co-ops Escrow on the first anniversary of the Co-ops Initial Distribution, and shall not be disbursed to any other Party or otherwise depleted from the M.D.L. 378 Escrow.

ii. *Second Distribution.* One year after the Co-ops Initial Distribution and subject to Paragraph II.B.2.h, the sum of (i) the amount of $10,725,806, which shall include the Co-ops Excess Funds, if any, and (ii) the amount of any deduction made from $34,751,177 under the Co-ops Initial Distribution pursuant to Paragraph II.B.2.e.i (hereinafter the Co-ops Second Distribution) shall be disbursed from the M.D.L. 378 Escrow to the Co-ops Escrow for further distribution pursuant to the Co-ops Order.

iii. *Indemnification.* Any Co-op receiving payment from the Co-ops Escrow agrees to indemnify all other Parties to this Agreement for any claims for refund based on Alleged Crude Oil Violations which are brought by any of its member-patrons but only to the extent of the amount of payment received by that Co-op from the Co-ops Escrow.

iv. *Reserve.* The Co-ops eligibility criteria set forth in Paragraph I.G provides for a restitutionary mechanism that will benefit farmers and other agricultural end-users that obtained petroleum products from agricultural cooperatives which they owned and operated for their mutual benefit. If an appeal is taken by a co-op from the Approval Order which challenges its own ineligibility under paragraph I.G, the Administrator of the Co-ops Fund shall seek an order of the District Court to establish a sufficient reserve pending final resolution of the ineligibility challenge. Such appeal shall not prevent or delay the distribution of funds from any Account to the Parties, or to or from any of the Escrows, for further distribution, except as to any reserve established hereunder.

f. *Surface Transporters.* The amount of $10,750,000 shall be segregated, pursuant to Paragraph II.B.1.a, into the Surface Transporters Account for disbursal, pursuant to Paragraph II.B.1.b, to the Surface Transporters Escrow for further distribution pursuant to the Order Establishing Surface Transporters Escrow (attached hereto as Exhibit F).

g. *Utilities.* The amount of $5,250,000 shall be segregated, pursuant to Paragraph II.B.1.a, into the Utilities Account for disbursal, pursuant to Paragraph II.B.1.b, to the Utilities Escrow for further distribution pursuant to the Order Establishing Utilities Escrow (attached hereto as Exhibit G).

h. *Conditions Applicable to Second Distributions.* All funds, other than the DOE/Amoco Stripper Fund, deposited after the date of the Approval Order in the M.D.L. 378 Escrow and the amounts, if any, of Resellers Excess Funds, Retailers Excess Funds, Airlines Excess Funds and Co-ops Excess Funds, shall be specifically reserved for payment of Second Distributions pursuant to Paragraphs II.B.2.b.ii, c.ii, d.ii, and e.ii, until each of such Second Distribution amounts has been fully funded. When any group has received an amount in satisfaction of its Second Distribution, the amount thereafter required to be reserved shall be reduced by the maximum amount of that group's Second Distribution as described in Paragraph II.B.2.b.ii, c.ii, d.ii, or e.ii. No disbursements shall be made from the funds deposited after the date of the Approval Order in the M.D.L. 378 Escrow until the Resellers, Retailers, Airlines and Co-ops have been paid their Second Distributions or until such amounts have been specifically reserved in the M.D.L. 378 Escrow for payment to the Settlement Escrows of Resellers, Retailers, Airlines and Co-ops. In the event funds in the M.D.L. 378 Escrow on or after the first anniversary of each group's Initial Distribution equal or exceed the sum of the full amounts of the Second Distribution pursuant to Paragraphs II.B.2.b.ii, c.ii, d.ii, and e.ii, but disbursement is stayed by reason of the pendency of an appeal, a proportionate share of any interest earnings of the M.D.L. 378 Escrow shall accrue to the benefit of and be added to the amounts of such Second Distributions effective from the first anniversary of the Initial Distribution until the earliest date disbursement of such Second Distribution is permitted. In the event the funds in the M.D.L. 378 Escrow on such first anniversary of the Initial Distribution are less than the sum of the full amounts of the Second Distributions to the Resellers, Retailers, Airlines and Co-ops pursuant to Paragraphs II.B.2.b.ii, c.ii, d.ii and e.ii, then, in satisfaction of their Second Distributions the administrators of the funds for the Resellers, Retailers, Airlines and Co-ops shall each have the separate right to elect to (i) receive the group's proportionate share of the funds in the M.D.L. 378 Escrow on such first anniversary in satisfaction of its Second Distribution or (ii) postpone the group's Second Distribution to a time of its choosing subsequent to the first anniversary of its Initial Distribution, but no later than the date of dismissal of the last individual case making up M.D.L. 378. If any of the administrators of the funds for the Resellers, Retailers, Airlines or Co-ops elects to receive the group's Second Distribution under (ii) above at a time when the funds in the M.D.L. 378 Escrow are less than the sum of the full amounts of the Second Distributions to the Resellers, Retailers, Airlines and Co-ops which remain unsatisfied, then its Second Distribution amount shall be equal to its proportionate share of the

funds in the M.D.L. 378 Escrow at the time it elects to receive its amount in satisfaction of its Second Distribution. Each group's proportionate share shall be equal to a ratio, the numerator of which shall be the full amount of that group's Second Distribution and the denominator of which shall be the sum of the full amounts of the Second Distribution of that group and all other groups which have not yet elected to receive their Second Distributions.

3. *Distributions to DOE and the States.*

a. *DOE/States Available Fund Disbursement.* Except as provided in Paragraphs II.B.3.c, d, and e, 50 percent of that portion of the Total Fund which is not required to be segregated or reserved on the date of the Approval Order under Paragraph II.B.2 or set aside under Paragraph II.C (hereinafter the Available Fund) shall be paid to the States pursuant to Paragraph II.B.1. in the manner and for the restitutionary uses described in Paragraph II.B.3.f, provided that the amount paid to any State shall be reduced by the amounts, if any, disbursed for litigation expenses pursuant to a designation under Paragraph II.B.3.f.iii, and the remainder of such Available Fund (less $50 million reserved to assure the disbursement to the States from OHA as provided in Paragraph IV.B.7) shall be disbursed to or retained by DOE.

b. *DOE/States Incremental Fund Disbursement.* Except as provided in Paragraphs II.B.3.c, d, and e, after the disbursement under Paragraph II.B.3.a, every 90 days, or each time the amounts in the M.D.L. 378 Escrow (excluding amounts reserved under Paragraph II.B.2.h and amounts set aside pursuant to Paragraph II.C) (hereinafter the Incremental Fund) reach $10 million, whichever is earlier, 50 percent of the Incremental Fund shall be disbursed to the States in the manner and for the uses described in Paragraph II.B.3.f, provided that the amount paid to any State shall be reduced by the amounts, if any, disbursed for litigation expenses pursuant to a designation under Paragraph II.B.3.f.iii, and the remainder of the Incremental Fund shall be disbursed to or retained by DOE.

c. *Advance Fund.* The disbursement of 50 percent of the Available Fund to the States shall be increased by an additional amount of $200 million (hereinafter the Advance Fund) from that portion of the Available Fund which would otherwise be disbursed to or retained by DOE. The DOE shall be reimbursed for the Advance Fund as follows:

i. after the total amount of $924,560,500 has first been disbursed to DOE and the States from the Available Fund, or from the Available Fund and the Incremental Fund, from the next $400 million of disbursements to DOE and the States from the Available Fund and the Incremental Fund, $100 million more will be disbursed to DOE than otherwise would be disbursed under II.B.3.a and b, by reallocating to DOE one-half of the States' disbursement(s) from disbursements of such $400 million; and

ii. after the total amount of $100 million of the funds attributable to Alleged Crude Oil Violations has been disbursed by OHA to DOE and the States pursuant to Paragraph IV.B.7, from the next $400 million disbursed by OHA, $100 million more will be disbursed to or retained by DOE than otherwise would be disbursed or retained under Paragraph IV.B.7, by reallocating to DOE one-half of the States' disbursement(s) from disbursements of such $400 million.

d. *Funding of Second Distributions.* In calculating the amount of funds to be disbursed to DOE and the States from the Incremental Fund, the disbursements and/or reservations of monies in the Incremental Fund under Paragraph II.B.2.h shall be deducted from the first funds which otherwise would have been disbursed to DOE from the Incremental Fund; provided, however, that no amount shall be disbursed pursuant to Paragraph II.B.3.b until the amount required to be reserved in Paragraph II.B.2.h has been fully funded. Reimbursement by the States to DOE for not more than one-half of the amount of the disbursements and/or reservations under Paragraph II.B.2.h shall be effectuated by a reduction in the disbursements to the States that otherwise would be made under

Paragraphs II.B.3.b and c by an amount equal to 3.875 percent of each combined DOE/States disbursement from the Incremental Fund and an increase in the disbursements to DOE by a corresponding amount.

e. *Assurance Fund.* The amount of $50 million from the Available Fund that would otherwise be segregated into the DOE Account on the date of the Approval Order shall be reserved (hereinafter the Assurance Fund) to assure the disbursement to the States from OHA, provided in and to be disbursed pursuant to, Paragraph IV.B.7. This $50 million amount will be treated for purposes of the calculations in Paragraphs II.B.3.a, b, c, and d as having been disbursed in its entirety to DOE under Paragraph II.B.3.a irrespective of whether all or a portion of such $50 million is disbursed to the States pursuant to Paragraph IV.B.7.

f. *State Use of Funds.* Funds available for distribution to the States shall be allocated among them on the basis of historical consumption patterns of refined petroleum products in the United States during the Settlement Period in the proportions as set forth in Exhibit H hereto, provided that no funds shall be distributed to a State until such State has submitted the signed Letters of Assurance required by this Paragraph. The payment mechanism set forth herein shall be the exclusive means of achieving distribution of the funds. The Attorney General of each State shall deliver to the Governor of such State, for the Governor's execution, duplicate originals of a Letter of Assurance in the form set forth in Exhibit I to this Agreement. Within 20 days following the date of the Approval Order, the Attorney General shall deliver to the Clerk of the Court and to the Administrator of ERA, DOE, such Letters of Assurance signed by the Governor of such State. At the same time, the Attorney General of each State shall designate in writing to the disbursing official of the M.D.L. 378 Escrow whether disbursement shall be by check or by wire transfer, and if by wire transfer, shall provide instructions for the transmittal of funds. Disbursement of all funds to such State thereafter shall be in the form designated by the Attorney General and made payable to "The State of _____". Physical delivery of a check shall be made by the disbursing official to the Attorney General and in the case of a wire transfer, advance written notice of the date and amount of the wire transfer shall be delivered to the Attorney General prior to the sending of each wire transfer. Upon receipt of each check or wire transfer notice, the Attorney General shall deliver it promptly to the Governor of such State. As used in this Paragraph II.B.3.f, "Attorney General" means the Attorney General of a State, or his or her duly authorized representative, and includes any other State official who intervened in M.D.L. 378 prior to the execution of the Memorandum of Understanding of January 24, 1986 preceding this Agreement. In the case of any State where an official other than or in addition to the Attorney General intervened in M.D.L. 378 prior to January 24, 1986, all references in this Paragraph II.B.3.f to the Attorney General shall mean the Attorney General jointly with such official. Such funds (including interest earned on the funds following their receipt by the States) will be utilized as follows:

i. *Public Notice.* Each State will give reasonable notice to the public that it has received the funds and will generally describe the types of restitutionary programs on which the State may expend the funds. Each State will conduct informal hearings at which the public may present its views concerning such expenditures. Any State which has held hearings with regard to the uses of oil overcharge refunds during the two-year period preceding the date of the Approval Order will not be required to hold additional hearings. Legislative hearings in accordance with applicable State procedures shall be sufficient to comply with the requirements of this subsection.

ii. *Restitutionary Program.* Monies received by any State shall be utilized to fund one or more existing or new energy-related programs which are designed to benefit, directly or indirectly, consumers of petroleum products within the State. State governments are familiar with the particular energy needs of their citizens, and therefore they are in the best position to select the specific programs that will most effectively provide restitution to their citizens. In order to provide the flexibility to select from a complement of approved options which will insure consideration of local needs and circumstances, each State will be accorded discretion in selecting specific programs to provide widespread benefits to consumers of petroleum products; provided, however, that

each State shall take into consideration the facts relating to usage of petroleum products within such State during the Settlement Period by various categories of such consumers and that the funds received by each State will be used to supplement, and not to supplant, funds otherwise available for such programs under Federal or State law. State funding of programs shall be limited to (1) those approved by OHA in Subpart V refund proceedings; (2) those referenced in the consent order which DOE entered into in 1981 with Standard Oil Company of California (Chevron) (46 *Fed. Reg.* 52221; October 26, 1981); (3) the types of energy conservation activities set forth in the following legislation:

(a) Part A of the Energy Conservation and Existing Buildings Act of 1976 (relating to weatherization of buildings; 42 U.S.C. §6861 *et seq.*);

(b) Part D of Title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. §6321 *et seq.*);

(c) Part G of Title III of the Energy Policy and Conservation Act (relating to the energy conservation for schools and hospitals; 42 U.S.C. §6371 *et seq.*);

(d) The National Energy Extension Service and Conservation Act (relating to the promotion of conservation by small businesses and individuals; 42 U.S.C. §7001 *et seq.*); and

(e) The Low-Income Home Energy Assistance Act of 1981 (relating to assisting the poor with home utility bills; 42 U.S.C. §8621 *et seq.*);

and (4) such other restitutionary programs as may be approved by the District Court. Exhibit J exemplifies the programs approved by DOE and referenced above.

iii. *Administrative Expenses.* Each State shall be entitled to expend for administrative expenses up to the amounts permitted by Federal legislation or regulation governing federally funded programs comparable to those identified in Paragraph II.B.3.f.ii and, where there is no such Federal legislation or regulation, up to five percent of the funds allocated pursuant to Exhibit H. Administrative expenses shall include the payment or reimbursement of attorneys' fees, expert witness' fees, contractual obligations and other related costs incurred in connection with pursuit of the State's Alleged Crude Oil Violations claims. The Attorney General of a State shall designate, by written notice filed with the disbursing official, the amount and manner of direct disbursements, if any, for payment or reimbursement of such litigation expenses.

iv. *Reporting of Expenditures.* At least 30 days prior to the expenditure of funds or permissible payments under this Agreement, each State shall submit a report to the District Court in M.D.L. 378 and to the Secretary of Energy identifying the programs or payments for which such funds will be expended. Within 30 days after the close of its fiscal year, each State shall submit a report to the District Court in M.D.L. 378 and to the Secretary of Energy concerning the uses for which the funds received under this Agreement have been expended and the amounts expended for each use, until all funds shall have been expended.

[redacted] Funds to be disbursed to DOE pursuant to this Agreement may be transmitted by check or by wire transfer to the Controller, DOE. Funds disbursed to or retained by DOE shall be subject to the further instruction of the Secretary, DOE, or his designee, for deposit in the U.S. Treasury or for such purpose as he may direct, consistent with law and this Agreement.

C. **The Set Aside**

1. *Pending Litigation.* The Parties recognize that there is certain litigation now pending in the District Court which is not presently part of M.D.L. 378 but which involves the same crude oil miscertifications as those in M.D.L. 378. Specifically, *Kerr-McGee Corporation v. Gulf Oil Corporation*, Case No. 84-1061, and *Total Petroleum Corporation v. Muskegon Oil Company*, Case No. 85-1968-T, involve claims by first purchasers of the miscertified stripper oil under Section 210 of the Economic Stabilization Act of 1970, 12 U.S.C.A. §1904 (note) (hereinafter the ESA).

2. *Escrow Set Aside.* On the date of the Approval Order and prior to any distribution hereunder, $30 million for *Kerr-McGee v. Gulf*, and $10 million for *Total v. Muskegon*, of the M.D.L. 378

Escrow shall be set aside and retained in escrow, together with interest thereon, to satisfy any final judgment obtained by the plaintiffs in either of the above mentioned cases in the event the District Court rules in M.D.L. 378 that such judgment should be satisfied directly or indirectly out of such funds; provided, however, that this set aside does not compromise or otherwise preclude any Party hereto from maintaining that such judgment should not be satisfied directly or indirectly out of such funds; and provided further that this paragraph shall confer no standing in those cases on any Party which it would not otherwise have. Set aside funds not used to satisfy any such final judgment shall be deemed to be funds deposited in the M.D.L. 378 Escrow after the date of the Approval Order.

3. *Future Set Asides.* In the event that any Party (1) was a party to M.D.L. 378; (2) was dismissed from that litigation; (3) withdrew funds from the M.D.L. 378 Escrow in connection with such dismissal; and (4) hereafter becomes a party to M.D.L. 378 and repays the previously withdrawn funds to the M.D.L. 378 Escrow plus the amount of uncontested interest, then a sufficient amount of the repaid funds shall be set aside by the District Court to satisfy any Section 210 ESA claim asserted in litigation prior to December 1, 1985 against that Party which involves the same crude oil miscertifications as those in M.D.L. 378 to the same extent and with the same limitation as in Paragraph II.C.2. Such repayment shall not be deemed to affect any dispute which may exist as to any additional amount which may be required to be paid into the M.D.L. 378 Escrow by that Party.

## III. WAIVERS, RELEASES AND EXCLUSIONS

### A. Waivers and Releases

1. *Release of Claims to Crude Oil Funds.* Subject to Paragraphs II.B.1 and 2 and effective upon the Payment Date, the Parties other than DOE and the States release, waive, and agree to withdraw any claims before any Federal or state court or agency, including the District Court in M.D.L. 378 (except any claims specifically excluded in Paragraphs II.C, III.A.4-5, III.B.1-10, IV.A and V.G): (a) against funds which have been or will be paid to satisfy compliance or enforcement actions (including declaratory actions) brought or to be brought based on Alleged Crude Oil Violations, including recoveries of such funds (i) within DOE's control, or (ii) in escrows created or to be created by DOE, any court or agency, and (b) against the orders or agreements by which such funds have been or will be created or maintained. As to the funds described in Paragraph II.B and Part IV of this Agreement, all Parties waive and release any claim other than claims under this Agreement, to: (a) the funds disbursed or to be disbursed to or retained by DOE, except those claims specifically excluded in Paragraph V.G; and (b) the funds disbursed or to be disbursed to the States.

2. *Refiners Release.* Prior to distribution by the Refiners Escrow Agent, the Refiners Escrow Agent shall secure from each Refiner receiving funds hereunder the waiver and release in the form set forth in Attachment A to the Refiners Escrow Agreement (hereinafter the Refiners Release). The Parties agree that the Refiners Distribution and the waiver and release of claims to funds covered by Parts II and IV hereof shall not be affected by Part V.

3. *Other Releases.* As a condition to receiving any payment from their respective Escrows, each Reseller, Retailer, Airline, Co-op, Surface Transporter and Utility claimant, seeking payment from such an Escrow shall execute and deliver the waiver and release pertinent to it, including a waiver and release of all claims which a Party waives under Paragraph III.A.1, in the form set forth in Exhibits B, C, D, E, F or G hereto, which shall be deemed to be effective upon the Payment Date. Upon receipt of any payment from their respective Escrows each Reseller, Retailer, Airline, Co-op, Surface Transporter and Utility claimant except as to claims excluded in Paragraphs III.A.5, III.B.6, and V.G, shall also withdraw all covered claims for funds based upon Alleged Crude Oil Violations, except as otherwise excluded, pending before any court or Federal agency. Such waiver and release, however, shall not affect the right of Reseller, Retailer, Airline, Co-op, Surface Transporter and Utility claimants to any future payments from their respective Escrows.

4. *Certain Claims Reserved.* Nothing in this Agreement shall be construed or shall constitute a release of any Reserved Offset Claim or Reserved Claim as defined in and reserved under

Paragraphs (B) or (E), respectively, of the Refiners Release and made in any pending or future litigation or proceeding.

5. *Section 210 Claims.* Nothing in this Agreement or in any release executed pursuant hereto shall waive or release any claim in private litigation under Section 210 of the ESA by a Party (or Person who files a claim and signs a release pursuant to this Agreement or any Exhibit hereto) against a Person who is not or does not become a Party or a claimant. Effective upon the Payment Date all Parties to this Agreement waive and release as to each other any claims or actions which have been or may be brought pursuant to Section 210 of the ESA seeking recovery for Alleged Crude Oil Violations, except (a) claims, defenses, counterclaims and claims of offset reserved in Paragraph III.A.4; (b) claims asserted by Refiners as first purchasers in private litigation commenced prior to December 1, 1985 involving claims of overcharges in first sales of crude oil (other than any such claim based upon the effect or impact or influence upon the Entitlements Program resulting from the improper certification of crude oil under the Crude Oil Regulations which is not excluded and excepted in Paragraphs (B) and (E)-(R), both inclusive, of the Refiners Release); and (c) all claims asserted prior to December 1, 1985 pursuant to Section 210 of the ESA by the parties in *Kern Oil & Refining Co. v. Tenneco Oil Co.*, Nos. CV 81-3253 LEW, CV 82-6875 (C. D. Cal.); provided that the reservation in this Paragraph of any such private action and recovery under Section 210 of the ESA shall in no way affect the waiver of claims to funds set forth in Paragraph III.A.1 of this Agreement, and provided further that this Paragraph shall in no way affect claims brought by DOE in any such action.

6. *Amoco.* Provided Amoco becomes a Party, and effective upon the Payment Date, all other Parties waive and release any claims or actions which have been or could have been brought pursuant to Section 210 of the ESA, or otherwise, relating to Alleged Crude Oil Violations based on Amoco's pricing of injection well crude oil refined by Amoco, which had never been sold to, or transferred to, a third party (self-refined crude oil), or relating to DOE's exercise of its enforcement discretion in resolving DOE's claims for Alleged Crude Oil Violations pertaining to Amoco's self-refined crude oil, except claims, defenses, counterclaims or claims of offset reserved in Paragraphs III.A.4 and III.A.5.

7. *Consumers Power.* If Exxon becomes a Party, on the Payment Date, all Parties, and any Affiliates of any Party, which are plaintiffs or intervenors in *Consumers Power Company, et al. v. Exxon Corporation,* Civil Action No. H83-0610 (N.D. Ind.), shall dismiss their complaints in that litigation, with prejudice.

**B. Exclusions**

1. *DOE v. Hunt.* Except as provided in Paragraph (G) of the Refiners Release, the Parties specifically do not compromise their claims, counterclaims, defenses, rights to intervene or other rights asserted prior to December 1, 1985, in *DOE v. Hunt*, Nos. 5-101, 5-102 (Em. App.), with respect to any funds heretofore paid or deposited in escrow for disposition pursuant to a final judgment in such action, except that, once the claims, counterclaims and defenses of the parties in that action are resolved or settled and satisfied, distribution of any funds remaining in escrow shall, with the approval of the court, be governed by this Agreement.

2. *Diamond Shamrock.* Except as provided in Paragraph III.A.6 hereof and, as to Refiners, Paragraph (G) of the Refiners Release, the parties to such litigation specifically do not compromise their claims, counterclaims, defenses, rights to intervene or other rights as against one another asserted prior to December 1, 1985, in *Diamond Shamrock Refining and Marketing Co. v. Standard Oil Co.*, Civil Action No. C2-84-1432 (S.D. Ohio), or with respect to any funds heretofore paid or deposited in escrow for disposition pursuant to a final judgment in such action except that, once the claims, counterclaims and defenses of the Refiners in that action are resolved or settled and satisfied, distribution of any funds remaining in escrow shall, with the approval of the court, be governed by this Agreement.

3. *Citronelle.* This Agreement also specifically excludes (a) any amounts held in escrow pursuant to any administrative or court order in existence as of the date of this Agreement in *In Re Three Forty One (341) Tract Unit of the Citronelle Field*, OHA Case Nos. BEN-0078, *et al.*; which may be refunded or paid to Refiners pursuant to adjudication or settlement of said matters before OHA and

(b) any amounts previously held in escrow pursuant to such orders or any other funds at issue in such matters which may be refunded or paid to Refiners; and the Parties specifically do not compromise their claims, counterclaims, defenses, rights to intervene or other rights asserted prior to December 1, 1985, in *Exxon Corporation, et al. v. DOE, et al. (The 341-Tract Unit of the Citronelle Field)*, No. 81-25 MMS or *Texaco, Inc., et al. v. DOE, et al.*, No. 81-99 MMS (D. Del.), with respect to funds which may be in dispute or in issue in those proceedings. Notwithstanding the exclusion from this Agreement of the funds described in the preceding sentence, no purchaser of crude oil from the 341 Tract Unit of the Citronelle Field shall hereafter have any liability under any statutes or regulations administered by or orders issued by DOE with respect to, or suffer any detriment as a result of, the issues and claims contained in those cases and decisions referenced by the following citations: OHA Case Nos. BEN-0078 (7 DOE ¶81,140); DEE-7746, HED-0079 (10 DOE ¶81,027); and BEX-0180 (9 DOE ¶82,509). Any and all such existing liabilities are forever extinguished.

4. *Gulf/Cities.* Nothing in this Agreement shall in any way apply to or in any way limit any claims, counterclaims, affirmative defenses or any other contentions of the parties in any litigation arising out of or relating to Gulf's 1982 proposed merger with Cities Service Company or Gulf's tender offer for or purchase of Cities Service Company stock in 1982; provided that nothing in the reservation of such action shall in any way affect the waiver and release of claims to the funds covered elsewhere in this Agreement.

5. *Ashland.* Nothing in this Agreement shall limit the claims of Ashland Oil Inc. left open by TECA in *New York Petroleum Corp. v. Ashland Oil, Inc.*, 757 F.2d 288 (Em. App. 1985), as to the funds in that case.

6. *Getty/Sohio.* The matters in *Getty Oil Co.*, OHA Case No. HRR-0074 (and related cases), concerning the yet undetermined issues of liability remanded by the District Court in *Getty Oil Co. v. DOE*, C.A. No. 77-434 (D. Del.), are excluded from this Agreement, provided, however, that to the extent the funds arising out of such matters are determined to be Alleged Crude Oil Violations funds, the provisions of paragraph IV.B hereof shall apply.

7. *Other Funds Not Affected.* Nothing in this Agreement may be construed to adversely affect the right of any Party to retain any Alleged Crude Oil Violation funds which that Party has received or has heretofore become entitled to receive pursuant to a final agency or court order, except that funds held in escrow by DOE for restitutionary redistribution are subject to this Agreement unless elsewhere otherwise provided in this Agreement. DOE and the States do not waive or release any claim to funds returned to a Party which (a) was a party to M.D.L. 378; (b) was dismissed from that litigation; and (c) withdrew such funds from the M.D.L. 378 Escrow in connection with such dismissal. Nothing in this Agreement shall prevent any Party in any Alleged Crude Oil Violation litigation from asserting a claim (other than a claim that the measure of liability for an overcharge for crude oil is different than the excess of the actual price received above the applicable ceiling price under the Crude Oil Regulations) that funds have been deposited erroneously in an escrow in that litigation in excess of that Party's actual liability so long as such funds remain undistributed from such escrow or such claim is asserted as an offset to a claim that additional monies should be paid into such escrow.

8. *Hawkins Field.* This Agreement shall have no effect on the distribution of the funds to the States in *United States v. Exxon Corp.*, 561 F. Supp. 816 (D.D.C. 1983), *aff'd*, 773 F.2d 1240 (Em. App. 1985), *cert. denied*, 54 USLW 3495 (Jan. 28, 1986) (Nos. 85-429 *et al.*), provided, however, (a) nothing in this Agreement shall in any way affect the rights, if any, of Exxon to seek reversal, revision or reconsideration of the judgment of the district court entered in that case, and (b) if such district court judgment is reversed or set aside by the Supreme Court, then in such event Exxon's execution of this Agreement or of the Refiners Release shall not affect Exxon's rights, if any, in such litigation including, without limitation, its claims, if any, to recover funds paid by Exxon in that litigation, except only to the extent, if any, that any such claim or right may be affected or limited by the provisions of Paragraph (B) of the Refiners Release.

9. *Department of Interior.* Nothing in this Agreement shall limit by a Party any claim against the United States Department of Interior which claim arises out of or is related to Alleged Crude Oil Violations in sales of crude oil by the United States Department of Interior.

10. *Tertiary Incentive Claims.* Nothing in this Agreement shall limit any claim or defense which is preserved under Paragraph (R) of the Refiners Release by a Party for or against recovery of Tertiary Incentive Revenue (as defined in the Tertiary Incentive Program regulations) the Tertiary Incentive Program regulations, originally appearing in 10 C.F.R. §212.78 and thereafter amended.

## IV. OTHER ALLEGED CRUDE OIL VIOLATIONS PROCEEDINGS

**A. Pending and Future DOE Actions.**

1. *Pending DOE Actions.* Except for the matters which are settled herein, DOE intends, and retains full authority, to continue to prosecute and seek appropriate restitutionary remedies for unresolved alleged violations. The defenses assertable by any party in such actions shall in no way be impaired or otherwise affected by this Agreement or any waiver and release executed pursuant hereto (except insofar as any such defense may assert a restitutionary right to recover, as an injured party, Alleged Crude Oil Violations funds paid or to be paid by others, or by such party in any other action, and held by DOE or a court or otherwise subject to this Agreement that has otherwise been waived and released under this Agreement). Funds attributable to injection well issues paid or escrowed or to be paid or escrowed by a former party to M.D.L. 378 shall be deemed to be M.D.L. 378 Escrow funds and deposited therein as of the date of such payment or escrow, whether or not paid into the M.D.L. 378 Escrow. In those instances where DOE proposes to enter into a settlement regarding an Alleged Crude Oil Violation, the States will be accorded the courtesy of reasonable notice by DOE of the amount to be recovered prior to the actual signing of such proposed settlement by any of the parties thereto. Nothing in this Paragraph shall in any way affect claims pursuant to Section 210 of the ESA which are reserved under Paragraph III.A.5 of this Agreement.

2. *Future DOE Actions.* With the sole exception set forth in Paragraph II.A.4, nothing in this Agreement shall be read or construed to limit or render reviewable the exercise of DOE's prosecutorial discretion in determining the appropriate action to take, if any, with regard to any enforcement matter. Further, nothing in this Agreement shall be read or construed to impose any obligation or duty upon the DOE regarding the enforcement or non-enforcement of its regulations, and it remains solely in the DOE's discretion to determine whether an enforcement proceeding should be initiated, settled, pursued on particular terms or terminated.

**B. Pending and Future Proceedings.** DOE and the States agree:

1. *Modification of Policy.* In order to carry out its remedial authority under the ESA and EPAA, within 20 days following the date of the Approval Order, DOE will issue a modification of the Statement of Restitutionary Policy concerning Alleged Crude Oil Violations issued on June 21, 1985 (50 Fed. Reg. 27400; July 2, 1985). DOE will publish that modification (hereinafter the Modified Policy) in the Federal Register. The Modified Policy will state that the policy of DOE is to process applications for refunds pursuant to existing Subpart V regulations and that in such administrative proceedings involving Alleged Crude Oil Violations, OHA will continue to require that each claimant must affirmatively demonstrate that it has been injured by the alleged violation and that it should therefore receive a refund. *See e.g. Office of Special Counsel/Tenneco Oil Co.*, 9 DOE ¶82, 538 at 85,206 (1982). The Modified Policy will state that individuals claiming such injury may file claims but OHA will not accept claims on behalf of classes, associations or trade groups. Nothing in the Modified Policy will preclude a claimant from attempting to prove injury through the use of econometric evidence of the type that was submitted in the Stripper Well evidentiary proceedings before the OHA nor preclude OHA from using the findings contained in the Report of the Office of Hearings and Appeals, *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., filed June 21, 1985). Nothing contained herein may be construed to amend the Subpart V regulations.

2. *Distribution of Future Funds.*

a. *Application of Policy.* The Modified Policy will also provide that, as to funds (other than the M.D.L. 378 Escrow and the DOE/Amoco Stripper Fund) for which those Persons ultimately affected by the Alleged Crude Oil Violations cannot be identified, it will be DOE's policy to exercise its remedial authority, or to recommend to any court that the court exercise its remedial authority, by paying 50 percent of such funds to the DOE, and 50 percent to the States in the proportions set forth herein on Exhibit H. The Modified Policy will provide that all funds distributed to the States (including interest earned on the funds following their distribution to the States) shall be applied to benefit petroleum consumers in the manner described in Paragraph II.B.3.f. The States' programs shall be limited to the restitutionary programs approved by OHA in Subpart V proceedings (*see, e.g.,* Exhibit J), those referenced in DOE's Chevron consent order, the types of activities identified in the legislation enumerated in Paragraph II.B.3.f.ii(3), and any others approved by a court with appropriate jurisdiction or OHA. The Modified Policy also will provide that each State shall be entitled to expend for administrative expenses, including the payment or reimbursement of attorneys' fees, expert witness' fees, contractual obligations and other related costs incurred in connection with the States' claims with respect to Alleged Crude Oil Violations, up to the amounts permitted by Federal legislation or regulation governing comparable Federally funded programs and, where there is no such Federal legislation or regulation, up to 5 percent of the funds allocated pursuant to Exhibit H.

b. *Payment Mechanism.* The payment mechanism set forth herein shall be the exclusive means of achieving distribution of the funds. The Attorney General of each State shall deliver to the Governor of such State, for the Governor's execution, a Letter of Assurance in the form set forth in Exhibit I to this Agreement. Within 20 days following the date of the Approval Order, the Attorney General shall deliver to the Administrator of ERA, DOE, such Letter of Assurance signed by the Governor of such State. Delivery to the Administrator of ERA, DOE, of the signed, duplicate original Letter of Assurance required under Paragraph II.B.3.f of this Agreement shall constitute delivery of the Letter of Assurance required by this Paragraph. At the same time, the Attorney General of each State shall designate in writing to the DOE whether disbursement shall be by check or by wire transfer, and if by wire transfer, shall provide instructions for the transmittal of funds. Disbursement of all funds to such State thereafter shall be in the form designated by the Attorney General and made payable to "The State of _____". Physical delivery of a check shall be made by DOE to the Attorney General and, in the case of a wire transfer, advance written notice of the date and amount of the wire transfer shall be delivered to the Attorney General prior to the sending of each wire transfer. Upon receipt of each check or wire transfer notice, the Attorney General shall deliver it promptly to the Governor of such State. As used in this Paragraph IV.B.2, "Attorney General" means the Attorney General of a State, or his or her duly authorized representative, and includes any other State official who intervened in M.D.L 378 prior to the execution of the Memorandum of Understanding of January 24, 1986 preceding this Agreement. In the case of any State where an official other than or in addition to the Attorney General intervened in M.D.L 378 prior to January 24, 1986, all references in this Paragraph IV.B.2 to the Attorney General shall mean the Attorney General jointly with such official. The Modified Policy will not require any procedures or standards other than those set forth in Paragraph II.B.3.f of this Agreement.

3. *Modification of DOE Order.* At the same time the Modified Policy is issued, DOE will take the steps necessary for issuance of an Order modifying the Order Implementing Departmental Policy Regarding Crude Oil Overcharges issued by OHA on June 21, 1985 (50 *Fed. Reg.* 27402, July 2, 1985) to provide that DOE's Modified Policy will be followed in all Subpart V proceedings involving Alleged Crude Oil Violations presently or hereafter coming under its jurisdiction.

4. *Expeditious Issuance of Orders.* DOE also will take the steps necessary to assure the expeditious issuance of orders or the filing of appropriate recommendations in all pending cases involving Alleged Crude Oil Violations (other than M.D.L. 378), including but not limited to those listed in Exhibit K to this Agreement, except as to such cases where the DOE is not a party and except in cases specifically exempted from this Agreement, in order to distribute the funds subject to those proceedings

pursuant to DOE's Modified Policy. With respect to such funds attributable to Alleged Crude Oil Violations presently in escrow under the control of the ERA, or which shall come under its control or be subject to agreements entered into by it in the future, petitions for the implementation of Subpart V proceedings or other actions to accomplish the distribution of such funds called for in this Agreement will be initiated as soon as practicable following the date of the Approval Order.

5. *Modification of PRO's, etc.* To the extent any Order or Proposed Order with respect to an Alleged Crude Oil Violation provides for a different disposition of funds than provided by this Agreement, including DOE's Modified Policy, DOE will promptly take all steps available to implement, with respect to such Orders or Proposed Orders, the procedures and policies set forth herein; provided, however, that nothing herein shall affect any other portions of such Orders or Proposed Orders. Nothing in this Paragraph shall apply to the Amoco consent order insofar as that order applies to counting injection wells to qualify a property as a stripper well property.

6. *Future Subpart V Proceedings.* DOE further agrees that in all Subpart V proceedings involving Alleged Crude Oil Violations, OHA expeditiously will complete the processing of first stage refund claims and will issue the final decisions and orders disbursing all funds as to which those Persons ultimately affected cannot be identified pursuant to DOE's Modified Policy. OHA may reserve a reasonable portion of funds from each such proceeding to satisfy potentially provable claims of identifiable injured claimants who have not waived their claims, but such reserve shall not exceed 20 percent of the monies in such proceeding and amounts in excess of the reserve shall be distributed while awaiting completion of the first stage refund proceedings. The percentage of the reserve will be altered within six months following the date of the Approval Order and periodically thereafter in subsequent proceedings to reflect the amount of reserve that is warranted and sufficient to provide adequate funding for eligible first-stage claims, and will be lowered as justified by claims experience as a consequence of this Agreement.

7. *Disbursement of OHA Funds.* Within 5 working days following issuance of the Modified Policy provided for in Paragraph IV.B.1, OHA will issue appropriate orders directing the disbursement of all Alleged Crude Oil Violations funds under DOE's control and available for distribution, (other than the M.D.L. 378 Escrow and the DOE/Amoco Stripper Fund) in an amount not less than $100 million, in equal shares to DOE and to the States, provided that no amount shall be distributed to a State until such State has submitted the Letter of Assurance required by Paragraph IV.B.2.b. Funds withheld from a State solely because of a failure to submit such a Letter of Assurance shall be deemed to have been disbursed to that State for the purposes of the remainder of this paragraph and an equal amount from the Assurance Fund shall be disbursed to DOE. If OHA issues such directive within the prescribed time and an amount of $50 million or more is disbursed to the States within 5 working days thereafter, the $50 million Assurance Fund from DOE's share of the M.D.L. 378 Escrow provided for in Paragraph II.B.3.e shall be disbursed to DOE. If OHA issues such directive within the prescribed time and an amount less than $50 million is disbursed to the States within 5 working days thereafter, an equal amount from the $50 million Assurance Fund from DOE's share of the M.D.L. 378 Escrow provided for in Paragraph II.B.3.e shall be disbursed to DOE and the balance of said reserve shall be disbursed to the States without any repayment obligation. If OHA does not make any such distribution to the States, said $50 million Assurance Fund shall be disbursed to the States without any repayment obligation. Should an amount be paid to the States out of said $50 million Assurance Fund as provided above and in Paragraph II.B.3.c, for purposes of the Advance Fund repayment to be satisfied from incremental OHA disbursements, as provided in Paragraph II.B.3.c, OHA will be deemed to have made the required initial disbursement of $100 million. Disbursement of the DOE/Amoco Stripper Fund pursuant to this Agreement shall be deemed to constitute an appropriate exercise of the discretion of OHA and DOE under 10 C.F.R. Part 205, Subpart V but shall not be deemed a payment in satisfaction of OHA's $100 million obligation under this paragraph.

8. *Implementation in Other Cases.* As to pending or future government enforcement cases or declaratory judgment actions involving Alleged Crude Oil Violations, DOE will on the date of the

Approval Order or at the earliest practicable date thereafter file the necessary motions, recommendations or other documents seeking immediate distribution and/or order of distribution in accordance with this Agreement. If any Person files suit to prevent or contest issuance of any notice, order, recommendation or payment under this Agreement, DOE will contest any such suit and will distribute the funds as provided in this Agreement unless barred from doing so by judicial order.

9. *Future Policy.* Consistent with the guidelines adopted by the Attorney General of the United States, "Departmental Policy Regarding Consent Decrees and Settlement Agreements", March 13, 1986, this Agreement does not limit or restrict the discretion of DOE to issue or adopt any restitutionary policy concerning future Alleged Crude Oil Violations; provided, however, in order to resolve the remedial aspects of pending administrative and judicial proceedings involving Alleged Crude Oil Violations, that the Modified Policy will continue to apply to such proceedings pending on June 1, 1986.

## V. ENTITLEMENTS LITIGATION

A. **Payments of Entitlements Settlement Funds.** The Refiners agree to allocate the Refiners Distribution of $298,514,000 to settle the pending litigation involving the January 1981 and Entitlements Adjustment Notices and certain other Entitlements Program claims as more fully provided in the Refiners Release to be executed pursuant to the Refiners Escrow Agreement. All Refiners entitled under Paragraph 5 or 8 of the Refiners Escrow Agreement to payment of money from the Sellers Account or Buyers Account, respectively, shall be paid by the Escrow Agent pursuant to such Paragraphs (hereinafter the Entitlements Disbursement) after disbursement of the Refiners Distribution or the Entitlements Disbursement funds to the Refiners Escrow Agent when (1) the Refiners Release is properly executed by that Refiner and delivered to the Escrow Agent within the time prescribed by the Refiners Escrow Agreement; (2) such Refiners Release is properly executed by each Refiner designated in Attachment C to the Refiners Escrow Agreement (hereinafter the Attachment C Releases) and delivered to the Escrow Agent within the time prescribed by the Refiners Escrow Agreement; and (3) this Agreement (a) receives Final Court Approval or (b) an order is issued pursuant to Paragraph II.B.1 of this Agreement permitting immediate disbursal to Refiners from the Refiners Escrow of the Refiners Distribution or the Entitlements Disbursement, whichever of (a) or (b) is the earlier (hereinafter Final Approval).

B. **Vacation of Entitlements Judgment.** Upon commencement of the Entitlements Disbursement, the parties agree jointly to take all appropriate steps to vacate the judgment of the district court in *Texaco Inc., et al. v. Department of Energy, et al.*, 604 F. Supp. 1493 (D. Del. 1985), appeal pending Nos. 3-44 through 3-49 (Em. App.) (hereinafter *Texaco v. DOE*). If for any reason the judgment of the district court in *Texaco v. DOE* is not vacated pursuant to this Paragraph and a judgment on the merits in *Texaco v. DOE* becomes final and not subject to further appellate review (including review by the U.S. Supreme Court), such final judgment will herein be called a *Final Texaco Judgment*. If a *Final Texaco Judgment* reverses the judgment of the district court therein and requires that no further entitlements notice be issued by DOE, the Parties to the cases other than *Texaco v. DOE* listed in Paragraph V.E. below agree to dismiss such cases with prejudice.

C. **Acceptance of Funds.** Except as provided in Paragraphs III.A.4, III.B.3 and V.G, upon commencement of the Entitlements Disbursement, and regardless whether a *Final Texaco Judgment* is issued, Refiners agree to accept such disbursements and the provisions of such Refiners Escrow Agreement as full accord and satisfaction of every claim relating to DOE's operation of the Entitlements Program for all periods covered by price and allocation controls including, but not limited to, the unissued Draft January 1981 List and Draft Cleanup List and DOE administrative actions.

D. **Buyers Relinquishment of Claims.** Effective upon commencement of the Entitlements Disbursement, and regardless whether a *Final Texaco Judgment* is issued, Refiners designated as Buyers on Attachment D to the Refiners Escrow Agreement relinquish any and all claims to the Sellers Account (other than any funds in the Sellers Account which are required to be transferred to the General Account under the provisions of the Refiners Escrow Agreement); provided, however, that in the further event that (1) a *Final Texaco Judgment* is issued which requires DOE to issue any further

Entitlement Notices, and (2) a Seller on such notices, which has not executed and delivered an acceptable Release pursuant to this Agreement, collects any monies from any Buyer which has executed and delivered an acceptable Release within the Claims Period provided for in the Refiners Escrow Agreement based on that Seller's entitlement sale right on such notices, then that Buyer will be entitled to recover from the Sellers Escrow the amount paid by that Buyer to that Seller, but no more than is allocated to that Seller on Attachment B to the Refiners Escrow Agreement and subject to the terms of Paragraph 6 of the Refiners Escrow Agreement.

E. **Withdrawal of Other Entitlements Litigation.** Within 10 days after commencement of the Entitlements Disbursement, all litigation, other than *Texaco v. DOE*, except as specifically excluded or reserved by Paragraphs III.B.3 and V.G, initiated by any Refiner against DOE involving any issue arising out of or involving the Entitlements Program shall be withdrawn or dismissed with prejudice and no further litigation against DOE involving any aspect of the Entitlements Program either past or future shall be instituted in any State or Federal court or agency of the United States Government, except as permitted in Paragraphs (A), (F) and (J) of the Refiners Release. Cases to be dismissed or withdrawn with prejudice shall include but not be limited to the following: *Ashland Oil v. DOE*, (W.D. Ky., Dkt. No. 81-0187L(B)); *Ashland Oil, Inc.* (FERC Dkt. No. RA 83-3-000); *Marathon Oil v. DOE* (N.D. Ohio, Dkt. No. 81-634); *Mobil Oil v. DOE* (N.D.N.Y., Dkt. No. 81-CV-340); and the cross claim of Ashland Oil Company in *Texaco v. DOE*, provided that nothing in this Agreement shall restrict or limit (1) a claim of an Entitlements Program violation by DOE except as provided in Paragraph V.F or (2) any challenge or defense by a Refiner to such a DOE claim.

F. **Termination of Entitlements Actions by DOE.** After commencement of the Entitlements Disbursement and vacation of the judgment in *Texaco v. DOE*, DOE agrees that it shall not order the purchase or sale of any further entitlements, either through entitlements lists or as a result of any exception decisions, and shall not institute or voluntarily participate in any judicial or administrative proceedings pertaining to the publication of any further entitlements notices. After commencement of the Entitlements Disbursement and vacation of the judgment in *Texaco v. DOE*, DOE shall take no action whatsoever pertaining to entitlements obligations based on runs-to-stills or crude oil receipts after December 31, 1980, and further agrees to take no such action on the basis of any entitlements report filed by a Refiner with DOE for any reporting period after December 31, 1980, including reports filed with respect to the Entitlements Adjustment Notice (10 C.F.R. §211.69).

G. **Preservation of Entitlements Claims.** This Agreement specifically excludes and preserves any and all claims by a Refiner applicant against DOE for payment by DOE of (i) exception relief from the crude oil Entitlements Program including, but not limited to, exceptions or adjustments based on or pursuant to *Delta/Beacon* or Naptha Entitlements relief, which has been or may be granted by the ERA, OHA, the Federal Energy Regulatory Commission, or any court or (ii) any adjustments or changes to the draft January 1981 Notice or Entitlements Adjustment Notice. This Agreement also specifically excludes any and all claims by a Refiner against DOE for interest on such adjustment or change or exception relief and for attorneys' fees and costs incurred in connection with such relief. DOE agrees to provide all funds necessary to fund and pay all amounts determined to be due any Refiner pursuant to or as a result of any such adjustments or changes or relief including such interest and attorneys' fees, if awarded, out of its share of funds under this Agreement, or out of funds (other than funds resulting from violations or alleged violations except Alleged Crude Oil Violations) to which no other Party has a claim by virtue of this Agreement. DOE's obligations shall not affect the amount or timing of any payment to any other Party made pursuant to this Agreement.

H. **Entitlements Settlement Contingency.** In the event of a *Final Texaco Judgment* which requires DOE to publish entitlements notices, the DOE reserves the right to recoup from any Refiner which received exception relief funded pursuant to Paragraph G, the amount of that exception relief to the extent such entitlements notice provides a duplicate funding of such relief by affecting the entitlements position of such Refiner, and provided further that the Release executed by each Refiner shall

remain effective, in accordance with and subject to the terms, provisions and exceptions set forth therein.

## VI. MISCELLANEOUS

A. **Agreement Binding.** The provisions of this Agreement, which shall include the Exhibits hereto as though fully set forth in the text hereof, shall be binding upon (1) all the Parties hereto and (2) all Persons executing waivers or releases pursuant to this Agreement, and with respect to such *Parties and Persons, their Affiliates, subsidiaries, member-patrons and their owners, and their member-patrons* and their owners, officers, agents, attorneys and any other Persons while acting under their direction or control. As used herein, an "Affiliate" of any Party includes any Person (and the successors and assigns of such Person) which controls, is controlled by or is under common control with such Party. For this purpose, "control" means the power (existing on the Payment Date), by contract, partnership agreement, stock ownership or otherwise, to control the policies and business operations of a Person, including, without limitation, the ownership, directly or indirectly (through one or more intermediaries), of shares of stock having the right to elect a majority of the Board of Directors of a corporate Person, or the ownership (on the Payment Date), directly or indirectly (through one or more intermediaries), of more than 49 percent of a Person.

B. **Support of Agreement.** The Parties to this Agreement shall support approval of all of its provisions, shall take all steps and make all filings necessary to its implementation at their own expense or from their respective Escrow funds. DOE will undertake the defense of this Agreement in response to any litigation, in which DOE is named as a party, challenging this Agreement or any action required to be taken by DOE pursuant thereto. However, DOE's agreement to this provision does not circumscribe the discretion of the Attorney General to authorize or preclude the filing of particular pleadings or the making of arguments by DOE in any litigation, and this Agreement shall not create any right of action against DOE concerning the initiation, continuation or conduct of any litigation. All Parties agree to cooperate (1) in defending this Agreement and (2) in any action required to be taken pursuant thereto in any litigation challenging its validity. All Parties also agree that they will fully support the procedures and policies set forth herein in all present and future proceedings involving Alleged Crude Oil Violations and, to the extent any counsel approving the form and content of this Agreement by signature hereon enters an appearance in any such proceeding, counsel will not oppose or do anything inconsistent with such policies and procedures, the terms of this Agreement or any orders pursuant thereto. Any Party may enforce this Agreement against any other Party but this Agreement confers no such enforcement right upon any non-Party hereto.

C. **Non-Crude Oil Cases.** By its terms, this Agreement (except Part V hereof) applies only to Alleged Crude Oil Violations funds. Nothing in this Agreement shall operate to the detriment of any Party or claimant in a non-crude oil refund case. The Parties agree that in cases involving (1) both Alleged Crude Oil Violations and other violations resulting in refunds or (2) violations, other than Alleged Crude Oil Violations, resulting in refunds, Alleged Crude Oil Violations funds will not be substituted for funds resulting from other violations or vice versa. OHA will continue to utilize its existing adjudicative policies and procedures as to funds involved in non-crude oil cases, *see, e.g., Office of Special Counsel*, 10 DOE ¶85,048 (1982) and *Standard Oil Co. (Indiana)*, 11 DOE ¶85,185 (1983), including the selection of an appropriate second stage restitutionary remedy which reflects the geographical incidence of injury, and OHA will not be prevented from freely exercising this discretionary authority in the future.

D. **Ongoing Formula.** This Agreement constitutes the determination of an ongoing formula for the allocation of second stage Alleged Crude Oil Violations funds between DOE and the States. As a result of this Agreement, the parties now believe there is no need for legislation regarding the disposition of such funds, including legislation that may have been proposed in the past. This Agreement is subject to applicable law.

E. **Standing.** Nothing in this Agreement shall confer, diminish or alter, as a matter of law, the rights of a Party to intervention or standing in any pending or future judicial or administrative proceeding involving Alleged Crude Oil Violations, in which a Party asserts an interest not inconsistent with, and not based upon, the provisions of this Agreement.

F. **No Prejudice.** In the event that this Agreement does not receive Final Court Approval, it shall be null and void and of no force and effect. If this Agreement fails to receive Final Court Approval, the fact that any Party executed this Agreement or any release provided for herein shall not be used for any purpose to prejudice such Party's position in any pending or future litigation or other proceeding. This Paragraph shall not be operative so long as there is continuing litigation seeking approval of this Agreement or an appeal therefrom. Upon Final Court Approval, this Agreement shall remain effective irrespective of the final action in *Texaco v. DOE*.

G. **Captions.** Captions used herein are for convenience only and shall have no substantive effect.

H. **Counterparts.** This Agreement may be executed in several counterparts which shall all be considered one Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST ABOVE STATED.