

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 4:08-cv-2944
v.)	
)	Judge Gray H. Miller
EXPLORER PIPELINE COMPANY)	
)	
Defendant.)	

CONSENT DECREE

Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint against Defendant, Explorer Pipeline Company, on October 2, 2008. The Complaint alleges that Defendant is civilly liable for violation of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1251 et seq., as amended by the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701 et seq. The Complaint seeks civil penalties for the discharge of jet fuel into navigable waters of the United States from defendant’s 28-inch interstate refined petroleum products pipeline at a location near Huntsville, Walker County, Texas, on July 14, 2007. The Complaint alleges that at least 6,568 barrels of jet fuel were discharged from the pipeline. Jet fuel spilled onto the surrounding area and into nearby Turkey Creek. Turkey Creek flows to the Trinity River at the upper reaches of Lake Livingston.

Defendant represents that it replaced the section of pipe that ruptured, completed cleanup of the impacted waters and adjoining shorelines, is cooperating in a joint federal and state natural resource damage assessment, and is performing additional assessment and followup work on its

pipeline, including metallurgical analysis, internal in-line inspection and mapping of the pipeline, confirmation excavations and evaluation of dig results, and pressure cycle analysis, under a Corrective Action Order issued by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration. Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before taking testimony and without adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the United States' claims in this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n). The Court has personal jurisdiction over the Parties to this Consent Decree. Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1395 because the claim arose in this district and Defendant is located and doing business in this district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant, and consents to venue in this judicial district.

II. APPLICABILITY

2. The obligations of this Consent Decree apply to and are binding upon the United

States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

3. No transfer of ownership or operation of the Facility shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented.

4. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

5. Terms used in this Consent Decree that are defined in the CWA, or in regulations promulgated thereunder, shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Complaint” shall mean the complaint filed by the United States in this action.

b. “Consent Decree” or “Decree” shall mean this document.

c. “Day” shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. “Defendant” shall mean Explorer Pipeline Company.

e. “Discharge” shall mean the jet fuel discharge on July 14, 2007 from the Defendant’s 28-inch interstate pipeline near Huntsville, Texas.

- f. “Effective Date” shall have the definition provided in Section IX.
- g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- h. “Facility” shall mean Explorer Pipeline Company’s 28-inch interstate pipeline that runs through Walker County, Texas.
- i. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.
- j. “Parties” shall mean the United States and Explorer Pipeline Company.
- k. “Plaintiff” shall mean the United States.
- l. “Section” shall mean a portion of this Decree identified by a Roman numeral.
- m. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

6. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of three million three hundred thousand dollars (\$3,300,000), plus interest, as a civil penalty. Interest shall accrue from the date on which this Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the date of lodging.

7. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Southern District of Texas. Such monies are to be deposited in

the Oil Spill Liability Trust Fund. The payment shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-07276/1 and shall specify that the payment is made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

8. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in this case, and shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-07276/1, to the United States in accordance with Section VIII of this Decree (Notices) and to:

Stephen C. Ewart
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, Virginia 22203-1804

Commander
United States Coast Guard
Office of Claims and Litigation
2100 Second Street, S.W.
Washington, D.C. 20593-0001

9. Defendant shall not deduct or capitalize the civil penalty paid under this Section in calculating its federal income tax.

V. STIPULATED PENALTIES

10. If Defendant fails to pay the civil penalty and interest required under Section IV (Civil Penalty) when due, Defendant shall pay to the United States a stipulated penalty of fifteen hundred dollars (\$1,500) per Day for each Day that the payment is late. Late payment of the civil penalty and payment of any stipulated penalties shall be made in accordance with payment instructions in Paragraphs 7-8 above. All transmittal correspondence shall state that any such

payment is for late payment of the civil penalty due under this Consent Decree or for stipulated penalties for late payment of the civil penalty, as applicable. Payments of stipulated penalties shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-07276/1 and shall specify that the payments are for stipulated penalties to be deposited into the United States Treasury.

11. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

12. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving a written demand.

13. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

14. Defendant shall not deduct stipulated penalties paid under this Section in calculating federal income tax.

15. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

16. Subject to the provisions of Section VI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for

Defendant's violation of this Consent Decree or applicable law.

VI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

17. This Consent Decree resolves the civil penalty claim of the United States for the violation alleged in the Complaint filed in this action.

18. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in the preceding Paragraph. This Consent Decree shall not be construed to limit the rights of the United States to obtain relief under the CWA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in the preceding Paragraph.

19. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, response or removal costs, natural resource damages, criminal liability, or other appropriate relief relating to the Facility or Defendant's violation alleged in the Complaint, including any proceeding related to any Corrective Action Order issued by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, pertaining to the July 14, 2007, pipeline rupture, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claim that has been specifically resolved pursuant to Paragraph 17 of this Section.

20. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and

maintaining complete compliance with all applicable federal, state, and local laws, regulations, orders, and permits. Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, orders, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of federal, state, or local laws, regulations, orders, or permits.

21. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties that are not party to this Consent Decree, nor does it limit the rights of third parties that are not party to this Consent Decree against Defendant, except as otherwise provided by law.

22. Defendant hereby covenants not to sue and agrees not to assert any claims related to the Discharge, or response activities in connection with the Discharge, against the United States pursuant to the CWA, OPA, or any other federal law, state law, or regulation including, but not limited to, any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund, or pursuant to any other provision of law.

23. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

VII. COSTS

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

VIII. NOTICES

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

As to the United States:

As to the U.S. Department of Justice:
Chief (re: DJ # 90-5-1-1-07276/1)
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-0097 (facsimile)

As to EPA Region 6:
OPA Enforcement Coordinator
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200, 6SF-PC
Dallas, Texas 75202-2733
(214) 665-7447 (facsimile)

Amy Salinas
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200, 6RC-S
Dallas, Texas 75202-2733

As to Defendant:

Curtis L. Craig
Vice President & General Counsel
Explorer Pipeline Company
P.O. Box 2650
Tulsa, Oklahoma 74101

-----simile)

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

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

IX. EFFECTIVE DATE

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

X. RETENTION OF JURISDICTION

29. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of effectuating or enforcing compliance with the terms of this Decree.

XI. TERMINATION

30. After Defendant has completed performance of its obligations required by this Consent Decree, including payment of the civil penalty under Section IV of this Decree and any accrued stipulated penalties under Section V, Defendant may serve upon the United States a written Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

31. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of

this Consent Decree. If the United States agrees that the Decree may be terminated, the United States shall file, for the Court's approval, a joint stipulation terminating the Decree.

32. If the United States does not agree that the Consent Decree may be terminated, the Defendant may petition the Court for relief. Defendant, however, shall not petition the Court until ninety (90) Days after service of its Request for Termination.

XII. PUBLIC PARTICIPATION

33. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree. Defendant consents to entry of this Consent Decree without further notice.

XIII. SIGNATORIES/SERVICE

34. The Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, on behalf of the United States, and the undersigned representative of Defendant certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to the terms of this Decree.

35. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

36. Defendant agrees to accept service of process by mail with respect to all matters

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

XIV. INTEGRATION

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

XV. FINAL JUDGMENT

38. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

This Consent Decree is dated and entered this ____ day of _____, 2009.

UNITED STATES DISTRICT JUDGE
Southern District of Texas

Signature Page to Consent Decree in US v. Explorer Pipeline Company

FOR PLAINTIFF UNITED STATES OF AMERICA:

RONALD J. TENPAS
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

JASON T. BARBEAU
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

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FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

TIM JOHNSON
Acting United States Attorney

KEITH EDWARD WYATT
Assistant United States Attorney
Texas Bar No. 22092900
Federal Bar No. 3480
United States Attorney's Office
Southern District of Texas
P. O. Box 61129
Houston, Texas 77208

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FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

RICHARD E. GREENE
Regional Administrator
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

AMY SALINAS
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200, 6RC-S
Dallas, Texas 75202-2733

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FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building, 2201A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

KELLY K. BRANTNER
Office of Civil Enforcement
Water Enforcement Division
U.S. Environmental Protection Agency
Mail Code 2243A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

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FOR DEFENDANT:

EXPLORER PIPELINE COMPANY

By: _____

CURTIS L. CRAIG
Vice President & General Counsel
Explorer Pipeline Company
P.O. Box 2650
Tulsa, Oklahoma 74101

CHRIS A. PAUL
Joyce & Paul, PLLC
1717 S. Boulder Avenue, Suite 200
Tulsa, Oklahoma 74119-4833

Counsel for Explorer Pipeline Company