

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
THE STATE OF OREGON, acting by and through)	
its Department of Environmental Quality)	
Plaintiff-Intervener,)	Civil Action No.
)	
v.)	CONSENT DECREE
)	
PACIFIC NORTHERN ENVIRONMENTAL)	
CORP., d.b.a. DEDICATED FUELS, INC.,)	
)	
Defendant.)	

I. Background

1. The United States of America ("United States"), by the Attorney General, on behalf of the United States Environmental Protection Agency ("EPA"), has previously filed a complaint ("Complaint") against Pacific Northern Environmental Corp., *d.b.a.* Dedicated Fuels, Inc. ("Defendant") in this Court alleging that the Defendant is liable to the United States under Sections 301(a) and 311(b)(3) of the Clean Water Act ("the Act"), 33 U.S.C. §§ 1311(a) and 1321(b)(3), for a discharge of diesel fuel ("Discharge") that occurred on July 8, 2006. The Complaint alleges that the Discharge occurred when a tanker truck and trailer owned and operated by Defendant rolled over while traveling west near milepost 17 on Highway 38, near Scottsburg, Oregon. The Complaint further

alleges that as a result of the Discharge, approximately 8,274 gallons (197 barrels) of diesel fuel was released to the environment, including the Umpqua River and its adjoining shoreline. The Complaint seeks civil penalties from the Defendant pursuant to Section 311(b)(7) of the Act, 33 U.S.C. § 1321 (b)(7), for causing the Discharge.

2. The State of Oregon ("State") has joined the United States in the Complaint as Plaintiff-Intervener. The State exercises authority over its water resources and has enacted statutory provisions prohibiting the entry of oil into waters of the State and holding any person owning or having control over oil that enters the waters of the State in violation of this prohibition strictly liable for the violation. Or. Rev. Stat. §§ 468B.305 and 468B.310. The State alleges that Defendant's Discharge violated its oil discharge prohibition and seeks civil penalties under Oregon Revised Statutes, § 468.140(3)(a).

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

4. The Defendant does not admit any liability arising out of the transactions or occurrences alleged in this action, but the Defendant does acknowledge that its actions addressed in this Consent Decree shall be deemed a Class I "prior significant action," as of April 12, 2007, for purposes of Oregon Administrative Rule 340-012-0145 and any successor or similar Oregon administrative rules.

NOW, THEREFORE it is Adjudged, Ordered and Decreed:

II. Jurisdiction

5. The Parties agree and this Court concludes that it has jurisdiction over this action under Sections 309(b) and 311(b)(7)(E) of the Act, 33 U.S.C. §§ 1319(b) 1321(b)(7)(E), and 28 U.S.C. §§ 1331, 1345, 1355 and 1367. Venue is proper in the District of Oregon (“District”) under Sections 309(b) and 311(b)(7)(E) of the Act, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395(a). The Defendant acknowledges that it is subject to the Court’s personal jurisdiction in connection with this action. Solely for the purposes of this Decree and the underlying Complaint, the Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District.

III. Parties Bound

6. This Decree applies to and is binding upon the United States, the State, and the Defendant including, without limitation, its successors and assigns. Any change in ownership or corporate status of the Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Defendant’s or its successors’ and assigns’ rights or responsibilities under this Decree.

IV. Definitions

7. Unless otherwise expressly provided herein, terms used in this Decree which are defined in the Clean Water Act, shall have the meaning assigned to them in that Act. In addition:

“Act” means the Clean Water Act, 33 U.S.C. § 1251 *et seq.*

“Day” means a calendar day unless expressly stated to be a Working Day.

“Decree” means this Consent Decree.

“Defendant” means Pacific Northern Environmental Corp., *d.b.a.* Dedicated Fuels, Inc.

“Discharge” means the diesel fuel discharge that occurred from a truck and attached trailer owned and operated by Defendant on July 8, 2006, near milepost 17 on Highway 38, near Scottsburg, Oregon.

“EPA” means the United States Environmental Protection Agency.

“Fund” means the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. § 9509.

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

“Parties” means the Plaintiffs and the Defendant.

“Plaintiffs” means the United States and the State.

“State” means the State of Oregon, acting by and through its Department of Environmental Quality.

“United States” means the United States of America, on behalf of the United States Environmental Protection Agency.

“Working day” shall mean a day other than Saturday, Sunday, or a Federal holiday.

V. Civil Penalties

8. Settlement of Federal Civil Penalties Claim. Within thirty (30) days following entry of this Decree, Defendant shall pay to the United States \$74,272 as a civil penalty.

Payment to the United States shall be to the Oil Spill Liability Trust Fund by cashier's check or certified check referencing Case No. [] (D. Oregon) to the following address:

United States Coast Guard—Oil Pollution
RE: No. [case #] (D. Oregon)
P.O. Box 403427
Atlanta, GA 30384-3427

Defendant shall send notice of payment to EPA and the United States Department of Justice ("DOJ") at the addresses listed in Section XIV (Notices). The notice of payment shall identify: (1) the date and amount of money transferred; (2) the name and address of the transferring bank; (3) this case by name; and (4) Case No. [] (D. Oregon).

9. Settlement of State Civil Penalties Claim. Within thirty (30) days following entry of this Decree, Defendant shall pay to the State \$20,000 as a civil penalty. Payment shall be made by cashier's check or certified check referencing the case name and payable to the "State of Oregon." The check shall be mailed via overnight mail, with notice referring to this action, to:

Business Office, DEQ
811 S.W. Sixth Avenue
Portland, Oregon 97204

10. Interest. In addition to the stipulated penalties set forth in Section VII (Stipulated Penalties) below, in the event Defendant fails to make timely payments of any amounts required under this Decree, including stipulated penalties, Defendant shall pay interest on the unpaid balance. Interest for late payments of the federal and State civil penalties, required under Paragraphs 8 and 9 respectively, shall be at the rate specified in 28 U.S.C.

§ 1961. The interest shall be calculated from the first day following the final due date for these payments (*i.e.*, 31 days after the entry of the Decree), until the entire outstanding balance has been received.

VI. Supplemental Environmental Project

11. Defendant shall implement a Supplemental Environmental Project ("SEP") in accordance with all provisions of Appendix A to this Consent Decree, which is attached hereto and incorporated into this Decree by reference.

12. The SEP shall be completed within 90 days of entry of this Decree.

13. The total expenditure for the SEP shall be not less than \$47,640. Defendant shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

14. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

14.1. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP;

14.2. That, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- 14.3. That the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- 14.4. That for Federal Income Tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- 14.5. That Defendant will not receive any reimbursement for any portion of the SEP from any other person.
15. Defendant shall submit a SEP Completion Report to the United States and the State within 30 days of completion of the SEP. The SEP Completion Report shall contain the following information:
- 15.1. A detailed description of the SEP as implemented;
- 15.2. Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and
- 15.3. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree.
16. Defendant agrees that failure to submit the SEP Completion Report required by Paragraph 15, above, shall be deemed a violation of this Decree, and Defendant shall become liable for stipulated penalties pursuant to this Decree.
17. Defendant agrees that the United States may inspect Defendant's records related to the SEP and the Facility at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

18. In all documents or reports including, without limitation, the SEP Completion Report, submitted to the United States pursuant to this Decree, Defendant shall, by a corporate officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

19. Following receipt of the SEP Completion Report described in Paragraph 15 above, the United States will do one of the following: (i) accept the Report, (ii) reject the Report, notify Defendant, in writing, of deficiencies in the Report, and provide Defendant an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 22 below.

20. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Defendant to EPA in accordance with Paragraph 22.1 below. Schedules herein may be extended based upon mutual written agreement of the parties.

VII. Stipulated Penalties

21. Failure to Pay Civil Penalties. The Defendant shall pay a stipulated penalty to the United States for failure to timely make the full payment required in Paragraph 8 at the rate of one thousand dollars (\$1,000) per day for each day of non-compliance. Payment

of a stipulated penalty for failure to make the payment required under Paragraph 8 shall be in accordance with the payment procedures outlined in Paragraph 8. The Defendant shall pay a stipulated penalty to the State for failure to timely make the full payment required in Paragraph 9 at the rate of one thousand dollars (\$1,000) per day for each day of non-compliance. Payment of a stipulated penalty for failure to make the payment required under Paragraph 9 shall be in accordance with the payment procedures outlined in Paragraph 9.

22. SEP Compliance.

22.1. In the event that Defendant fails to comply with any of the terms or provisions of this Decree relating to the performance of the SEP described in the preceding paragraphs, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Decree, Defendant shall be liable for stipulated penalties according to the provisions set forth below:

22.1.1. For a SEP which has not been completed satisfactorily pursuant to this Decree, Defendant shall pay a stipulated penalty to the United States in the amount of \$47,640 less the amount actually expended.

22.1.2. For failure to submit the SEP Completion Report required by Paragraph 15 above, Defendant shall pay a stipulated penalty in the amount of \$100.00 for each day after the report is due until the report is received by the United States.

22.1.3. Payment of a stipulated penalty for failure to comply with terms or provisions of this Decree relating to performance of the SEP shall be in accordance with the payment procedures outlined in Paragraph 8.

22.2. The determinations of whether the SEP has been satisfactorily completed and whether the Defendant has made a good faith, timely effort to implement the SEP shall be at the sole discretion of EPA. In raising any objection to EPA's determinations, Defendant has the burden of proving that EPA's determinations are arbitrary or capricious.

23. Written Notice of Penalties. The United States or the State may give the Defendant written notification that it has failed to make a payment as required by Paragraphs 8 and 9. Such notice shall describe the noncompliance, and make a demand for the full payment due and payment of the applicable penalties. However, the penalties provided for in Section VII shall be owed and shall accrue regardless of whether or not the Defendant has been notified of a violation. The Defendant shall pay stipulated penalties within thirty (30) days from the date a written demand for such penalties is mailed.

24. In General. Any stipulated penalty payments shall be accompanied by a reference to this Decree, and be identified as "Stipulated Penalties." Notice of payment of a stipulated penalty shall be made to the United States and the State in the manner specified in Section XIV (Notices). Stipulated penalties shall begin to accrue interest on the day after payment is due at the rate specified under 28 U.S.C. § 1961 and shall continue to

accrue interest until full payment is made. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

25. Notwithstanding any other provision of this Section, the United States and/or the State may, in their unreviewable discretion, waive any portion of stipulated penalties or interest to which that party otherwise is entitled that have accrued pursuant to this Decree.

26. Nothing in this Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Defendant's violation of this Decree or of the statutes and regulations upon which it is based.

VIII. Covenant Not to Sue by Plaintiffs

27. United States' Covenant. In consideration of the payments that will be made by Defendant under Section V (Civil Penalties) of this Decree, and the satisfactory performance by Defendant of all obligations under Section VI (Supplemental Environmental Project), the United States Environmental Protection Agency covenants not to sue or take administrative action against the Defendant pursuant to Sections 309(b) or 311(b)(7) of the Act, 33 U.S.C. §§ 1319(b) and 1321(b)(7), for civil penalties for the Discharge or otherwise relating to or arising from the Discharge. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments and interest required by Section V (Civil Penalties) and Section VII (Stipulated Penalties), and by the satisfactory performance of the obligations under Section VI (Supplemental Environmental Project) as set forth in this Decree.

28. State's Covenant. In consideration of the payment that will be made by Defendant under Section V (Civil Penalties) of this Decree and the satisfactory performance by Defendant of all obligations under Section VI (Supplemental Environmental Project), the State covenants not to sue the Defendant pursuant to Or. Rev. Stat. §§ 468B.305, 468B.310 and 468.140(3)(a), for civil penalties for the Discharge or otherwise relating to or arising from the Discharge, and the State covenants not to pursue any administrative proceedings and to dismiss any such proceedings that may be pending. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments and interest required by Sections V (Civil Penalties) and Section VII (Stipulated Penalties), and by the satisfactory performance of the obligations under Section VI (Supplemental Environmental Project) as set forth in this Decree.

IX. Covenant Not to Present Claims to the Oil Spill Liability Trust Fund

29. Defendant and the State covenant not to present any claim arising from or relating to the Discharge to the Oil Spill Liability Trust Fund.

X. Reservation of Rights

30. Notwithstanding any other provision of this Decree, the United States and the State reserve, and this Decree is without prejudice to, all rights against the Defendant with respect to all matters other than those expressly specified in the covenants not to sue set forth in Paragraphs 27 and 28 above. Additionally, notwithstanding any other provision of this Consent Decree, the United States Coast Guard reserves its rights to seek reimbursement of all monies expended from the Oil Spill Liability Trust Fund.

XI. Covenant by the Defendant

31. The Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States (including all employees, agents, contractors, departments, agencies, administrations and bureaus thereof) or the State (including all employees, agents, contractors, departments, agencies, administrations and bureaus thereof) related to the Discharge.

XII. Effect of Settlement

32. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action which each Party may have with respect to the Discharge against any person not a Party hereto.

33. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of costs, or other appropriate relief relating to the Discharge, the 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-splitting, the entire controversy doctrine, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided,

however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenant Not To Sue by Plaintiffs) or Section XI (Covenant by the Defendant).

XIII. Modification

34. Material Modifications. Material modifications to the Decree may be made only by written agreement of the Parties and the approval of the Court.

35. Non-Material Modifications. Non-material modifications of the Decree may be made only by written agreement of the Parties, and will become effective upon their filing with the Court.

XIV. Notices

36. Whenever under the terms of this Decree notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses and facsimile numbers specified below, unless it is otherwise specifically provided in this Decree. Any change in the individuals designated by any Party must be made in writing to the other Parties. Any correspondence submitted to the Plaintiffs shall include a reference to the case caption and civil action number of this action. All notices shall be sent by first-class mail and facsimile. As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611

Ben Franklin Station
Washington, D.C. 20044-7611
Fax: (202) 514-0097

Stephanie Mairs
Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
ORC-158
Seattle, WA 98101
Fax: (206) 553-0163

Frederick S. Phillips
Trial Attorney
Environment & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
Fax: (202) 514-0097

As to the State:
Jane K. Hickman, Administrator
Office of Compliance and Enforcement, DEQ
811 S.W. Sixth Avenue
Portland, Oregon 97204

As to Defendant:

Tom Lindley
Perkins Coie
1120 N.W. Couch St., Tenth Floor
Portland, OR 97209-4128
Fax: (503) 727-2222

XV. Retention of Jurisdiction

37. This Court retains jurisdiction over both the subject matter of this Decree and the Parties for the duration of the performance of the terms and provisions of this Decree for the purpose of enabling any of the Parties to apply to the Court for such further order,

direction and relief as may be necessary or appropriate to enforce compliance with its terms or to enable all of the Parties to apply to the Court for the material modification of this Decree.

XVI. Lodging and Opportunity for Public Comment

38. This proposed Decree shall be lodged with the Court for a period of not less than thirty (30) days from date of lodging for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw its consent if it receives comments regarding the Decree that disclose facts or considerations which indicate that the Decree is inappropriate, improper or inadequate. The Defendant consents to the entry of this Decree without any reservation.

39. If for any reason the United States withdraws its consent pursuant to Paragraph 38 or if the Court should decline to approve this Decree in the form presented, this agreement is voidable at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. Final Judgment

40. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the United States, the State and the Defendant.

XVIII. Effective Date

41. The effective date of this Decree shall be the date this Decree is entered by the Court.

XIX. Costs and Attorneys Fees

42. If the Settling Defendant fails to make any payment required under Section V (Civil Penalties) or Section VII (Stipulated Penalties) of this Decree when due, including stipulated penalties, and the United States and/or the State file(s) with the Court a motion to enforce this Decree or any other application for such payment, and: (1) the United States and/or the State thereafter receives a payment, or (2) an order is issued directing payment of any portion of the amount sought by the United States and/or the State; or (3) the action is settled in a manner in which the United States and/or the State receives any portion of the amount sought, the Settling Defendant shall reimburse the United States and/or the State for all costs arising from such motion, complaint or application, including but not limited to costs of attorney time.

43. The United States and the State will use best efforts to coordinate any action(s) to enforce this Decree.

44. The Defendant is entitled to assert any arguments or defenses, claims or counterclaims, available to it by law in an effort to mitigate such costs or fees.

XX. Signatories/Service

45. The undersigned representative of the Defendant, as well as of the United States and the State, certify that they are fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such parties to this document.

46. The Defendant hereby agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree.

47. The Defendant shall identify on the attached signature page the name, address, telephone number and facsimile number of an agent who is authorized to accept service of process, if served by both mail and facsimile, on behalf of such Defendant with respect to all matters arising under or relating to this Decree. The Defendant hereby agrees to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS ____ DAY OF _____ 2008.

Honorable
UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

Neil Evans
Assistant United States Attorney
Mark O. Hatfield U.S. Courthouse
1000 SW Third Avenue, Suite 600
Portland, OR 97204-2902

THE UNDERSIGNED PARTY enters into this Decree in the matter of *United States v. Pacific Northern Environmental Corp., d.b.a. Dedicated Fuels, Inc.*, relating to the Umpqua River Discharge.

FOR THE UNITED STATES:

ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, DC 20044-7611

Frederick S. Phillips
Trial Attorney
Environment & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

EDWARD J. KOWALSKI
Regional Counsel
USEPA Region 10
ORC-158, Suite 900
1200 Sixth Avenue
Seattle, WA 98101

THE UNDERSIGNED PARTY enters in to this Decree in the matter of *United States v. Pacific Northern Environmental Corp., d.b.a. Dedicated Fuels, Inc.*, relating to the Umpqua River Discharge.

FOR THE STATE OF OREGON:

Joni Hammond, Interim Deputy Director
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Daniel H. Rosenhouse OSB #773275
Assistant Attorney General
1515 SW Fifth Avenue, Suite 410
Portland, OR 97201

THE UNDERSIGNED PARTY enters in to this Decree in the matter of *United States v. Pacific Northern Environmental Corp., d.b.a. Dedicated Fuels, Inc.*, relating to the Umpqua River Discharge.

FOR PACIFIC NORTHERN ENVIRONMENTAL CORP., *d.b.a.* DEDICATED FUELS, INC.:

Signature _____
Print name: Larry L Young
Title: CFO

Address: 1081 Columbia Blvd
Longview, WA 98632

Phone: 360-423-2245

Fax: 360-423-2222