

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
V.)
)
AMOCO PIPELINE COMPANY, INC.,)
)
Defendant.)
)
)
)

Civil Action No. H-00-2847

CONSENT DECREE

Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), has filed, contemporaneously with the lodging of this consent decree, a complaint ("Complaint") in this action alleging that Defendant Amoco Pipeline Company, Inc. (Amoco) violated the Clean Water Act as amended by the Oil Pollution Act of 1990, 33 U.S.C. § 1321 ("Act"), and 40 C.F.R. Part 110.1, by discharging crude oil into navigable waters of the United States. More specifically, the Complaint alleges that "[o]n or about November 10, 1997, Amoco discharged approximately 5843 barrels of oil ... from its Genoa Metering Station [an onshore facility located in Houston, Harris County, Texas] ... into a storm water drainage ditch which connects directly to Berry Gully Bayou, a navigable water of the United States ... [and] indirectly to Berry Gully Bayou through the City of Houston's publicly owned treatment works." The Complaint further alleges that the

discharge of oil caused businesses in the area to shut down, contaminated the City's sewage treatment works, interfered with its ability to treat sewage, and stressed vegetation.

The parties stipulate and agree that Amoco Pipeline Company, Inc. is a person within the meaning of the Act and that it operates the Genoa Meter Station which is an onshore facility as defined in the Act and regulations thereunder. The parties further stipulate and agree as set forth in Section I of this Consent Decree.

The parties hereby represent to the Court that this Consent Decree is fair, reasonable and in the public interest, and should be entered.

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over the parties. Venue is appropriate in this judicial district. The Complaint states a claim upon which relief may be granted.

The United States and Amoco consent to the entry of this consent decree without trial of any issues of fact or law.

II. BINDING EFFECT

The provisions of this Consent Decree shall apply to and be binding upon the United States (including the United States Environmental Protection Agency and the United States Coast Guard) and upon Amoco and the officers, directors, agents, trustees, servants, employees, successors, assigns, and all persons, firms, and corporations acting under the control or

direction of Amoco.

In any action to enforce this consent decree, Amoco shall not raise as a defense the failure by any of its agents, servants, contractors or employees to take actions necessary to comply with the provisions of this consent decree.

Upon final entry of this consent decree, the United States shall be deemed a judgment creditor for purposes of collection of this penalty and enforcement of the consent decree in accordance with Federal Rule of Civil Procedure 69 and other applicable federal authority. Interest shall accrue on any balance unpaid after 30 days from entry of this consent decree at the statutory judgment interest rate prescribed pursuant to 28 U.S.C. § 1961, in effect on the date of entry.

III. OBJECTIVES

It is the express purpose of the parties in entering this Consent Decree to further the objectives of the Clean Water Act and the Oil Pollution Act.

IV. CIVIL PENALTY

In full settlement of the civil claims set forth in the Complaint, Amoco agrees to pay by wire transfer in accordance with the instructions in Attachment A. the sum of \$1-million fifty-thousand dollars (\$1,050,000.00) within thirty (30) days of the entry of this consent decree. Of this total, \$1 million forty-four thousand dollars (\$1,044,000.00) shall be a civil penalty pursuant to 33 U.S.C. § 1321(b)(7)(A) and six thousand dollars (\$6,000.00) shall constitute reimbursement of costs

incurred by the United States pursuant to 33 U.S.C. § 1321(f)(2). Notice of the wire transfer shall be provided to the United States and EPA Region 6 at the addresses specified in Section IX of this consent decree. The United States Attorney's Office for the Southern District of Texas will ensure that the appropriate sums are credited to the Oil Spill Liability Trust Fund (26 U.S.C. § 9509).

V. SPILL WARNING SYSTEM

Amoco agrees that, in addition to corrective actions already taken, it will install a Spill Warning System at its Genoa Metering Station. This system may be installed at any time, subject to the ten (10) day notice requirement in A(4) *infra*, but shall be completed within ninety (90) days of the entry of this consent decree.

A. The Spill Warning System shall have the structure and dimensions set forth in Attachment B and shall consist of the following:

1. Diked Containment Area:

Amoco shall install a concrete containment area which will collect liquids that accumulate near the Genoa Junction meters and direct them to a sump.

2. Sump Valve:

Amoco shall install a sump valve in the concrete containment area that is designed to close automatically upon the detection of liquid hydrocarbons.

3. Hydrocarbon Sensor:

Amoco shall install a liquid hydrocarbon sensor inside of the concrete containment area. Amoco shall design the sensor to provide an automatic alarm to Amoco's pipeline control center upon detection of liquid hydrocarbons.

4. Within ninety (90) days of the entry of this Consent Decree, Amoco shall certify to EPA Region 6 that the construction of the Spill Warning System has been completed, has been tested and is functioning correctly. Ten (10) days prior to completion and testing, Amoco shall notify EPA Region 6 of the testing date at 1445 Ross Avenue, Dallas, Texas 75202, Attention: Roger Hartung, Phone No. 214-665-8561, FAX No. 214-665-7447, and EPA Region 6 may, at its discretion, elect to be present and observe this test. If EPA contests the test results or the certification, it will promptly (within ten days) notify Amoco and any such dispute shall be subject to Section VII, Dispute Resolution. Amoco agrees to retain all Spill Warning System testing and inspection records for a period of one year or for a period consistent with its document retention policies whichever is longer.

5. Amoco shall inspect the Spill Warning System at least once per month and test the carbon sensor at least once every six months and make any repairs necessary to keep the system functioning correctly.

B. Subject to Sections VI (Delays or Impediments to Performance) and VII (Dispute Resolution), Amoco agrees to pay

stipulated penalties for noncompliance with the requirements of this Consent Decree. For each day of non-compliance, Amoco shall pay:

<u>Period of Failure to Comply</u>	<u>Penalty</u>
1st to 30th day	\$500/day per violation
31st to 60th day	\$750/day per violation
more than 60 days	\$1000/day per violation

Any stipulated penalties incurred by Amoco shall be paid by cashiers or certified check payable to "United States Treasurer" are to be mailed to United States Attorney for the Southern District of Texas at the address set out *infra*.

Attention: Chief, Civil Division by the 15th day of the month following the month in which the violations occurred, together with a letter describing the basis for the penalties. Copies of the letter and the check shall be sent to the Chief of the Environmental Enforcement Section, P.O. Box 7611, Washington, D.C. 20044 (reference 90-5-1-1-06365), the U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, attention: Chief, Response and Prevention Branch (6SF-R), and to the U.S. Coast Guard National Pollution Funds Center, 4200 Wilson Blvd, Arlington, Virginia 22203-1804, Attention: Dan Allman.

VI. DELAYS OR IMPEDIMENTS TO PERFORMANCE

A. If any event beyond the control of Amoco, its

contractors, consultants, or agents, occurs which causes or may cause a delay in the achievement of any requirement of this consent decree, Amoco shall submit a written report of said event by certified mail to EPA Region 6 within twenty (20) days of the date Amoco knew or should have known of the event. Said written report shall describe the violation or failure to comply with a term of this consent decree, its cause and all attendant circumstances, and the measure(s) taken or to be taken to prevent or minimize any such violation or failure and to comply with the pertinent requirements of this consent decree as soon as possible, and the timetable by which those measures are proposed to be implemented.

B. The burden of proving that any violation or failure is caused by circumstances beyond the control of Amoco and its contractors, consultants and agents and the length of the delay attributable to such circumstances shall rest with Amoco. Financial, economic, or business conditions or changes in same, unanticipated or increased costs or expenses, or problems relating to reasonably foreseeable lack of feasibility associated with the implementation of actions called for by this consent decree, shall not relieve Amoco of any obligation imposed under the terms of this consent decree.

C. If the parties agree that the violation of a provision of this consent decree has been or will be caused by circumstances beyond the control of Amoco and/or any entity controlled by or affiliated with Amoco, including its agents,

consultants and contractors, and that Amoco could not have reasonably foreseen and prevented such violation, the time for performance of such provision shall be extended in writing by the EPA for a period not to exceed the actual, unavoidable delay resulting from such circumstances.

D. If the parties are unable to agree as to whether the violation was caused by circumstances beyond the control of Amoco and/or any entity controlled by or affiliated with Amoco, including its agents, contractors and consultants, or as to whether the length of time for fulfilling the provision should be extended, the matter may be submitted by any party to the Court for resolution. If the noncompliance is then determined to have been caused by circumstances beyond the control of Amoco and/or any entity controlled by or affiliated with Amoco, including Amoco's consultants, contractors and agents, and it is determined that Amoco could not have reasonably foreseen and prevented such violation, Amoco shall be excused as to that violation for the period of time the violation continues due to such circumstances.

E. Amoco shall have the burden of proving (1) that the noncompliance was caused by circumstances beyond the control of Amoco and/or any entity controlled by or affiliated with Amoco, including its contractors, agents and consultants; (2) that neither Amoco nor any entity controlled by Amoco, including its consultants, contractors and agents, could have reasonably foreseen and prevented such violation; and (3) the number of days of noncompliance that were caused by such circumstances.

F. Compliance with any requirement of this consent decree by itself shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident shall not necessarily result in an extension of a subsequent compliance date or dates. Amoco must make an individual showing of proof regarding the cause of each delayed step or requirement for which an extension is sought.

VII. DISPUTE RESOLUTION

A. In the event that a dispute arises under this consent decree, including any dispute regarding any decision by EPA made pursuant to this consent decree with respect to excused delay, the dispute shall be subject to dispute resolution. Any disputed matter shall in the first instance be the subject of informal negotiations between the parties. If the parties cannot resolve the dispute within fifteen (15) days after notice of the dispute is received by EPA, either party may file a motion with the Court for dispute resolution.

B. Except as otherwise agreed by the parties, the filing of a motion for dispute resolution with the Court to resolve the dispute shall not serve to extend or postpone any obligation of Amoco under this consent decree. The motion shall set out the nature of the dispute with a proposal for its resolution. The opposing party shall have thirty (30) days to file a response with an alternate proposal for resolution. In any such motion for dispute resolution, Amoco shall have the burden of proving to the Court that its proposal for resolution

of the dispute better furthers the objectives of this consent decree, the Act, or other applicable law.

VII. COSTS OF SUIT

Each party shall bear its own costs and attorney's fees in this action. Should Amoco subsequently be determined to have violated the terms and conditions of this Decree, then Amoco shall be liable to the United States for any costs and attorney's fees incurred by the United States in any actions against it for noncompliance with this Decree.

IX FORM OF NOTICE

Except as specified otherwise, whenever written notification to or communication with the United States, by Amoco is required by the terms of this Consent Decree, it shall be addressed as follows and contain the Civil Action Number.

As to the United States:

Chief, Response and Prevention Branch (6SF-R)
U.S. Environmental Protection Agency -
Region 6
1445 Ross Avenue
Dallas, Texas 75202

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044
Reference 90-5-1-1-06365

United States Coast Guard
National Pollution Funds Center
4200 Wilson Blvd.
Arlington, Virginia 22203-1804
Attention: Dan Allman

United States Attorney
Southern District of Texas
910 Travis Street #1500
Post Office Box 61129
Houston, Texas 77208
Attention: Assistant United States Attorney
Gordon Young

All notifications or communications shall be deemed submitted on the date they are received by EPA Region 6.

X. NON-WAIVER PROVISIONS

In consideration for payment of civil penalties, reimbursement of the United States' costs and for the construction and operation of the Spill Warning System, the United States releases all civil claims against Amoco and covenants not to sue or take administrative action against Amoco for civil penalties and costs arising out of the complaint in this civil action. This release and covenant not to sue does not include disbursements from the Oil Spill Liability Trust Fund for payment of third party claims against the Oil Spill Liability Trust Fund or natural resource damages. Amoco agrees to hold the Oil Spill Liability Trust Fund harmless and covenants not to sue and agrees not to assert any claims or causes of action against the United States, including the Oil Spill Liability Trust Fund, under the Clean Water Act, the Oil Pollution Act or any other federal law or regulation with regard to the November 10, 1997

spill from the Genoa Metering Station.

A. This consent decree in no way affects or relieves Amoco of any responsibility to comply with any applicable federal, state, or local law or regulation.

B. This consent decree does not limit or affect the rights of Amoco or the United States as against any third parties, nor does it limit the rights of third parties against Amoco.

C. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this consent decree.

D. The United States reserves, and this consent decree is without prejudice to, all rights against Amoco with respect to matters not set forth in the complaint, including but not limited to:

a.) Claims based on a failure by Amoco to meet a requirement of the consent decree;

b.) Claims, actual or potential, not relating to the November 10, 1997 spill;

c.) Claims based on matters not known to the United States;

d.) Any criminal claim.

XI. PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for publication

of notice of the lodging of this Consent Decree in the Federal Register, and an opportunity for public comment, and consideration of any comments.

XII. CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Decree.

XIII. SATISFACTION/TERMINATION

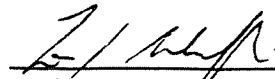
This Decree shall be deemed satisfied when Amoco has paid all penalties due and has completed and successfully tested the Spill Warning System specified herein, and shall be terminated upon joint motion to the Court.

Signed this _____ day of _____, 2000.

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Decree, subject to the public notice requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF UNITED STATES OF AMERICA:



Lois J. Schiffer
Assistant Attorney General
Environment & Natural Resources
Division
United States Department of Justice

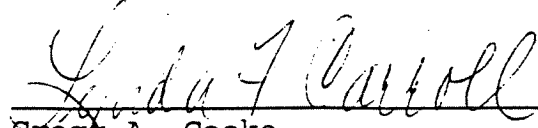


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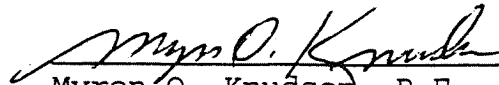
Mervyn M. Mosbacher
United States Attorney
Southern District of Texas

By: _____

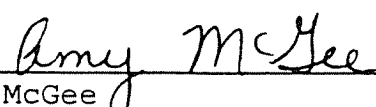
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Gregg A. Cooke
Regional Administrator
United States Environmental
Protection Agency Region 6
1445 Ross Avenue
Dallas, Texas 75202



Myron O. Knudson, P.E.
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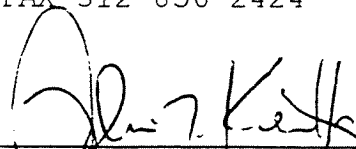


Steven A. Herman
Assistant Administrator
Enforcement & Compliance Assurance
United States Environmental
Protection Agency
401 "M" Street S.W.
Washington, D.C. 20460

FOR DEFENDANT AMOCO PIPELINE, INC.:



James A. Nolan, Jr.
Attorney,
Amoco Pipeline Company, Inc.
Illinois Bar #6205793
BP Amoco Corporation
Suite 2104
200 East Randolph Drive
Chicago, Illinois 60601-7125
312-856-4474
FAX 312-856-2424



Alvin T. Keith
President,
Amoco Pipeline Company, Inc.

FEDWIRE Electronic Funds Transfer
To The
U. S. Department of Justice

To: Responsible Party

In order for you to transfer funds electronically to the Federal Reserve/U. S. Treasury Department in New York City for credit to the U. S. Department of Justice, the following information must be provided to the bank from which the funds are to be transferred. This information will enable the sending bank to complete those fields associated with the beneficiary bank of a "Fedwire Structured Third Party Format" electronic funds transfer.

ITEM	DESCRIPTION	CODING INFORMATION FOR FEDWIRE FORMAT
2	Receiving Bank ABA Code	021030004
3	Message Type Code	1000
7	Wire Amount	\$1,050,000.00
9 10 11	Receiving Beneficiary Bank, Name & Account No.	TREAS NYC/CTR/BNF=DEPT OF JUSTICE/AC-15030001
12	Required Beneficiary Information: •Collection Office Identifier •Debtor Name •Collection Office Claim#	USAO/TXS AMOCO PIPELINE COMPANY INC. CIF# C100-00806

ATTENTION COLLECTION OFFICES: Each of the above blank spaces "MUST" be completed before providing this form to the debtor/debtor's attorney. Once completed, the debtor/debtor's attorney must provide this form to the bank from which the funds are to be transferred to ensure that the electronic transfer of funds is accomplished and properly credited to the U. S. Department of Justice/Debt Accounting Operations Group.

AUTHORITY: The above information requirements are in accordance with the U. S. Treasury Department "Treasury Requirements Manual/Part 6 - Chapter 8000"; Appendix E of the "Federal Reserve Bank Funds Transfer Systems Manual"; and, 31 CFR Part 206 (Federal Register - Vol. 59, No. 20).

Questions regarding this Fedwire EFT should be directed to the responsible Collection Office:

POINT OF CONTACT: Debra R. Gregory
TELEPHONE NUMBER: (713) 567-9543

Attachment A

