

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

FILED
JUL 16 1996

STEPHEN D. LUDWIG, CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

1:96w280

UNITED STATES OF AMERICA,)
)
STATE OF INDIANA,)
)
and)
)
STATE OF OHIO,)
)
Plaintiffs,)
)
v.)
)
ARCO PIPE LINE COMPANY)
)
and)
)
NORCO PIPELINE, INC.,)
)
Defendants.)
_____)

CONSENT DECREE

I. BACKGROUND

WHEREAS, on September 15, 1993, a pipeline owned by Defendant NORCO Pipeline, Inc., and formerly owned and operated by ARCO Pipe Line Company, ruptured and discharged approximately 30,000 gallons of diesel fuel into an agricultural field along County Road 18 in DeKalb County, Indiana (the "Fish Creek Oil Spill").

WHEREAS, the Fish Creek Oil Spill flowed through a drainage ditch into Fish Creek, a tributary of the St. Joseph River, and spread downstream into Williams County, Ohio, affecting approximately seven miles of Fish Creek in Indiana and Ohio.

9

WHEREAS, Fish Creek is a biologically diverse aquatic system in the Great Lakes drainage basin. Natural resources affected or potentially affected by the Fish Creek Oil Spill include the following: fish, freshwater mussels, mammals, amphibians, reptiles, migratory birds (including waterfowl and shorebirds), lands (including wetlands, shorelines, soil, and geologic resources), aquatic and terrestrial plants, invertebrates, microorganisms, groundwater, surface waters, sediments, and air. Services provided by the natural resources of Fish Creek include a habitat for the variety of animal and plant species in the area, sport fisheries, and recreational uses (including fishing, hunting, hiking, and nature observation).

WHEREAS, Plaintiffs, the United States of America, the State of Indiana, and the State of Ohio, on behalf of trustees for certain natural resources, have commenced this civil action under Section 1006 of the Oil Pollution Act of 1990, 33 U.S.C. § 2706, for natural resource damages resulting from the Fish Creek Oil Spill.

WHEREAS, Plaintiffs seek reimbursement of damages to the Fish Creek natural resources, including the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources and the reasonable cost of assessing those damages.

WHEREAS, the United States, the State of Indiana, the State of Ohio, and Settling Defendants ARCO Pipe Line Co. and NORCO Pipeline, Inc., agree that this Decree is fair, reasonable, in

the public interest, and in furtherance of the statutory goals of the Oil Pollution Act of 1990, and will avoid difficult, prolonged and complicated litigation among the United States, the State of Indiana, the State of Ohio, and the Settling Defendants.

WHEREAS, the United States, the State of Indiana, the State of Ohio, and the Settling Defendants agree that settlement of this case without further litigation and without admission, adjudication, or determination of any issue of fact or law, except as specified herein, is the most appropriate means of resolving this action.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed as follows:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to Sections 1006 and 1017(b) of the Oil Pollution Act of 1990, 33 U.S.C §§ 2706, 2717(b), and 28 U.S.C. §§ 1331, 1345. Solely for the purposes of this Decree and its enforcement and the underlying complaint, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District and shall not challenge this Court's jurisdiction to enter and enforce this Decree. The Parties agree to be bound by the terms of this Decree and not to contest its validity in any subsequent proceeding arising from it.

III. PARTIES BOUND

2. This Decree is binding upon the United States, the State of Indiana, the State of Ohio, and the Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Decree. Each undersigned representative of a Settling Defendant to this Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and bind legally such party to this document and has identified on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Decree that are defined in the Oil Pollution Act of 1990 ("OPA") or in regulations promulgated under OPA shall have the meaning assigned to them in OPA or in such regulations. Whenever terms listed below are used in this Decree, the following definitions shall apply:

"Fish Creek Oil Spill" refers to the approximately 30,000 gallons of oil released into the environment as a result of a pipeline rupture on September 15, 1993, in DeKalb County, Indiana.

"Natural Resource Trustees" refers to the designated federal and state officials who may act on behalf of the public as trustees for the natural resources in Fish Creek; the United States Department of Interior, represented by the United States Fish and Wildlife Service, is the federal trustee for natural resources in and around Fish Creek; the co-trustees for natural resources in and around Fish Creek for the State of Indiana are the Deputy Director of the Bureau of Water and Resource Regulation for the Indiana Department of Natural Resources and the Assistant Commissioner of the Office of Environmental Response for the Indiana Department of Environmental Management; the Ohio Director of Environmental Protection, in consultation with the Ohio Director of Natural Resources, is the State of Ohio's trustee for natural resources in and around Fish Creek.

"Settling Defendants" refers to ARCO Pipe Line Company and NORCO Pipeline, Inc.

V. PURPOSE

4. The purpose of the Parties in entering into this Decree is to provide funding for the Natural Resource Trustees to restore, rehabilitate, replace, or acquire the equivalent of the natural resources damaged as a result of the Fish Creek Oil Spill and to reimburse the Natural Resource Trustees for the reasonable costs of assessing the damages to the natural resources resulting from the Fish Creek Oil Spill.

VI. PAYMENTS

5. Reimbursement of Assessment Costs. Within thirty (30) days of entry of this Decree, Settling Defendants shall pay the following amounts as reimbursement for costs incurred by the Natural Resource Trustees in assessing the damages to natural resources resulting from the Fish Creek Oil Spill:

\$214,246 to the United States;

\$14,000 to Indiana Department of Environmental Management;

\$5,000 to Indiana Department of Natural Resources;

\$51,638 to Ohio Environmental Protection Agency;

\$5,000 to Ohio Department of Natural Resources.

6. Method of Payment of Assessment Costs. Within 30 days of entry of this Decree, Settling Defendants shall pay the amounts described in Paragraph 5 above. Payment shall be deemed made upon receipt of check or wire transfer by the specified recipient. Payments shall be made as provided below and sent to the following addresses:

For the United States (2 separate payments):

(1) Certified check in the amount of \$118,513
made payable to U.S. Fish and Wildlife Service Lockbox

Send to:
U.S. Fish and Wildlife Service Lockbox
P.O. Box 840114
Dallas, TX 75284-0114

The check shall reference:

BD-9818259054
Account # 31440-1907-0021
FPN 093026
DCN 28/93/30/3/H/YR/26J

(2) Certified check in the amount of \$95,733
made payable to the Secretary of the Interior

Send to:
Chief, Division of Finance
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Rm. 380
Arlington, VA 22203

The check shall reference:

Account # 14X1618 - subactivity 8353
Fish Creek - FPN 093026
Agency Location Code: 14160006

For the Indiana Department of Environmental Management:

Payment may be made by wire transfer by directing the
payment to:

National City Bank
"State of Indiana, Treasurer of State, Attn IDEM"
ABA Routing No. 074000065
Account No. 009014424

Forty-eight (48) hours prior to the date of the wire transfer of funds, the settling defendants shall notify Mr. John Rose by fax at (317)233-6358, and Ms. Lynn Louis by telephone call at (317)232-4870. Failure to notify forty-eight hours in advance of the date certain for the wire transfer will result in the payment of assessment costs reverting to the general funds of the State of Indiana. The trustee will not recognize funds wired by Settling Defendants without prior notification to ensure credit to the appropriate account.

For the Indiana Department of Natural Resources:

Payment may be made by wire transfer by directing the
payment to:

National City Bank
"State of Indiana, Treasurer of State, Attn IDNR"
ABA Routing No. 074000065
Account No. 009014424

Forty-eight (48) hours prior to the date of the wire transfer of funds, the Settling Defendants shall notify Ms. Angela Coy by telephone call at (317)232-4080. Failure to notify forty-eight hours in advance of the

date certain for the wire transfer will result in the payment of assessment costs reverting to the general funds of the State of Indiana. The trustee will not recognize funds wired by Settling Defendants without prior notification to ensure credit to the appropriate account.

For the Ohio Environmental Protection Agency:

Certified check made payable to:

Treasurer, State of Ohio/Hazardous Waste Special Clean
Up Account
Fiscal Officer, DERR (Attn: Pat Campbell)
Ohio EPA
P.O. Box 1049, 1800 Watermark Drive
Columbus, OH 43216-1049

This payment shall be for deposit into the Hazardous Waste Clean Up Fund established under Ohio Revised Code section 3734.28.

For the Ohio Department of Natural Resources:

Certified check made payable to:

Ohio Division of Wildlife
ATTN: Ireta Robeson, Administrative Assistant
Division of Wildlife, Bldg. G-2
1840 Belcher Drive
Columbus, OH 43224

This payment shall be for deposit in the Ohio Department of Natural Resources' account, fund #015.

7. Natural Resource Damages. With in thirty (30) days of entry of this Decree, Settling Defendants shall pay the Natural Resource Trustees a total of \$2,507,500 for natural resource damages resulting from the Fish Creek Oil Spill. As provided in Section 1006(f) of OPA, 33 U.S.C. § 2706(f), such funds shall be used by the Natural Resource Trustees to pay costs incurred by the Natural Resource Trustees for restoring, rehabilitating,

replacing, or acquiring the equivalent of the damaged natural resources.

8. Method of Payment for Natural Resource Damages. In accordance with Paragraph 7, Settling Defendants shall pay by electronic funds transfer ("EFT") the amount of \$2,507,500 to the Clerk of the Court of the United States District Court for the Northern District of Indiana for deposit into the Registry of the Court. Instructions for EFT payment shall be provided to the Settling Defendants upon lodging of this Decree. Such deposit into the Registry of the Court shall be made in accordance with the accompanying Order Directing the Deposit of Natural Resource Damages Payment into the Registry of the Court. ("Attachment A"). The Natural Resources Damages Payment deposited into the Registry of the Court shall be managed pursuant to the Order Directing the Deposit of Natural Resource Damages Payment into the Registry of the Court and the Natural Resource Trustees' Memorandum of Understanding addressing natural resource damages resulting from the Fish Creek Oil Spill ("Attachment B").

9. Late Payments. In the event Settling Defendants fail to make timely payments of any amounts required under this Consent Decree, Settling Defendants shall be liable for interest on the unpaid balance at the rate specified in Section 1005 of OPA, 33 U.S.C. § 2705. The interest shall be calculated from the first day following the date payment is due until the entire outstanding balance has been received.

10. Notice of Payments. For all payments required to be made by Settling Defendants under this Consent Decree, Settling Defendants shall send, at the time payment is made, a copy of all checks or other documentation of payment to each of the following:

For the United States:

Chief, Environmental Enforcement Section
U.S. Department of Justice
DOJ #90-5-1-1-4146
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044-7611

Field Supervisor
United States Fish & Wildlife Service
Bloomington Field Office
620 S. Walker Street
Bloomington, IN 47403-2121

For the State of Indiana:

Timothy J. Junk
Deputy Attorney General
Indiana Government Center South
402 W. Washington Street, 5th Floor
Indianapolis, IN 42604

For the State of Ohio:

Matthew A. Sanders, Administrative Assistant
Ohio Attorney General's Office
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, OH 43215-3428

VII. COVENANTS NOT TO SUE BY PLAINTIFFS

11. In consideration of the payments made by the Settling Defendants under the terms of this Decree, the United States, the State of Indiana, and the State of Ohio, on behalf of their

respective natural resource trustees, covenant not to sue or take administrative action against the Settling Defendants for natural resource damages pursuant to Section 1006 of the Oil Pollution Act, 33 U.S.C. § 2706, resulting from the Fish Creek Oil Spill. This Covenant Not to Sue is conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This Covenant Not to Sue applies only to the Fish Creek Oil Spill and extends only to the Settling Defendants and does not extend to any other person.

12. Reservation of Rights. The Covenant Not to Sue set forth in the preceding paragraph does not pertain to any matters other than those expressly specified therein. The United States, the State of Indiana, and the State of Ohio reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendants with respect to all other matters. Except as provided in the preceding paragraph, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States, the State of Indiana, or the State of Ohio to initiate appropriate action, either judicial or administrative, with respect to any claim not expressly alleged in the complaint(s), including but not limited to the following:

- (1) claims based upon a failure of Settling Defendants to meet the requirements of this Decree;
- (2) claims based upon criminal liability;
- (3) claims arising from the past, present, or future disposal, release, or threat of release of hazardous

substances or other materials other than as alleged in the complaint;

(4) claims for civil penalties under the Clean Water Act, 33 U.S.C. § 1301 et seq.;

(5) claims for civil penalties under Ohio's Water Pollution Control statute, Ohio Rev. Code Ch. 6111;

(6) claims for clean up or civil penalties under Indiana's Environmental Management Act, Ind. Code § 13-7-1-1 et seq.

13. Nothing in this Decree is intended as a covenant not to sue or a release from liability for any persons or entities not parties to this Decree. The United States, the State of Indiana, and the State of Ohio expressly reserve all claims, demands, and causes of action, either judicial or administrative, past or future, in law or equity, against any person or entity not a party to this Consent Decree for any matter arising at or in any way relating to the Fish Creek Oil Spill.

VIII. COVENANT BY SETTLING DEFENDANTS

14. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, the State of Indiana, and the State of Ohio relating to the Fish Creek Oil Spill, including but not limited to assertion or presentment of any claim to the Oil Spill Liability Trust Fund for removal costs or damages arising from the Fish Creek Oil Spill, pursuant to Sections 1008 and 1013 of the Oil Pollution Act, 33 U.S.C. §§ 2708, 2713.

XIII. LODGING AND ENTRY

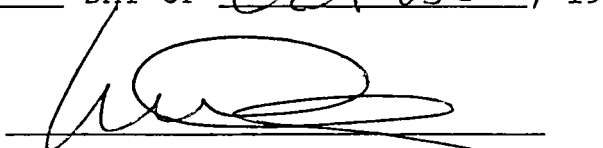
15. This Consent Decree shall be lodged with the Court for a period of at least thirty (30) days for public notice and comment. The United States reserves, and all other parties acknowledge, the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate.

16. The Settling Defendants consent to the entry of this Decree without further notice.

XIV. NO ADMISSION OF LIABILITY

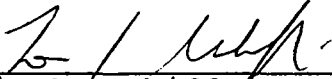
17. Neither the execution of this Consent Decree by Settling Defendants nor the entry of this Consent Decree by the United States District Court shall be deemed or construed to be an admission of liability or a waiver of any defenses by the Settling Defendants regarding the Fish Creek Oil Spill or any other matter, except as otherwise provided in Paragraphs 1, 2, 14, and 16.

SO ORDERED THIS 2 DAY OF October, 1996.

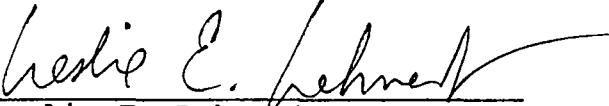

United States District Judge
Northern District of Indiana

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al., v. ARCO Pipe Line Co., et al. (N.D. Ind.).

FOR THE UNITED STATES OF AMERICA



Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice



Leslie E. Lehnert
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
202/514-1761


United States Attorney
Northern District of Indiana

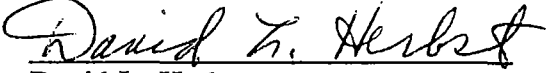
Deborah M. Leonard
Assistant U.S. Attorney

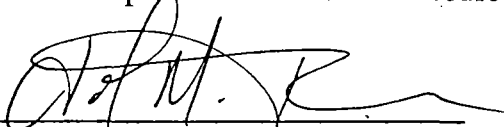
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al., v. ARCO Pipe Line Co., et al. (N.D. Ind.).

FOR THE STATE OF INDIANA

INDIANA NATURAL RESOURCE
CO-TRUSTEES


Evan Bayh
Governor of Indiana

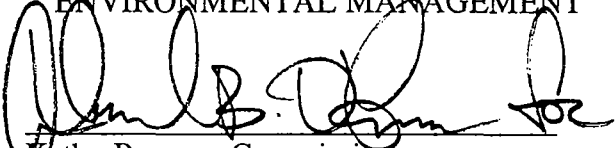

David L. Herbst
Deputy Director
Bureau of Water and Resource Regulation
Indiana Department of Natural Resources


John Rose
Assistant Commissioner
Office of Environmental Response
Indiana Department of Environmental
Management

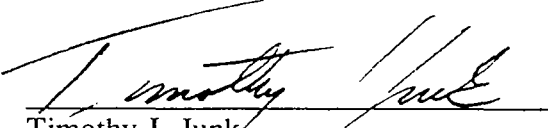
INDIANA DEPARTMENT OF
NATURAL RESOURCES


Patrick R. Ralston, Director

INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


Kathy Prosser, Commissioner

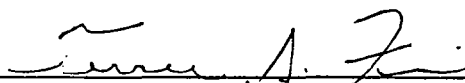
Pamela Carter
Attorney General of Indiana


Timothy J. Junk
Deputy Attorney General
State of Indiana
Atty. No. 5587-02

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al., v. ARCO Pipe Line Co., et al. (N.D. Ind.)

FOR THE STATE OF OHIO

Betty D. Montgomery
Attorney General
State of Ohio



Terrence S. Finn
Assistant Attorney General
State of Ohio
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, OH 43215-3428
614/466-2766

THE UNDERSIGNED DEFENDANTS enter into this Consent Decree in the matter of United States, et al., v. ARCO Pipe Line Co., et al. (N.D. Ind.).

FOR THE SETTLING DEFENDANT
(Please type or print, except for signature line for Officer)

NORCO Pipeline, Inc.
Name of Settling Defendant

280 N. College, Suite 500, Fayetteville, AR 72701
Address

(501) 444-3507
Telephone Number

Richard E. Gathright
Name of Officer


Signature of Officer

President
Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Jim H. Boyd
Name

Jim H. Boyd
Name

280 North College, Suite 500
Fayetteville, AR 72701
Address

280 North College, Suite 500
Fayetteville, AR 72701
Address

(501) 444-3507
Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

THE UNDERSIGNED DEFENDANTS enter into this Consent Decree in the matter of United States, et al., v. ARCO Pipe Line Co., et al. (N.D. Ind.).

FOR THE SETTLING DEFENDANT
(Please type or print, except for signature line for Officer)

ARCO PIPE LINE COMPANY

Name of Settling Defendant
15600 JFK Boulevard, Suite 300
Houston, Texas 77032

Address

(713) 986-5429

Telephone Number

Larry E. Shakley

Name of Officer



Signature of Officer

Vice President, Operations

Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

CT Corporation

Name

700 South Flower Street
Los Angeles, CA 90017

Address

Attorney

Michael B. Schwerdtfeger

Name

300 Oceangate, Suite 1599
Long Beach, CA 90802

Address

(310) 590-4427

Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

96 OCT -2 AM 10:07
STEPHEN J. ...
U.S. DISTRICT COURT
FORT WAYNE, INDIANA

UNITED STATES OF AMERICA,)
)
STATE OF INDIANA,)
)
and)
)
STATE OF OHIO,)
)
Plaintiffs,)
)
v.)
)
ARCO PIPE LINE COMPANY)
)
and)
)
NORCO PIPELINE, INC.,)
)
Defendants.)

1:95w280

ORDER DIRECTING THE DEPOSIT OF
NATURAL RESOURCE DAMAGES PAYMENT INTO THE REGISTRY OF THE COURT

This Order is a part of and will become effective upon entry by this Court of the Consent Decree between plaintiffs the United States, the State of Indiana, and the State of Ohio, and defendants ARCO Pipe Line Co. and NORCO Pipeline, Inc. Pursuant to Rule 67 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2041, 2042, and in accordance with the terms of the Consent Decree in the above-captioned matter, it is hereby Ordered as follows:

1. The Clerk of the Court shall establish an account in the Registry of the Court titled "Fish Creek Restoration Fund"

1

specifically and exclusively for the funds for restoration of injured natural resources to be paid as provided in Paragraphs 7 and 8 of the Consent Decree; said funds shall be held by the Clerk on behalf of the Natural Resource Trustees pursuant to Rule 67 of the Federal Rules of Civil Procedure.

2. The Clerk of the Court shall deposit said funds in an interest-bearing account. All income earned as interest on said funds shall be credited to the Fish Creek Restoration Fund.

3. The funds in the Fish Creek Restoration Fund shall remain in the Registry of the Court until further order of this Court.

4. Applications for orders for disbursements from the Fish Creek Restoration Fund may be made only in accordance with the Natural Resource Trustees' Memorandum of Understanding addressing natural resource damages resulting from the Fish Creek Spill by the United States on behalf of and with the approval of the Natural Resource Trustees; counsel for the United States shall serve as the point of contact for the Clerk on behalf of the parties to this Consent Decree.

5. The Natural Resource Trustees shall establish such procedures as are necessary to arrive at decisions for approving expenditures of funds from the Fish Creek Restoration Fund consistent with this Consent Decree and the Natural Resource Trustees' Memorandum of Understanding addressing natural resource damages resulting from the Fish Creek Spill; the Natural Resource Trustees will ensure that such decisions are properly

memorialized for purposes of evidencing the Natural Resource Trustees' approval of an application for disbursement of funds.

6. The United States is a party to this action, and, therefore, the registry fee is waived.

SO ORDERED THIS 2 DAY OF October, 1996.

A handwritten signature in black ink, consisting of a large, stylized 'W' followed by a horizontal line and a flourish.

United States District Judge
Northern District of Indiana

OHIO
ATTY GENERAL

OCT 8 10 05 AM '96

1000 1000 47