

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) v.)
)
(1) MAGELLAN PIPELINE COMPANY, L.P.,)
)
) Defendant.)

Civil No. 17-cv-00031-JED-TLW

CONSENT DECREE

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WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint concurrently with this Consent Decree, alleging that Defendant, Magellan Pipeline Company, L.P. (“Magellan”), violated Section(s) 309 and 311 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319 and 1321.

WHEREAS, on February 24, 2011, 482 barrels of gasoline were discharged from a pipeline owned and operated by Magellan near Texas City, Texas (the “Texas City Spill”). Gasoline from this discharge flowed into Bayou Pierre.

WHEREAS, on December 10, 2011 1,529 barrels of gasoline, 655 barrels of jet fuel, and 650 barrels of diesel fuel were discharged from two parallel pipelines owned and operated by Magellan near Nemaha, Nebraska (collectively referred as the “Nemaha Spill”). Gasoline, jet fuel, and diesel fuel from these discharges flowed into Jarvis Creek and impacted soils and groundwater. The impacts from these discharges pose an ongoing threat to Jarvis Creek.

WHEREAS, on May 5, 2015, 1,861 barrels of diesel fuel were discharged from a pipeline owned and operated by Magellan near El Dorado, Kansas (the “El Dorado Spill”). Diesel fuel from this discharge flowed into Constant Creek.

WHEREAS, Magellan responded to each spill and took steps to contain and mitigate the damage caused by the releases of hydrocarbons to the environment.

WHEREAS, Magellan has completed response actions related to the Texas City and El Dorado Spills.

WHEREAS, Magellan is continuing to perform a response action related to the Nemaha Spill under the oversight of the State of Nebraska.

WHEREAS, Magellan has completed and submitted to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) a Root Cause Failure Analysis (“RCFA”) and Remedial Work Plan (“RWP”) related to the entire pipeline Segment from which the El Dorado Spill occurred.

WHEREAS, 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 the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, 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 this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section(s) 309(b) and 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E) and (n), and over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391 and 1395(a), because Defendant resides and is located in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court’s jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319 and 1321.

3. Notice of the commencement of this action has been given to the States of Texas, Kansas, and Nebraska, as required by Section 309(b) of the Act, 33 U.S.C. § 1319(b).

II. APPLICABILITY

4. 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.

5. No transfer of ownership or operation of the Facility, or any portion thereof, shall relieve Magellan of its obligation to ensure that the terms of this Consent Decree are implemented.

6. Magellan shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. 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

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA 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. “Affected Environment” shall have the meaning given to that term in Title 126 of the Nebraska Administrative Code (“NAC”), Chapter 1: “any portion of the waters of the State or land which has been altered either physically, chemically or biologically due to the release of an oil or hazardous substance;”
- b. “Cleanup” shall have the meaning given to that term in Title 126 of the NAC, Chapter 1: “the physical removal or on-site treatment of an oil or hazardous substance release. This may include, but not be limited to, controlling public access and monitoring activities to determine the effectiveness of removal or treatment activities”;
- c. “Complaint” shall mean the complaint filed by the United States in this action;
- d. “Consent Decree” or “Decree” shall mean this document and the appendix attached hereto;
- e. “Day” shall mean a calendar day unless expressly stated to be a business 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 business day;
- f. “Defendant” shall mean Magellan;
- g. “Deliverable” shall mean any written document required to be submitted by or on behalf of Magellan to the United States or EPA pursuant to Section VI of this Consent Decree;

- h. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- i. “Effective Date” shall have the definition provided in Section XVI;
- j. “Facility” shall mean the Magellan-owned and -operated petroleum liquid pipeline system, comprised of approximately 11,000 miles of pipelines;
- k. “IMP” shall mean the written integrity management program required by 49 C.F.R. § 195.452;
- l. “Magellan” shall mean Magellan Pipeline Company, L.P.;
- m. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;
- n. “Parties” shall mean the United States and Defendant;
- o. “PHMSA” shall mean the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration and any of its successor departments or agencies;
- p. “El Dorado RCFA” shall mean the RCFA prepared for Magellan and submitted to PHMSA on September 11, 2015 in response to Required Corrective Action Paragraph 8 of the PHMSA Corrective Action Order regarding Compliance Progress File No. 3-2015-5003H;
- q. “Section” shall mean a portion of this Decree identified by a roman numeral;
- r. “Segment” shall mean a continuous length of pipe between: (i) two pressure pump stations; (ii) a pressure pump station and terminal or breakout tanks; (iii) a pressure pump station and a block valve; or (iv) two block valves;
- s. “SSC” shall mean selective or preferential seam corrosion, a form of corrosion that

occurs along a weld line/fusion line of a pipe;

- t. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Defendant shall pay the sum of \$2,000,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

10. Defendant shall pay the civil penalty by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of Oklahoma after the Effective Date. 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 the DOJ Number 90-5-1-1-10628 and shall specify that the payment is made for 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).

11. Payment instructions will be provided by the FLU to the individual named in this Paragraph. Transmittal of instructions to the individual named in this Paragraph shall constitute notice to Magellan. Magellan may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XV (Notices). The individual to receive notice of payment instructions on behalf of Magellan is:

Daniel Scroggins
One Williams Center
Ste. 2800
Tulsa, OK 74172
Danny.Scroggins@magellanlp.com

12. 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 90-5-1-1-10628: (i) to EPA in accordance with Section XV (Notices); (ii) to the United States in accordance with Section XV (Notices); and (iii) to:

Thomas VanHorn
National Pollution Funds Center
4200 Wilson Blvd. Suite 1000
Arlington, VA. 20598-7100

AND

Chief
United States Coast Guard
Office of Claims and Litigation, CG-LCL
US Coast Guard Mailstop 7213
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7213

Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal, state, or local income taxes.

V. COMPLIANCE REQUIREMENTS

Cleanup of the Nemaha Spill

13. Magellan shall Cleanup the diesel, gasoline and/or jet fuel, including any fraction or derivative thereof, discharged to an Affected Environment as a result of the Nemaha Spill in

accordance with: (i) the Nebraska Environmental Protection Act, Neb. Rev. Stat. 81-1501 et seq; (ii) Title 126 of the NAC, Rules and Regulations Pertaining to Management of Wastes; and (iii) Title 118 of the NAC, Groundwater Quality Standards and Use Classification. The Nebraska Department of Environmental Quality (“NDEQ”) will determine whether Magellan's cleanup has been satisfactory and whether the cleanup standards of these laws and regulations are achieved. Satisfactory compliance shall include the timely and complete submission of any required report or work plan; the satisfactory implementation of any approved work plan; and any other actions required by NDEQ in connection with the Nemaha Spill.

14. EPA Oversight Takeover: If Magellan fails to satisfactorily Cleanup any Affected Environment impacted by the Nemaha Spill under NDEQ oversight, or if NDEQ becomes unable or unwilling to continue oversight of the Cleanup, NDEQ may so notify EPA Region 7. If EPA Region 7 is so notified, EPA Region 7 may, at its sole discretion, elect to take over oversight of the Cleanup of the Nemaha Spill under this Consent Decree ("EPA Oversight Takeover"). In the event of an EPA Oversight Takeover, EPA Region 7, in its sole discretion and by notice to Magellan, may require Magellan to take any or all of the following steps:

- a. Complete performance of any NDEQ approved work plan for the Cleanup;
and
- b. Retain a third-party consultant to assess the site conditions of the Nemaha Spill and prepare a plan to remediate any remaining oil or hazardous substances in accordance with the National Contingency Plan, 40 C.F.R. Part 300, resulting from the Nemaha Spill ("Remedial Work Plan"). Any third-party consultant shall be selected in accordance with the following requirements:

(1) Selection of a Third-Party Consultant: By no later than thirty (30) Days after receiving notice of EPA Oversight Takeover, Magellan shall submit to EPA Region 7 a list of two or more proposed third-party consultants that possess appropriate technical background and experience in the remediation of oil contamination, as well as all necessary professional licenses required by federal and state law. Magellan's proposal shall include a description of each proposed third-party consultant's qualifications and a description of any previous contracts or financial relationships, if any, between the proposed third-party consultant and Magellan. By no later than thirty (30) Days after receiving the list of proposed third-party consultants, EPA Region 7 will provide Magellan with written approval or disapproval of each proposed third-party consultant. If EPA Region 7 disapproves every proposed third-party consultant on Magellan's list, Magellan shall submit a supplemental list of at least two additional proposed third-party consultants by no later than thirty (30) Days after receiving EPA Region 7's written disapproval. If EPA Region 7 disapproves every proposed third-party consultant on Magellan's supplemental list, EPA Region 7 shall have the right to select any third-party consultant it deems qualified, subject to Magellan's right to invoke Dispute Resolution pursuant to Section XI (Dispute Resolution) of this Consent Decree with respect to EPA's selection.

(2) Within thirty (30) Days after receiving approval for one or more proposed third-party consultants from EPA Region 7, the selection of a third-party consultant by EPA Region 7, or the conclusion of Dispute Resolution, whichever is applicable, Magellan shall enter into a contract with the chosen third-party

consultant to assess the site of the Nemaha Spill and draft a Remedial Work Plan;
and

c. Submit the Remedial Work Plan to EPA Region 7 for review and approval, pursuant to Section VI (Deliverables) of this Consent Decree. At its sole discretion, EPA Region 7 may elect to accept a Remedial Work Plan created by Magellan rather than a third-party consultant.

(1) The deadline for the submission of a Remedial Work Plan shall be set by EPA Region 7, but shall be no sooner than 30 Days after Magellan enters into a contract with a third-party consultant, or 30 Days after EPA Region 7 provides written notice that Magellan need not retain a third-party consultant, whichever is applicable.

(2) Magellan must implement any approved Remedial Work Plan, pursuant to Section VI (Deliverables) of this Consent Decree.

Training Program

15. Magellan shall implement an annual training program for all Magellan employees engaged in preventing third party damage to any Magellan Facility ("Training Program"). The Training Program must be based upon and provide employees with a review of all applicable: i) Magellan damage prevention standards, guidance; and procedures, ii) "lessons learned" from past pipeline oil discharges caused by third-party damage, iii) best practices within the company and industry, and iv) tools and methods to enhance the effectiveness of communications sent to third parties to prevent third party pipeline damage.

16. The Training Program must conform to the description and requirements listed in Appendix A, provided that:

a. Magellan must provide initial training to all employees covered by the Training Program within twelve (12) months of the Effective Date, and annually thereafter.

b. The Training Program may be modified periodically based on new industry best practices or lessons learned.

(1) Modifications to the Training Program must neither delete any topics covered by the Training Program nor result in a program that offers less frequent training or training to a more limited category of employees than the program described in Appendix A, and must be consistent with the topics required by Paragraph 15, above.

(2) Any modification to the Training Program must be submitted in writing to EPA Region 7 within thirty (30) Days of implementation. After review, EPA Region 7 may disapprove, in whole or in part, any modification. Should EPA Region 7 disapprove, in whole or in part, any modification to the Training Program, Magellan shall revert to the last approved version of the Training Program immediately upon notification of such disapproval.

Pipeline Integrity SSC Database

17. Within 180 Days of the Effective Date, Magellan shall develop a database that collects industry documentation or publications concerning SSC and its impact on pipeline

integrity and risk management (“Pipeline Integrity SSC Database”). This shall include any reports reasonably available to Magellan concerning spills known to have been caused by SSC.

- a. Magellan shall update the Pipeline Integrity SSC Database at least once each calendar quarter to include the most recent publically available documents.
- b. Magellan shall make the Pipeline Integrity SSC Database available to all Magellan engineers, pipeline integrity supervisors, and pipeline integrity analysts.

Integrity Management Plan

18. Within 180 Days of the Effective Date, Magellan shall submit to EPA an updated IMP that takes into account, as appropriate, the findings of the El Dorado RCFA (“Updated IMP”). As part of the Updated IMP, Magellan shall explain the basis for any determinations by Magellan not to incorporate the following actions recommended by the RCFA into the Updated IMP:

- a. Additional procedures to ensure that SSC is identified as a specific threat to be considered in the determination of seam susceptibility;
- b. Inclusion of SSC as a specific threat within Magellan’s Pipeline Relative Risk Model;
- c. Continual assessment procedures to escalate the discovery of SSC and to require an accelerated engineering analysis upon discovery of SSC where no previous history of SSC exists;
- d. Additional procedures to document in any engineering analysis the consideration of in-line inspection limitations and/or the use of supplementary hydrostatic testing for longitudinal electronic resistance seam welds;
- e. Additional procedures to include in any engineering analysis the consideration of cathodic protection effectiveness with a focus on disbanded coatings;
- f. Additional procedures to include in any engineering analysis the consideration of the impact of pressure cycle fatigue aggressiveness on a formal and documented basis;
- g. Additional procedures to consider continued monitoring of cathodic protection effectiveness through the use of close-interval surveys. This includes the consideration of the additional use of close-interval surveys in areas where SSC has been discovered

in order to identify other areas along the pipeline where cathodic protection levels may indicate a high likelihood for the development of SSC; and

- h. Updating procedures to reference the latest available industry documentation regarding advancements to SSC research and understanding.

The Updated IMP is not subject to EPA review and approval.

Public Spill Reporting

19. Magellan shall create and maintain a page on its corporate web site which describes information concerning Covered Releases ("Public Spill Information Page").

20. The Public Spill Information Page must include information concerning any release of oil or hazardous substances that impacts a Water of the United States ("Covered Release").

21. For each Covered Release, the Public Spill Information Page must have a narrative description or summary that includes the following information:

- a. location of the Covered Release;
- b. estimated volume of the Covered Release;
- c. type of product(s) released in the Covered Release;
- d. name of impacted water(s);
- e. description of Magellan's response to the Covered Release.

22. An entry for each Covered Release must be posted on the Public Spill Information Page within thirty (30) Days of the date of the Covered Release.

23. Should Magellan become aware that information posted on the Public Spill Information Site is inaccurate, the information shall be updated to provide the most accurate

information available to Magellan as soon as practicable, but in no case later than fourteen (14) Days after Magellan becomes aware of the inaccuracy.

VI. DELIVERABLES

24. Deliverables Subject to EPA Review and Approval. After review of any Deliverable required to be submitted for review and approval, EPA shall in writing: (a) approve the Deliverable; (b) approve the Deliverable upon specified conditions; (c) approve part of the Deliverable and disapprove the remainder; or (d) disapprove the Deliverable.

25. If the Deliverable is approved pursuant to Paragraph 24, Defendant shall take all actions required by the Deliverable, in accordance with the schedules and requirements of the Deliverable, as approved. If the Deliverable is conditionally approved or approved only in part pursuant to Paragraph 24(b) or (c), Defendant shall, upon written direction from EPA, take all actions required by the Deliverable that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section XI (Dispute Resolution).

26. If the Deliverable is disapproved in whole or in part pursuant to Paragraph 24(c) or (d), Defendant shall, within 30 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the Deliverable, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

27. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with the preceding

Paragraphs, or may itself correct any deficiencies subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties.

28. Any stipulated penalties applicable to a Deliverable that is disapproved in whole or in part pursuant to Paragraphs 24.c or 24.d, as provided in Section IX, shall accrue during the 30 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original Deliverable was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original Deliverable shall be due and payable notwithstanding any subsequent resubmission.

VII. PERMITS

29. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VIII. REPORTING REQUIREMENTS

30. Defendant shall submit the following reports:
- a. Semi-Annual Report: By July 31st and January 31st of each year after the Effective Date of this Consent Decree, until termination of this Decree pursuant to

Section XIX, Defendant shall submit a semi-annual report that includes a description of all activities related to Consent Decree implementation in the preceding 6 months (“Semi-Annual Report”). The Semi-Annual Report shall include, at a minimum: (a) a tabulation of the number of individual employee trainings completed as part of Training Program, cumulatively and since the last Semi-Annual Report; (b) a progress report concerning the cleanup of the Nemaha Spill; (c) a progress report concerning the creation of the Pipeline Integrity SSC Database; and (d) a progress report concerning the Public Spill Information Page.

b. The Semi-Annual Report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

31. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within 10 business Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section X (Force Majeure).

32. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Consent Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

33. All reports shall be submitted to the United States and EPA in accordance with Section XV (Notices).

34. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

35. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

36. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CWA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

37. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

IX. STIPULATED PENALTIES

38. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

39. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$2,500 per Day for each Day that the payment is late.

40. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VIII:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$350.....	1st through 14th Day
\$750.....	15th through 30th Day
\$1,250.....	31st Day and beyond

41. All Other Consent Decree Violations. The following stipulated penalties shall accrue per violation per Day for any violation of the Consent Decree that is not otherwise specified in this Section:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 14th Day
\$1,000.....	15th through 30th Day
\$3,000.....	31st Day and beyond

42. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

43. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States’ written demand, unless otherwise provided in this Consent Decree.

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

45. Stipulated penalties shall continue to accrue as provided in Paragraph 42, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

46. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

47. 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.

48. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

49. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

X. FORCE MAJEURE

50. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

51. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant

shall provide notice orally or by electronic or facsimile transmission to EPA, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven (7) Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

52. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

53. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

54. If Defendant elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 50 and 51. If EPA or the Court determine that Defendant has carried this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XI. DISPUTE RESOLUTION

55. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

56. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,

then the position advanced by the United States shall be considered binding unless, within 10 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

57. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

58. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

59. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

60. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

61. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 57 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law. Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 57, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the CWA.

62. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 45. If

Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

63. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

64. Upon request, Defendant shall provide EPA or its authorized representative splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

65. Until three (3) years after the termination or partial termination, where applicable, of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents'

possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

66. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

67. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

68. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

69. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

70. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

71. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendant's violations, 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 claims that have been specifically resolved pursuant to Paragraph 69.

72. 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, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent 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, or permits.

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

74. 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.

XIV. COSTS

75. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees)

incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XV. NOTICES

76. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-10628

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-10628

As to EPA by mail and email:

U.S. Environmental Protection Agency, Region 6
Oil Spill & Response Team Lead
1445 Ross Avenue, Suite 1200, 6SF-EO
Dallas, TX 75202-2733
(214) 665-7447 (facsimile)

AND

Amy Salinas
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200, 6RC-S
Dallas, TX 75202-2733
(214) 665-6460 (facsimile)

AND

U.S. Environmental Protection Agency, Region 7
AWMD/CORP
Attn: Mark Aaron
11201 Renner Boulevard
Lenexa, Kansas 66219

AND

Aaron.Mark@epa.gov

As to Defendant:

Daniel Scroggins
One Williams Center
Ste. 2800
Tulsa, OK 74172
Danny.Scroggins@magellanlp.com

AND

David Tripp
Stinson Leonard Street
1201 Walnut, Ste. 2900
Kansas City, MO 64106
David.Tripp@stinson.com

AND

Brittany Barrientos
Stinson Leonard Street
1201 Walnut, Ste. 2900

Kansas City, MO 64106
Brittany.Barrientos@stinson.com

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

78. 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.

XVI. EFFECTIVE DATE

79. 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.

XVII. RETENTION OF JURISDICTION

80. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI and XVIII, or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

81. The terms of this Consent Decree, including any attached appendix, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

82. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 61, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. TERMINATION

83. After Defendant has completed the requirements of Section V (Compliance Requirements), has complied with all other requirements of this Consent Decree and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, and at least four (4) years have passed since the Effective Date, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation. Supporting documentation must include, but is not limited to, written certification from NDEQ that Magellan has satisfactorily completed the Cleanup of the Nemaha Spill in accordance with Paragraph 13 of this Consent Decree.

84. Defendant may submit a Request for Partial Termination of the Consent Decree once all requirements of Paragraph 83 have been met other than Cleanup of the Nemaha Spill.

85. Following receipt by the United States of Defendant's Request for Termination or Request for Partial 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 or partially terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

86. In the event of a Partial Termination, all requirements of this Consent Decree shall remain in full force and effect with respect to the Cleanup of the Nemaha Spill, including, but not limited to, any associated reporting or record retention obligations.

87. If the United States does not agree that the Decree may be terminated or partially terminated, Defendant may invoke Dispute Resolution under Section XI. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination or partial termination until at least 90 Days after service of its Request for Termination or Request for Partial Termination.

XX. PUBLIC PARTICIPATION

88. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. 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 consents to entry of this Consent Decree without further notice and agrees not to withdraw from or 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.

XXI. SIGNATORIES/SERVICE

89. Each undersigned representative of Defendant, the EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies 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 this document.

90. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. 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.

XXII. INTEGRATION

91. This Consent Decree, including its appendix, 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. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXIII. FINAL JUDGMENT

92. 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.

Dated and entered this __ day of _____, 2017

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of United States of America v. Magellan Pipeline Company, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

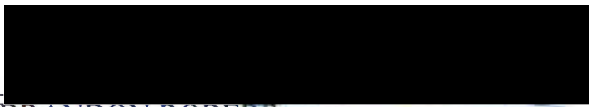
FOR THE UNITED STATES OF AMERICA

Jan 16, 2017
Date



BRUCE GELBER
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Jan 18, 2017
Date



BRANDON ROBERS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Phone: (202) 514-5292
Fax: (202) 616-6584
Brandon.robbers@usdoj.gov

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of United States of America v. Magellan Pipeline Company, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

**FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY REGION 6:**

1/18/2017
Date



RON CURRY
Regional Administrator
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

1/5/17
Date



AMY SALINAS
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of United States of America v. Magellan Pipeline Company, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

**FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY REGION 7:**

01-10-2017

Date



MARK J. HAGUE
Regional Administrator
U.S. Environmental Protection Agency
Region 7
11201 Renner Blvd.
Lenexa, KS 66219

1/9/17

Date



HOWARD BUNCH
Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Blvd.
Lenexa, KS 66219

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of United States of America v. Magellan Pipeline Company, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE:

1/17/17

Date

[Redacted Signature]

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

1/13/17

Date

[Redacted Signature]

SUSAN SHINKMAN
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

12-22-16

Date

[Redacted Signature]

MARK POLLINS
Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

12-22-16

Date

[Redacted Signature]

KELLY ANN K. BRANTNER
Attorney Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of United States of America v. Magellan Pipeline Company.

FOR MAGELLAN:

1/6/17
Date

A black rectangular redaction box covering the signature of Daniel Scroggins.

Daniel Scroggins
Senior Attorney, Magellan Pipeline Company, L.P.