

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

SUNOCO PIPELINE L.P.

Defendant.

Civil Action No. 17-cv-689

CONSENT DECREE

TABLE OF CONTENTS

I. INTRODUCTION 2

II. JURISDICTION..... 3

III. PARTIES BOUND 4

IV. DEFINITIONS 4

V. PAYMENT OF CIVIL PENALTY 5

VI. NOTIFICATION 7

VII. EFFECT OF SETTLEMENT/ RESERVATION OF RIGHTS 9

VIII. COSTS 10

IX. MISCELLANEOUS PROVISIONS 10

X. SIGNATORIES/SERVICE..... 11

XI. FINAL JUDGMENT 12

I. INTRODUCTION

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action against Sunoco Pipeline L.P. (“Defendant” or “SPLP”) concurrently with this Consent Decree (“Decree”) alleging that the Defendant is liable for civil penalties under the Clean Water Act (“CWA”), 33 U.S.C. § 1251-1387, arising from Defendant’s unauthorized discharge of 1,950 barrels of gasoline on January 12, 2012 from Defendant’s on-shore oil pipeline located near Wellington, Lorain County, Ohio (the “Pipeline”);

WHEREAS, this Decree does not constitute an admission of any facts or liability by Defendant;

WHEREAS, Defendant’s response to the removal of discharged gasoline was completed in accordance with an administrative order entered with EPA;

WHEREAS, Defendant currently transports ethane and propane through the Pipeline and has represented that it has taken steps to reduce the potential for future releases, including but not limited to, removing and replacing sections of the pipeline, hydrostatic pressure testing the pipeline and improving its internal monitoring and response programs;

WHEREAS, to resolve, in accordance with this Decree, the claims asserted in the Complaint regarding alleged violations of the CWA at the Facility, Defendant agrees to pay the sum specified herein;

WHEREAS, the United States and Defendant (the “Parties”) recognize, and the Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith, will avoid litigation between the Parties, and that this Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to Sections 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 28 U.S.C. §§ 1331, 1345, and 1355, and also has jurisdiction over the parties.

2. Venue is proper in this District pursuant to Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395(a), because the events giving rise to the claims alleged in the Complaint occurred in this District.

3. For the purposes of this Decree, Defendant agrees that the Complaint filed in this case states claims upon which relief may be granted.

4. Solely for purposes of this Consent Decree, Defendant waives any defenses it might have as to jurisdiction and venue, and without admitting or denying the factual allegations contained in the Complaint, consents to the Court's jurisdiction, venue in this District, and the terms of this Decree. In any action to enforce this Decree, Defendant accepts the Court's jurisdiction over this Decree and consents to venue in this District.

5. Defendant does not admit any fact, law or liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

6. The United States has given notice of commencement of this action to the State of Ohio as required by Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

III. PARTIES BOUND

7. The obligations of this Decree apply to and are binding upon the United States and upon the Defendant, and any of its successors or assigns.

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

IV. DEFINITIONS

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

- a. “Complaint” shall mean the Complaint filed by the United States in this action;
- b. “Consent Decree” or “Decree” shall mean this Consent Decree;
- c. “Date of Lodging” shall mean the date the signed Decree is filed with the Court pursuant to 28 C.F.R. § 50.7;
- d. “Day” shall mean a calendar day. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;
- e. “Defendant” shall mean Sunoco Pipeline L.P., a Pennsylvania corporation with its principal office in Newtown Square, Pennsylvania;
- f. “DOJ” shall mean the U.S. Department of Justice and any of its successor departments or agencies;

- g. “Effective Date” shall mean the date upon which this Decree is entered by the Court or a motion to enter the Decree is granted, whichever is first, as recorded by the Court’s docket;
- h. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- i. “Facility” shall mean Defendant’s Hudson to Fostoria pipeline located in Ohio;
- j. “Interest” shall mean interest at the rate specified in 28 U.S.C. § 1961;
- k. “Paragraph” means a portion of this Decree identified by an Arabic numeral (“subparagraph” by letter);
- l. “Parties” shall mean the United States and Sunoco Pipeline L.P.;
- m. “Plaintiff” shall mean the United States;
- n. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral; and
- o. “United States” shall mean the United States of America, acting on behalf of the EPA.

V. PAYMENT OF CIVIL PENALTY

10. Within thirty (30) Days of the Effective Date, Defendant shall pay to the United States a civil penalty under CWA Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C), of \$990,000. Defendant shall not deduct any civil penalties paid under this Section in calculating its federal income tax.

11. The payment due the United States under Paragraph 10 of this Section shall be made by Fedwire Electronic Fund Transfer (“EFT”) in accordance with instructions provided to

Defendant by the Financial Litigation Unit of the United States Attorney's Office, United States Court House, 801 W. Superior Ave; Suite 400, Cleveland, Ohio 44113-1852, Telephone Number (216) 622-3600 following the Effective Date. Such monies are to be deposited in the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9609(b)(8). The Financial Litigation Unit ("FLU") will provide the payment instructions to:

Kevin Dunleavy, Chief Counsel
3801 West Chester Pike
Newtown Square, Pennsylvania 19073
kevin.dunleavy@sunoco.com

on behalf of Defendant. Defendant 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 VI (Notification). 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 reference the civil action number assigned to this case and DOJ Case Number 90-5-1-1-11415: (1) by email to CINWD AcctsReceivable@epamail.epa.gov; (2) by U.S. mail to the EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268, and (3) by U.S. mail to the representatives of the U.S. Department of Justice and EPA designated in Section VI (Notification). Any payment received by the U.S. Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

12. If all or any part of the penalty specified in Paragraph 10 is not paid within thirty (30) Days of the Effective Date, in addition to the amount specified in Paragraph 10, Defendant shall pay Interest on any unpaid balance and be subject to stipulated penalties as provided in Paragraph 13 of this Consent Decree.

13. Stipulated Penalties. Defendant shall pay stipulated penalties of \$1,500 for each Day the payment required by Paragraph 10 is late.

a. Defendant shall pay any Stipulated Penalty within thirty (30) Days of receiving a written demand from EPA pursuant to Section VI (Notification).

b. If Defendant fails to pay stipulated penalties according to the terms of this Decree, Defendant shall be liable for Interest on such penalties accruing as of the date stipulated penalties become due under Subparagraph (a) of Paragraph 13.

c. Defendant shall pay stipulated penalties pursuant to the instructions for payment of civil penalties set forth in Paragraph 11 except that the transmittal letter shall state that it is for the payment of stipulated penalties.

d. Defendant shall not deduct any stipulated penalties paid under this Paragraph in calculating federal income tax.

14. Nothing in this Section shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay the civil penalty under Paragraph 10 or any stipulated penalty under Paragraph 13.

VI. NOTIFICATION

15. Notifications required pursuant to this Consent Decree shall be deemed submitted on the date they are either sent by certified mail, return receipt requested, sent by facsimile transmission with confirmation of receipt, or sent by overnight delivery service with confirmation of receipt. When notification is required by the terms of this Consent Decree, it shall be provided both to the United States Department of Justice and to EPA at the following addresses:

As to the United States Department of Justice:

Thomas A. Mariani Jr.
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 Case No. 90-5-1-1-11415

As to EPA:

Richard J. Clarizio
U.S. EPA, Region 5
Office of Regional Counsel (CS-14J)
77 W. Jackson Blvd.
Chicago IL, 60604
Email: clarizio.richard@epa.gov

Rachel Zander
U.S. EPA, Region 5
Office of Regional Counsel (CS-14J)
77 W. Jackson Blvd.
Chicago IL, 60604
Email: zander.rachel@epa.gov

Joseph Ulfig
U.S. EPA, Region 5
Superfund Division (SC-5J)
77 W. Jackson Blvd.
Chicago IL, 60604
Email: Ulfig.joseph@epa.gov

Kelly Brantner
U.S. EPA
Office of Enforcement and Compliance Assurance
Mail Code 2243-A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Email: Brantner.kelly@epa.gov

16. When notification is required by the terms of this Consent Decree, it shall be provided to SPLP at the following addresses:

Sunoco Pipeline L.P.
Attn: Carl Borkland or VP of Health, Environmental and Safety
3807 West Chester Pike
Newtown Square, PA 19073
E-mail: cgborkland@sunocologistics.com

Attn: Law Department
Regulatory – Health, Environmental and Safety Chief Counsel
3807 West Chester Pike
Newtown Square, PA 19073

E-mail: kevin.dunleavy@sunoco.com

17. Any Party may, by written notice to the other Parties in accordance with this Section, change its designated notice recipient or notice address provided above.

VII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

18. Entry of this Consent Decree and full and satisfactory compliance with its requirements resolves the civil claims of the United States against the Defendant for the violations alleged in the Complaint filed in this action.

19. Notwithstanding Paragraph 18 above, the United States reserves, and this Decree is without prejudice to, its right to institute a claim against Defendant with respect to all matters other than those expressly specified in Paragraph 18 including, but not limited to, the following:

- a. claims based on failure of Defendant to meet a requirement of this Consent Decree;
- b. claims for criminal liability; and
- c. claims for natural resources damages (under the CWA, the Oil Pollution Act (“OPA”), the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), or other legal authority).

20. Plaintiff reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under any other federal or state law, regulations, or permit conditions, except as expressly specified herein.

21. In any subsequent administrative or judicial proceeding reserved herein, 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 18. Except as provided herein, Defendant reserves its defenses to any such action.

22. This Decree does not limit or affect the rights of the Plaintiff or Defendant against any third parties (parties not specifically part of this Decree), nor does it limit the rights of such third parties against Defendant except as provided by law. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party that is not party to this Decree.

23. Defendant hereby covenants not to sue and agrees not to assert any claims related to the violations alleged in the Complaint against the United States pursuant to the CWA, OPA, or any other federal law, state law, or regulation, including, but not limited to, any direct or indirect claims for reimbursement from the Oil Spill Liability Trust Fund, as defined in Section 1001(11) of OPA, 33 U.S.C. § 2701(11), or any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106, 107, 111, 112, 113, 42 U.S.C. §§ 9606, 9607, 9611, 9612, and 9613, or any other provision of law.

VIII. COSTS

24. Each Party shall bear its own costs in this action, including attorney's fees except that the United States shall be entitled to collect the costs of an action brought to enforce this Consent Decree, including attorney's fees, if the United States prevails in that action.

IX. MISCELLANEOUS PROVISIONS

25. Integration and Modifications. This Consent Decree contains the entire agreement between the Parties with respect to the settlement embodied herein. No other document, nor any

representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

26. Termination. After Defendant has paid the civil penalties under Section V of this Decree (Payment of Civil Penalty) and paid any Stipulated Penalties accrued under Paragraph 13, the Parties shall submit, for the Court's approval, a joint stipulation for termination of the Decree.

27. Public Participation. The Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment, consistent with the procedures set forth in 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Consent Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper or inadequate. Defendant 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. Defendant consents to entry of this Consent Decree without further notice.

X. SIGNATORIES/SERVICE

28. The undersigned representative(s) of each Party 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 the terms of this Consent Decree.

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

30. 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 Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to service of a summons.

XI. FINAL JUDGMENT

31. Upon entry by this Court, this Consent Decree shall constitute a final judgment for purposes of Fed. R. Civ. P. 54 and 58.

32. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment.

This Consent Decree is dated and entered this ____ day of _____, 2017.

United States District Judge

The undersigned party enters into this Consent Decree in the matter of United States v. Sunoco Pipeline, L.P., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF UNITED STATES OF AMERICA

[REDACTED]

KAREN S. DWORKIN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

[REDACTED]

LILA C. JONES
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
601 D St. NW
Washington, DC 20044
Telephone: (202) 514-9859

The undersigned party enters into this Consent Decree in the matter of United States v. Sunoco Pipeline, L.P., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF UNITED STATES OF AMERICA


DAVID A. SIERLEJA
Acting United States Attorney
Northern District of Ohio

ALEJANDRO A. ABREU
Assistant United States Attorney
United States Courthouse
801 West Superior Ave.
Cleveland, Ohio 44113
Telephone: (216) 622-3620
alejandro.a.abreu@usdoj.gov

The undersigned party enters into this Consent Decree in the matter of United States v. Sunoco Pipeline, L.P., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.


FOR THE ENVIRONMENTAL PROTECTION AGENCY

3/10/17
Date



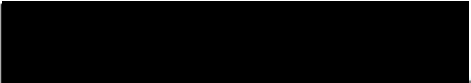
SUSAN SHINKMAN
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

3/10/17
Date



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

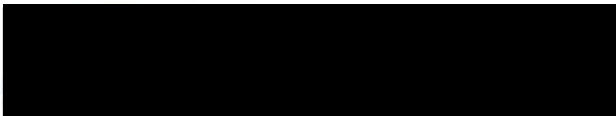
3/10/17
Date



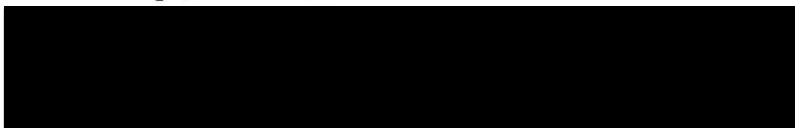
KELLY ANN K. BRANTNER
Attorney Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

The undersigned party enters into this Consent Decree in the matter of United States v. Sunoco Pipeline, L.P., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

**FOR THE ENVIRONMENTAL PROTECTION
AGENCY**



ROBERT A. KAPLAN
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604



RICHARD J. CLARIZIO and RACHEL ZANDER
Associate Regional Counsels
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

The undersigned party enters into this Consent Decree in the matter of United States v. Sunoco Pipeline, L.P., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR DEFENDANT SUNOCO PIPELINE L.P.,

By: Sunoco Logistics Partners Operations GP
LLC, its general partner



DAVID R. CHALSON
President and Chief Executive Officer
3807 West Chester Pike
Newtown Square, PA 19073