

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

MAR 13 2002

Michael N. Milby, Clerk of Court

UNITED STATES OF AMERICA, and
The STATE OF TEXAS,
Plaintiffs,

v.

EQUILON PIPELINE COMPANY, LLC, f/d/b/a
TEXACO PIPELINE, INC., and COLONIAL
PIPELINE COMPANY,
Defendants.

CIVIL ACTION NO. H 01-3171

CONSENT DECREE ADDRESSING NATURAL RESOURCE DAMAGES

Plaintiffs, the United States of America, on behalf of the United States Department of the Interior for the United States Fish and Wildlife Service ("DOI/USFWS") and the National Oceanic and Atmospheric Administration ("NOAA") of the United States Department of Commerce, and the State of Texas ("State"), on behalf of the Texas Natural Resource Conservation Commission ("TNRCC"), the Texas Parks and Wildlife Department ("TPWD"), and the Texas General Land Office ("TGLO"), filed a Complaint in this action pursuant to Section 1006 of the Oil Pollution Act ("OPA"), 33 U.S.C. § 2706, seeking natural resource damages, arising out of the discharge of oil into the navigable waters and adjoining shoreline of the United States and the State of Texas in the vicinity of the San Jacinto River on or about October 20, 1994.

The Complaint, which was filed by the United States and the State concurrently with the lodging of the Consent Decree, alleges that the Defendants named therein are each persons within the meaning of OPA who are liable for injuries or losses of natural resources caused by discharges of oil into the navigable waters and adjoining shoreline of the United States and the State in the vicinity of the San Jacinto River on or about October 20, 1994.

The Complaint seeks a finding of liability against Defendants for natural resource

damages incurred by the United States and the State, based on those injuries and losses. The United States, the State and the Defendants, have agreed on the terms set forth in this Consent Decree to address these claims of the United States and the State and dismiss this action. By entering into this Consent Decree the Defendants make no admission with respect to their liability for, or the amount of, any natural resource damages arising from any conditions present at or arising from the discharges of oil products which are the subject of the action.

The United States, the State, and the Defendants agree that entry of this Consent Decree on the terms identified herein is in the public interest and is the most appropriate means of resolving this action against the Defendants.

IT IS, ADJUDGED, ORDERED AND DECREED THAT:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2717(b), and pursuant to 28 U.S.C. §§ 1331 and 1345.

II. VENUE

2. Venue is proper in this District pursuant to Section 1017(b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2717(b), and pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a), as it is the judicial district in which the discharges of oil and natural resource damages are alleged to have occurred.

III. BINDING EFFECT

3. This Consent Decree applies to and is binding upon the United States, the State and the Defendants, and their successors and assigns. Any change in corporate status or ownership of a Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Defendant's responsibilities under this Consent Decree.

4. Each representative of a Defendant who signs this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and

legally bind such Defendant to this document. The undersigned Deputy Section Chief on behalf of the United States, and the undersigned representative of the State certify that they are each fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind their respective entities to this document.

5. The unwillingness to pay or the insolvency of any Defendant, whether or not it is through formal bankruptcy proceedings, shall not affect or change the obligations of the remaining signatories to this Consent Decree. The remaining Defendant shall be jointly and severally responsible to the United States and the State for performing all of the obligations of Defendants set forth herein.

IV. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Decree shall have the meanings ascribed to them in the Oil Pollution Act, ("OPA"), 33 U.S.C. § 2701, et seq. The following definitions also apply to terms used in this Consent Decree:

a. "Coastal Protection Fund", ("CPF") shall mean the fund established by Texas Natural Resources Code, Section 40.151.

b. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. 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, eastern standard time of the next working day.

c. "Discharge" has the meaning provided in Section 1001 of OPA, 33 U.S.C. § 2701.

d. "Defendants" means those parties whose representatives have signed the Consent Decree, namely; Equilon Pipeline Company, LLC, successor, by way of merger to, Texaco Pipeline, Inc., and Colonial Pipeline Company.

e. "Incident" refers collectively to the rupture of two Colonial Pipeline Company pipelines, and of a Texaco Pipeline, Inc., pipeline which occurred in the vicinity of the San

Jacinto River on or about October 20, 1994.

f. "Natural Resources" shall have the meaning provided in Section 1001 of OPA, 33 U.S.C. § 2701.

g. "Natural Resource Damages" shall have the meaning provided in Section 1001 of OPA, 33 U.S.C. § 2701.

h. "Natural Resource Trustees" shall mean the Federal Natural Resource Trustees (DOI/USFWS and NOAA), and the State Natural Resource Trustees (TNRCC, TPWD and TGLO), collectively, except where otherwise indicated in this Consent Decree.

i. "Navigable waters" shall have the meaning provided in Section 1001 of OPA, 33 U.S.C. § 2701.

j. "Oil" shall have the meaning provided in Section 1001 of OPA, 33 U.S.C. § 2701.

k. "Oil Spill Liability Trust Fund" ("OSLTF"), shall mean the fund established by Section 9509 of Title 26.

l. "Person" has the meaning provided in Section 1001 of OPA, 33 U.S.C. § 2701.

m. "Parties" means the United States, the State and the Defendants.

n. "Remove" or "removal" shall have the meaning provided in Section 1001 of OPA, 33 U.S.C. § 2701.

V. DEFENDANTS

7. At the time of the incident, Texaco Pipeline Inc. ("Texaco") owned and operated a 20 inch pipeline which crosses the San Jacinto River and transports oil from Houston, Texas to Louisiana. Subsequent to the incident, Equilon Pipeline Company LLC succeeded to the interests of Texaco.

8. Colonial Pipeline Company (hereinafter "Colonial"), is a Delaware and Virginia corporation. Colonial owns and operates two pipelines that traverse and parallel the San Jacinto River: a 36-inch pipeline transporting primarily heating oil from Houston, Texas to the New York City area, and a 40-inch pipeline transporting primarily gasoline from Houston to the New

York City area.

VI. STATEMENT OF FACTS RELATING TO NATURAL RESOURCE DAMAGES

9. Beginning on October 15, 1994, heavy rains in the Houston area caused serious flooding in the San Jacinto River Basin.

10. Early in the morning on October 20th, the Colonial 40 inch pipeline failed in the flood plain next to the San Jacinto River crossing near Wallisville Road.

11. Colonial's 36 inch line which carried diesel/fuel oil in the same right-of-way as the failed 40 inch line, failed at 2:00 p.m. on October 20th.

12. Texaco's 20 inch crude oil pipeline ran along the same right-of-way as the two Colonial lines. Unlike the other pipelines in this right-of-way, the Texaco pipeline was not under pressure. The U.S. Coast Guard and others suspected that the Texaco line failed on October 20th, 1994, Texaco contends that its pipeline failed sometime on October 20 or 21, 1994.

13. The rupture of each of these pipelines resulted in discharges of oil into the navigable waters and adjoining shoreline of the United States and the State in the San Jacinto watershed.

14. In response to the discharges of oil and resulting fires, the U.S. Coast Guard undertook substantial removal activities, including assessment of the pollution; coordination of pollution response with local, state and federal authorities; monitoring operations; assistance in fighting and controlling fires; implementation of the Unified Command Booming and Skimmer Strategy; establishment and enforcement of a safety zone on the Houston ship channel; hiring cleanup contractors; conducting laboratory analysis of sampled oils; deploying containment booms; leasing and deploying skimmers; and providing funds to the State as for removal activities and to the Trustees to allow them to initiate natural resource damage assessment activities. Response operations were completed on or about December 3, 1994.

15. The United States and the Defendants have previously entered into a Joint Stipulation and Order of Dismissal ("Joint Stipulation") addressing and resolving their liability to the United States for removal and initiation costs incurred under the Clean Water Act ("CWA"), 33 U.S.C.

§ 1251 *et seq.*, as amended by OPA, 33 U.S.C. § 2701 *et seq.*, as a result of the Incident. [*U.S. v. Texaco Pipeline et al.*, Civil Action No. H-97-3876, S.D. Texas]. The Joint Stipulation reserved all claims of the United States for natural resources damages for the injury, destruction or loss of natural resources associated with the Incident.

16. The United States and the State of Texas allege that natural resources of the United States and the State were injured as a result of direct contact with oil discharged from the pipelines and as a result of exposure to floating burning oil. Further, biological resources may also have been injured through ingestion of the discharged hydrocarbon material or hydrocarbon/water mixture. Additional harmful exposure of aquatic resources to hydrocarbons may have occurred as a result of dispersion of the discharged oils into the water column.

17. DOI/USFWS, NOAA, TGLO, TPWD and TNRCC are each designated under OPA as a trustee for natural resources which have been actually or potentially affected by the discharges of oil attributable to the Incident.

18. On October 24, 1994, Colonial, Texaco and the Trustees agreed to conduct a cooperative Pre-Assessment Screen, as the first step in the Natural Resource Damage Assessment ("NRDA") process. At that time, ENTRIX, a private consulting firm, was retained by Colonial and Texaco to perform various tasks to support the Pre-Assessment Screen. A Cooperative Assessment Group ("CAG"), consisting of Colonial, Texaco, the Trustees, and ENTRIX representatives, was formed to facilitate the cooperative Pre Assessment Screen.

19. Through the cooperative Pre-assessment Screen, the Trustees found that natural resources had been or were likely to have been injured as a result of the Incident and four Trustees - TGLO, TPWD, TNRCC and DOI/USFWS - determined to proceed with the natural resource damage assessment process in order to identify and quantify those losses and the damages due as a result. Colonial, Texaco and these four Trustees entered into an Memorandum of Agreement ("MOA") that outlined the conduct of a Cooperative Natural Resource Damage Assessment ("NRDA") for the Incident. NOAA was involved in the Pre-Assessment Screening

process and found resources under its trusteeship had been injured but considered its further formal participation in the NRDA process to be unnecessary in light of the decision of the other four Trustees. NOAA's role in the NRDA process was thereafter limited to providing requested technical assistance to the other Trustees on certain NRDA activities, in accordance with Section 1006(e)(1) of OPA, 33 U.S.C. 2706(e)(1).

20. The NRDA for the Incident was conducted using a phased approach. This phased approach allowed for a logical progression of technical tasks, that included (a) initial response efforts; (b) pre-assessment screen; (c) injury characterization; (d) injury quantification (Habitat Equivalency Analysis Debit Calculations); (e) preliminary restoration planning; (f) restoration quantification (Habitat Equivalency Analysis Credit Calculations); and (g) restoration planning and implementation.

21. In order to evaluate the impact of the incident, the CAG divided the area impacted by the spill into two parts: (1) north of the Interstate 10 ("I-10") river bridge and (2) south of the Interstate 10 river bridge. The area north of the I-10 river bridge consisted primarily of freshwater and mixed forest. The area south of the I-10 river bridge consisted primarily of estuarine wetland habitat. Because the sectors differed in habitat and impact, different techniques were employed throughout the Pre-Assessment and Assessment process.

22. On April 1, 1995, the Trustees issued a Notice of Intent to Perform a NRDA. Representatives for Colonial and Texaco requested that they be allowed to participate in the Injury Assessment phase of the NRDA.

23. Based on consideration of the habitat types present within the south of I-10 study area, the CAG agreed that coastal wetlands were a primary habitat of concern due to their geographic extent and ecological significance to a wide range of estuarine species. This focus of concern on coastal wetlands was subsequently reflected in the scope of work for the south of I-10 injury assessment studies and is consistent with the established Bay-wide resource management and general restoration goals for the Galveston Bay area.

24. The north of I-10 study area focused primarily on potential injury related to the oiling and burning of forested and herbaceous habitats. In May 1995, the CAG agreed to use aerial photography along with groundtruthing, to formulate estimates for Habitat Equivalency Analysis ("HEA") input values. Low-level true color and color infrared ("IR") aerial photography of the north of I-10 study area were taken in early summer and fall 1995, and again in early summer 1996. Groundtruthing efforts were conducted after each set of aerial photographs to visually confirm photographic interpretations of injury and recovery in the field.

25. HEA input parameters for the restoration component of the analysis were developed by the CAG based on the evaluation of existing restoration projects within the Galveston Bay area and the expertise of the CAG members. The CAG determined that the restoration, construction, enhancement and preservation of freshwater and estuarine wetlands and mixed forest habitats were appropriate for this case due to their ecological value and the feasibility of implementing these types of restoration.

26. In addition to determining the required amount of mixed forest habitat construction required to compensate for losses, the Trustees also evaluated the option of acquisition and preservation of existing forested habitat at risk for development. Under this scenario, past losses are offset by the avoidance of potential impact to existing productive habitats that would impair the ability of the habitat to provide ecological services into the future.

27. For the south of I-10 study area, total service losses for each habitat affected were determined by summing the results of HEA calculations for all scenarios within each affected habitat. These values were then converted to marsh equivalent losses by applying a habitat relative value.

28. Once total marsh equivalent lost services were determined, the amount of required habitat construction was calculated by dividing the lost services value by the credit earned for each acre of habitat construction. This resulted in the determination that 2.0 acres of estuarine emergent wetlands were required to satisfy compensatory restoration requirements for the

wetland habitat injuries that resulted from the incident in the south of I-10 study area.

29. For some estuarine emergent wetland areas in the south I-10 study area, due to the severity of the impact and the resulting change in environmental character, it was assumed that the impacted habitat would never recover naturally and that primary restoration was appropriate. For these areas, the CAG agreed that the construction of 2.2 acres of estuarine marsh was required to compensate for the lost habitat.

30. For the north of I-10 study area, total service losses for each habitat affected were determined by summing the results of HEA calculations for all scenarios within each affected habitat. These values for the mixed forest, mixed herbaceous and developed habitat were then converted to mixed forest equivalent losses by applying a habitat relative value. Results of HEA calculations for the herbaceous, wetlands and sand habitats were converted to freshwater wetland equivalent losses by applying a habitat relative value.

31. Once total mixed forest and freshwater marsh equivalent lost services were determined, the amount of required habitat construction was calculated by dividing the lost services value by the credit earned for each acre of habitat construction. This resulted in the determination that the construction of 32.8 acres of mixed forest habitat and 0.9 acres of freshwater wetlands were required to satisfy compensatory restoration requirements for injuries to habitats in the north of I-10 study area that resulted from the Incident.

32. For some injury categories it is extremely difficult, time consuming and costly to perform definitive injury quantification procedures. Additional restoration based CAG agreements were reached for natural resources such as air and water quality for which injuries are difficult to assess. The CAG agreed that the construction of 4 acres of estuarine emergent wetlands and 1 acre of mixed forest habitat were required to compensate for water quality and air impacts, respectively.

33. Based on an evaluation of the threat of future degradation/development to similar properties in the area, experience with the mitigation ratios, HEA based on preservation at

similar locations, and best professional judgment, the Trustees determined that the preservation of 100 acres of mixed forest habitat in the vicinity of the area affected by the incident would provide an equivalent level of services as the construction of 32.8 acres of mixed forest.

34. Results of the assessment process for this incident indicate that the construction of 8.2 acres of emergent estuarine wetlands, 0.9 acres of freshwater wetlands and either the construction of 32.8 acres or the preservation of 100 acres of mixed forest habitat are required to compensate the public for injuries resulting from the incident.

35. The Trustees estimated that it would cost \$746,000 to acquire and preserve 100 acres of mixed forest habitat in the vicinity of the area affected by the discharge, \$30,000 for an endowment for the continuing management of the preserved area and \$245,000 to construct the required estuarine and freshwater marsh.

36. The Trustees have determined that the acquisition of a specific parcel composed of 101.9 acres of mixed forest habitat, referred to herein as the "Shunta Property" and more fully described in Appendix "A", which is incorporated herein by reference, would compensate for injuries to mixed forest habitat.

37. The Trustees have presented their natural resource damage claim to the Defendants. The claim presented included the estimated costs to implement the above restoration, the Trustees' estimated costs to plan, design, permit, implement, administer and monitor the above restoration actions or to have these actions performed under the Trustees' oversight, and the costs incurred by the Trustees (including NOAA) in the NRDA process (past assessment costs). The Defendants have agreed to bear the costs of acquiring the Shunta Property to compensate for the injuries to mixed forested habitat and to provide the funds necessary to construct the required estuarine and freshwater marsh but have specifically declined to make funds available to reimburse past assessment costs incurred by the Trustees prior to entry of this Consent Decree or to pay or reimburse the Trustees' further costs to plan, implement and monitor the above restoration actions. The Consent Decree sets forth the terms under which the Defendants will

acquire property and make funds available to the Trustees in order to effect the described restoration actions but, consistent with the Defendants' declination to make further funds available, the resolution of this action neither provides compensation for nor compromises the claim(s) of the Trustees for reimbursement of past assessment costs or the Trustees' future costs to plan, implement and monitor the above restoration actions as described more fully in Paragraphs 38 and 41.

VII. COMPENSATION ADDRESSING NATURAL RESOURCE DAMAGES

38. Within 30 days of the entry of this Consent Decree, the Defendants shall pay to the Trustees the sum of \$250,000. The Trustees shall use \$220,000 to construct estuarine and freshwater marsh habitat. The remaining \$30,000 shall provide an endowment for management by the Trustees of a mixed forest habitat preservation site to be acquired by the Defendants as specified in Appendix "A".

a. Restoration Funds: The Defendants shall pay the \$250,000 into an account established within the Court Registry, to be referred to as the "San Jacinto River Oil Spill, October 1994 Account", in accordance with procedures acceptable to the Court Registry for effecting such transfer. These funds, together with any interest earned thereon, will be held in this account solely for use by the Trustees to plan, implement and oversee the creation or enhancement of estuarine wetlands and freshwater marsh in the San Jacinto River basin in accordance with a restoration plan to be developed by the Trustees to restore, replace or acquire the equivalent of natural resources or resource services injured or lost due to the Incident and to provide for an endowment (\$30,000) for management of the mixed forest habitat preservation site.

b. Reservation of Claims/Rights: The payment and property acquisition described in Paragraph 39 below do not equal the full costs of restoration which the Trustees presented for payment to the Defendants. In particular, the Defendants declined to pay the future costs which the Trustees expect to incur to plan, implement, monitor or otherwise administer these restoration projects. Consistent with the Defendants' declination to make further funds available, in

resolving this action the Parties explicitly recognize and agree that the Trustees' claim(s) for these costs are neither compensated nor compromised under this Consent Decree and, as incurred, shall survive this settlement as uncompensated claims of the Trustees pursuant to Section 1013 of OPA, 33 U.S.C. § 2713, including any interest to which they may be entitled on account of the Defendants' declination to pay. Each Trustee expressly reserves its right to pursue a claim for payment or reimbursement of such future costs from the OSLTF and/or the CPF, as applicable.

39. Not more than thirty (30) days of the entry of this Consent Decree, the Defendants shall acquire in fee simple a specific parcel of 101.9 acres (more or less) of mixed forest habitat ("Shunta Property"), more fully described in Appendix "A" to this Consent Decree, which is incorporated by reference herein, for purposes of establishing a habitat preservation area.

40. Within sixty (60) days of the entry of this Consent Decree, the Defendants shall transfer fee simple title for the Shunta Property to the TPWD, as the designated Trustee responsible for the preservation of ecological services provided by the property.

VIII. ASSESSMENT COSTS

41. The Defendants have been presented with and have declined to make funds available to reimburse past assessment costs incurred by the Trustees prior to entry of this Consent Decree, which costs are as follows:

a. State Trustee(s) Past Costs: The State Trustees have incurred assessment costs of at least \$250,000.

b. DOI/USFWS Past Costs: The United States Department of Interior through the United States Fish and Wildlife Service ("DOI/USFWS") has incurred past assessment costs in the amount of \$29,242.00.

c. NOAA Past Costs: The National Oceanic and Atmospheric Administration ("NOAA") has incurred past assessment costs in the amount of \$61,793.31 as a participant in the Pre-assessment screening phase of the assessment and thereafter incurred costs of \$7,138.98 in

providing technical assistance to the other Trustees on certain NRDA activities.

42. Consistent with the Defendants' declination to make further funds available, in resolving this action the Parties explicitly recognize and agree that these assessment costs are neither compensated nor compromised under this Consent Decree but shall survive this settlement as uncompensated claim(s) of the Trustees pursuant to Section 1013 of OPA, 33 U.S.C. § 2713, including any interest to which they may be entitled on account of the Defendants declination to pay. Each Trustee expressly reserves its right to pursue a claim for reimbursement of such unpaid assessment costs from the OSLTF, and/or the CPF, as applicable. The Defendants reserve all defenses should the Trustees seek to recover additional compensation or reimbursement from the Defendants on any grounds allowed under the Consent Decree. Additionally, the Defendants reserve all defenses should the OSLTF, and/or the CPF or their representatives, seek compensation or reimbursement from the Defendants.

IX. INTEREST

43. In the event that the Defendants fail to timely pay any amount specified in Section VII (Compensation Addressing Natural Resource Damages), the Defendants shall pay Interest on any balance due in accordance with 28 U.S.C. § 1961. Interest shall accrue on any unpaid amount from and including the 31st day following the date of entry of the Consent Decree, until and including the day full payment of penalty and interest is received by the United States and the State. Payment of interest due shall be made in the manner directed by the United States and the State. Defendants shall be liable for attorneys' fees and costs incurred by the United States or the State to collect any amount due under this Consent Decree.

X. DEFAULT

44. If the Defendants fail to timely make any payment specified in Section VII (Compensation Addressing Natural Resource Damages), or to take any action specified in this Consent Decree, this Consent Decree shall be considered an enforceable judgment against the Defendants for purposes of post-judgment collection under Federal Rule 69, Federal Rules of

Civil Procedure, and other applicable statutory authority without further order of this Court.

XI. STIPULATED PENALTIES

45. In addition to any Interest, the Defendants shall pay stipulated penalties to the United States and the State for each failure to comply with any term or condition of this Consent Decree. Any stipulated penalties paid pursuant to this Section shall be in addition to the payment of natural resource damages pursuant to Section VII, Paragraph 38 and shall be payable to, and split between the United States and the State in the manner instructed by the governments. The Defendants shall pay the following total amounts per day for each day of violation:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$2,000.00
15th through 44th day	\$3,000.00
45th day and beyond	\$5,000.00

46. All Stipulated penalties owed to the United States and the State shall be due and payable within thirty (30) days of the Defendants' receipt from either the United States, and/or the State of Texas, of a demand for payment of the Stipulated Penalties.

47. All Stipulated Penalties begin to accrue on the day that complete performance is due or a violation of the Consent Decree occurs, and continue to accrue through the final day of the correction of the non-compliance. Nothing herein shall preclude the simultaneous accrual of separate Stipulated Penalties for separate violations of this Consent Decree.

48. All payments under this Section shall be made in the form of a certified check or checks and made payable to the United States and the State in the manner prescribed in the manner instructed by the governments.

49. If the Defendants fail to pay stipulated penalties when due, the United States and the State may institute proceedings to collect the penalties, as well as any Interest associated thereto. In addition, Defendants shall be liable for attorney's fees and costs incurred by the United States and the State associated with the collection of stipulated penalties.

XII. COVENANTS NOT TO SUE

50. In consideration of the compensation provided by the Defendants in accordance with this Consent Decree and the actions required under this Consent Decree, and except as specifically provided in Paragraph 54, the United States and the State each covenant not to sue or to take any other civil or administrative action against the Defendants for natural resource damages resulting from, or in connection with, the discharge of oil into the navigable waters and adjoining shoreline of the United States and the State on or about October 20, 1994, arising out of the Incident pursuant to Section 1006, OPA, 33 U.S.C. § 2706, or any other federal, state, or common law. The State covenants not to sue or take any other civil or administrative action against the Defendants for penalties or response costs, for or in connection with, the discharge of oil into the navigable waters and adjoining shoreline of the State on or about October 20, 1994, arising out of the Incident pursuant to Texas Natural Resources Code Chapter 40, Subchapter F, or other state law.

51. The covenants not to sue contained in Paragraph 50 are conditioned and shall only take effect upon satisfactory performance by Defendants of their obligations under this Consent Decree. Further, these covenants not to sue extend only to the Defendants, and not to any other person.

52. In consideration of the covenant not to sue contained in Paragraph 50, the Defendants agree not to assert any claims or causes of action for natural resources damages with respect to OPA, 33 U.S.C. § 2701 et seq., or the Texas Oil Spill Prevention and Response Act of 1991 ("OSPRA"), Texas Natural Resources Code, Section 40.001 et seq., or any other federal, state or common law with respect to the Incident against the United States or the State, including any department, agency or instrumentality of the United States or the State of Texas, under OPA, OSPRA, or any other federal, state or common law.

XIII. NON-WAIVER PROVISIONS

53. Nothing in this Consent Decree shall be construed to relieve the Defendants or their

officers, agents, servants, employees, successors, or assigns of their obligations to comply with all applicable federal, state and local statutes and regulations, including, but not limited to, OPA, 33 U.S.C. § 2701 et seq., or OSPRA, Texas Natural Resources Code, Section 40.001 et seq.

54. Notwithstanding any other provision of this Consent Decree, the United States and the State each reserve, and this Consent Decree is without prejudice to:

a. Any and all rights of the United States or the State of Texas to institute proceedings in a new action, or to issue an administrative order seeking to compel Defendants to reimburse the United States and the State of Texas for additional natural resource damages if:

(i) conditions pertaining to the Incident previously unknown to the Trustees are discovered; or,

(ii) information about the Incident previously unknown to the Trustees is received in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that there is injury to, destruction of, or loss of natural resources of a type unknown to the Trustees as of the date of entry of this Consent Decree.

b. Any and all rights or claims of the United States and the State against the Defendants with respect to all other matters not specifically included in the covenant not to sue in Paragraph 50, including but not limited to the following:

(i) claims based on a failure by Defendants to satisfy a requirement of this Consent Decree;

(ii) claims for natural resource damage assessment and restoration planning costs incurred by the Trustees which are not paid or reimbursed by the compensation included in this Consent Decree, including on behalf of the U.S. Coast Guard and the OSLTF pursuant to Section 1012(f) of OPA, 33 U.S.C. § 2712(f); and,

(iii) criminal liability.

55. Nothing contained in this Consent Decree shall be construed to prevent or limit the

rights of the United States or the State, acting individually or in concert, to seek or obtain any other remedy, sanction or relief that may be available by virtue of the Defendants' failure to comply with this Consent Decree, the OPA, OSPRA, or any other applicable law or regulation.

56. This Consent Decree does not limit or affect the rights of the United States, the State or the Defendants as against any third party. Except as set forth in Paragraph 54, this Consent Decree does not limit the rights of any entity, not a party to this Consent Decree, against Defendants.

57. Nothing in this Consent Decree shall be deemed to limit the response authority of the United States or the State under any law.

XIV. DISPUTE RESOLUTION

58. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Decree and its Appendices. The procedures set forth in this Section shall not apply to actions by the United States or the State to enforce Defendants' obligations that have not been disputed in accordance with this Section.

59. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. Informal negotiations cannot exceed 20 days from the time a dispute arises, unless modified by written agreement of the Parties to the dispute. A dispute is considered to have arisen when one Party sends the other parties a written Notice of Dispute.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustees shall be considered binding unless, within 10 days after the conclusion of the informal negotiations period, Defendants invoke the formal dispute resolution procedures of this Section by serving on the Trustees a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon.

b. Within 14 days after receipt of Defendants' Statement of Position, the Trustees will serve on Defendants their Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustees.

c. Following receipt of Defendants' Statement of Position submitted pursuant to Paragraph 59(a), the Trustees, or a properly designated representative will issue a final decision resolving the dispute. The Trustees decision shall be binding on the Defendants unless, within 10 days of receipt of the decision, Defendants file with the Court and serve on the Parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and/or the State may file a response.

d. Judicial review of any decision of the Trustees governed by this paragraph shall be limited to the statements of position of the Parties and the accompanying supporting documentation. The scope of review shall be limited to whether substantial evidence supports the Trustees' decision.

60. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligations of Defendants under this Consent Decree not directly in dispute, unless the Trustees or the Court determines otherwise.

XV. NOTICES AND SUBMISSIONS

61. Any notices or correspondence required to implement this Consent Decree shall be in writing and shall be deemed to have been made when sent by certified mail or its equivalent, including overnight courier, to the persons specified below:

a. Notices or correspondence to be submitted to the United States shall refer to DJ No. 90-5-1-1-4376/1 and shall be sent to:

United States Department of Justice

Chief, Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20005

b. Notices or correspondence to be submitted to the State of Texas shall refer to AG#00- 1319441 and shall be sent to:

Office of the Texas Attorney General
Natural Resources Division
P. O. Box 12548
Austin, TX 78711-2548
Attn: Albert M. Bronson, Esq.

c. Notices or correspondence to be submitted to the Defendants shall be sent to:

Kevin Gaynor, Esq.
Vinson & Elkins
The Willard Office Building
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008

and

Barbara Hickl
Equiva Services, L.L.C.
910 Louisiana, Room 798
Houston, Texas 77002

XVI. RETENTION OF JURISDICTION

62. The Court shall retain jurisdiction over both the subject matter of, and the Parties to, this action for the purposes of enforcing the Parties' rights and obligations under this Consent Decree until such time as the Defendants have fulfilled their obligations under Section VII, (Compensation Addressing Natural Resource Damages) of this Consent Decree.

XVII. PUBLIC COMMENT

63. The Parties agree and acknowledge that final approval by the United States and the State and entry of this Consent Decree is subject to a thirty (30) day period for public notice and an opportunity for public comment in accordance with 28 C.F.R. § 50.7 and Texas Water Code § 7.110. The United States and the State each reserve the right to withdraw or withhold consent if the public comments regarding the Consent Decree disclose facts or considerations which

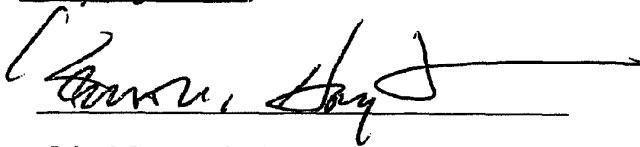
indicate that the Consent Decree is inappropriate, improper, or inadequate. The Defendants consent to the entry of this Consent Decree without further notice. Each Defendant agrees that it will not oppose the entry of this Consent Decree.

64. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIX. EFFECTIVE DATE

65. This Consent Decree is effective upon the date of its entry by the Court.

SIGNED and ENTERED this 12th day of March, 2001.



United States District Judge

NRD CONSENT DECREE RE:
UNITED STATES and The STATE of TEXAS v. TEXACO
PIPELINE, INC., et. al.
Civil Action No. _____
Southern District of Texas

FOR THE UNITED STATES OF AMERICA:

9/12/01
Dated:

Catherine R. McCabe
Catherine R. McCabe
Deputy Section Chief
Environmental Enforcement
Section

9/14/01
Dated:

Kirk W. Koester
Kirk W. Koester
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P. O. Box 7611
Washington, D.C. 20044-7611
(202) 514-9009
(202) 514-8395 (fax)

Dated:

United States Attorney

By: Gordon Speights Young with per
Gordon Speights Young 9/17/01
Assistant United States Attorney
Southern District of Texas

NRD CONSENT DECREE RE:
UNITED STATES and The STATE of TEXAS v. TEXACO
PIPELINE, INC., et. al.
Civil Action No. _____
Southern District of Texas

FOR THE STATE OF TEXAS:

John Comyn
Attorney General of Texas

Andy Taylor
First Assistant Attorney General

Jeffrey S. Boyd
Deputy Attorney General for Litigation

Karen W. Kornell
Assistant Attorney General
Chief, Natural Resources Division



Albert M. Bronson
Assistant Attorney General
SBN # 03057500
Natural Resources Division
P.O. Box 12548
Capital Station
Austin, Texas 78711-2548
(512) 463 - 2012
(512) 320-0911 (fax)

Dated:

On behalf of:

The State Natural Resource Trustees

NRD CONSENT DECREE:

UNITED STATES and The STATE of TEXAS v. EQUILON
PIPELINE COMPANY LLC, et. al.

Civil Action No. _____
Southern District of Texas

FOR EQUILON PIPELINE COMPANY, LLC., f/d/b/a
TEXACO PIPELINE, INC.


3/13/01
DATED:


Equilon Pipeline Company, LLC

SEAL



3/14/01
DATED:

 *By Admission*
E. JOSEPH LOVELAND, ESQ.
King & Spalding
1100 Louisiana Street, Suite 3300
Houston, Texas 77002-5219

Counsel for Equilon Pipeline Company LLC, f/d/b/a
Texaco Pipeline, Inc.


NRD CONSENT DECREE RE:
UNITED STATES and The STATE of TEXAS v. EQUILON
PIPELINE COMPANY LLC, et. al.
Civil Action No. _____
Southern District of Texas

FOR COLONIAL PIPELINE COMPANY

3/8/01
DATED:

By: *Melvin Jones*, vice president
Colonial Pipeline Company SEAL

3/14/01
DATED:


KEVIN A. GAYNOR, ESQ. *By Permission.*
Vinson & Elkins L.L.P.
2300 First City Tower
1001 Fannin Street
Houston, Texas 77002-6760

Counsel for Colonial Pipeline Company

NRD CONSENT DECREE RE:
UNITED STATES and The STATE of TEXAS v. EQUILON
PIPELINE COMPANY LLC, et. al.
Civil Action No. _____
Southern District of Texas

Exhibit A

**METES AND BOUNDS DESCRIPTION
OF 101.9 ACRES OF LAND
IN THE VICTOR BLANCO SURVEY, A-2
HARRIS COUNTY, TEXAS**

All that certain 101.9 acres of land, out of the 126.946 acre tract described as Tract 1 in the deed from W.K. King Family Limited Partnership to Joseph W. Shunta, Trustee, recorded under File No. S645585, in the Official Public Records of Real Property of Harris County, Texas, and the 65.664 acre tract described as Tract 2 in said deed, in the Victor Blanco Survey, A-2, Harris County, Texas, and being more particularly described by metes and bounds as follows: (All bearings based on The Texas State Plane Coordinate System, South Central Zone)

BEGINNING at a brass disc in concrete found for the northeast corner of said 126.946 acre tract, in the south line of the 1804.19 acre tract described in the deed from Robert C. Hux, Robert A. Higley, and Max C. Butler M.D. as successor trustees by virtue of deed recorded under File No. M115640 to FRM North Belt Associates 1, LTD. recorded under File No. T107162 in the Official Public Records of Real Property of Harris County, Texas;

THENCE S 15° 45' 37" E - 1599.94', along the east line of said 126.946 acre tract, and the east line of the aforesaid 65.664 acre tract, to an angle corner of the herein described tract;

THENCE continuing along the east line of said 65.664 acre tract the following five (5) courses and distances;

S 11° 29' 11" W - 429.26', to an angle corner of the herein described tract;

S 27° 48' 01" E - 286.82', to an angle corner of the herein described tract;

S 53° 35' 01" E - 222.93', to an angle corner of the herein described tract;

S 55° 37' 34" E - 127.11', to an angle corner of the herein described tract;

S 55° 11' 18" E - 357.57', to an angle corner of the herein described tract;

THENCE S 44° 54' 30" E - 305.58', to a 5/8" iron rod set for the southeast corner of the herein described tract, in the north right-of-way line of Lake Houston Parkway (300' R.O.W.), common to a point on a curve to the right, having a central angle of 00° 59' 22", a radius of 13072.10', and from which point the center of the circle of said curve bears N 06° 56' 43" W;

THENCE along said curve to the right, along said north right-of-way line, in a westerly direction, an arc distance of 225.75' to a 5/8" iron rod set for the end of curve;

THENCE S 84° 02' 39" W - 250.00', continuing along said north right-of-way line, to a 5/8" iron rod set for the Point of Curvature of a curve to the right, having a central angle of 38° 35' 00", and a radius of 2141.83';

THENCE along said curve to the right, continuing along said north right-of-way line, in a northwesterly direction, an arc distance of 1442.32' to a 5/8" iron rod set for the end of curve;

THENCE N 57° 22' 21" W - 688.67', continuing along said north right-of-way line to a 5/8" iron rod set for the Point of Curvature of a curve to the left, having a central angle of 03° 23' 53", and a radius of 2059.86';

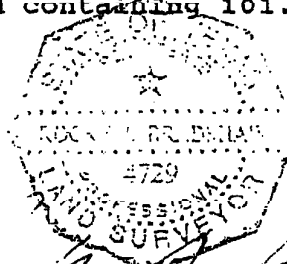
THENCE along said curve to the left, continuing along said north right-of-way line, in a northwesterly direction, an arc distance of 122.16' to a 5/8" iron rod set for the southwest corner of the herein described tract, from which a 5/8" iron rod found for the northeast corner of the 48.544 acre tract described as Parcel 3A4 in the substitute trustee's deed to Juanita King and J.E. King recorded under File No. N347828 in the Official Public Records of Real Property of Harris County Texas bears S 76° 48' 13" W - 503.52';

THENCE N 02° 33' 28" W - 2073.11' departing said north right-of-way line to a 5/8" iron rod set for the northwest corner of the herein described tract in the south line of the aforesaid 1804.19 acre tract;

THENCE N 87° 31' 04" E - 1352.11', along said south line, to the **POINT OF BEGINNING** of the herein described tract and containing 101.9 acres of land.

Prepared by:
G. P. SURVEYORS
a division of
Pate Engineers, Inc.

Job No. 200-015-56-01
Original Issue Date:
July 2, 1986



Rodney R. Brennan

Certification Date
October 14, 1999

THIS LEGAL DESCRIPTION IS ISSUED AS "PART TWO", IN CONJUNCTION WITH THE LAND TITLE SURVEY BY G. P. SURVEYORS LAST CERTIFIED OCTOBER 14, 1999. REFERENCE IS HEREBY MADE TO THE SURVEY AS "PART ONE".

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, MENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

FEB 26 2001

RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION DUE TO USE OF ILLEGIBILITY, CARBON OR FADING, DISCOLORED PAPER, ETC.



Dorothy B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS