

39. The payment of penalties shall not alter in any way Colonial's obligation to complete the performance required under this Decree.

40. Penalties shall continue to accrue as provided in Paragraphs 36 and 37 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the Natural Resource Trustees that is not appealed to this Court, accrued penalties determined to be owing shall be paid within 30 days of the agreement or the receipt of the Natural Resource Trustees' decision or order;

b. If the dispute is appealed to this Court and the Plaintiffs prevail in whole or in part, Colonial shall pay all accrued penalties determined by the Court to be owed to the Plaintiffs under this Decree.

41. Notwithstanding the forgoing, if stipulated penalties accrue relating to Colonial's failure to (a) timely or adequately submit a Work Plan pursuant to Section XII or, (b) timely commence implementation of a deliverable pursuant to a Work Plan amended by the Natural Resource Trustees pursuant to Section XII then, for such penalties that accrue between the time that Colonial invokes formal Dispute Resolution and 10 days after the dispute resolution procedure has concluded by agreement, failure to challenge the decision of DOI, or by entry of a final non-appealable order by the Court, any assessment of stipulated penalties shall be made by order of the Court based upon the

Court's assessments of the reasonableness of Colonial's challenge to the Natural Resource Trustees' decision, and such other equitable factors as the Court deems appropriate.

42. If Colonial fails to pay stipulated penalties when due, the Natural Resource Trustees may institute proceedings to collect the penalties.

43. Except for Section XVI, nothing in this Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States, Virginia or the District to seek any other remedies or sanctions available by virtue of Colonial's violation of this Decree or of the statutes and regulations upon which it is based.

#### XII. RPL WORK PLANS

44. Within 30 days after written notification to Colonial of completion of the Restoration Planning Process, Colonial shall submit Work Plans to the Natural Resource Trustees for the implementation of the restoration projects described in the RPL set forth in Appendix A. The Work Plans shall provide a design for each of the components of the RPL, schedules for completion, and performance standards.

45. Colonial agrees to implement the RPL, including the Work Plans approved by the Natural Resource Trustees, as set forth in Appendix A, according to the outline set forth in Appendix B, subject to modification thereto by the Natural Resource Trustees as a result of public comment on the Consent Decree or as a result of public comments that may be received in

connection with the Restoration Planning Process, provided that the substituted project or projects provide substantially equivalent benefits, according to the scaling metric used to select the original project or projects, to natural resources and/or the public as the project or projects set forth in Appendix A. The Natural Resource Trustees' determination that the substitute project or projects provide substantially equivalent benefits to natural resources and/or the public as the project or projects in the RPL attached hereto as Appendix A is subject to the dispute resolution provisions of Section VIII (Dispute Resolution) of this Consent Decree.

46. Should the Natural Resource Trustees and Colonial agree that implementation of any of the RPL components are not feasible, the Natural Resource Trustees and Colonial shall identify substitute projects at comparable cost which provide substantially equivalent benefits, according to the scaling metric used to select the original project or projects, to natural resources and/or the public as those which would have been provided by the RPL project deemed infeasible. Colonial agrees to implement the substitute projects pursuant to any revised schedules and conditions.

47. A sampling and monitoring program shall be established under the Work Plans developed pursuant to Section XII of the Consent Decree, subject to the approval of the Natural Resource Trustees, as appropriate for the projects listed in the

RPL or any substitute projects implemented pursuant to Section XII of the Consent Decree.

XIII. INDEMNIFICATION AND INSURANCE

48. The United States, Virginia, and the District do not assume any liability by entering into this agreement and/or by virtue of any activities to be performed by Colonial under this Decree. Colonial shall indemnify, save and hold harmless the United States, Virginia and the District, and their officials, agents, employees, contractors, subcontractors, and/or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Colonial, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Decree. Further, Colonial agrees to pay the United States, Virginia and the District all costs incurred including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or Virginia or the District based upon acts or omissions of Colonial, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Decree. Neither the United States nor Virginia nor the District shall be a party to any contract entered into by or on behalf of Colonial in carrying out activities pursuant to this Decree. Neither Colonial nor any contractor hired by it

shall be considered an agent of the United States, Virginia, or the District. Notwithstanding this provision, Colonial may arrange for the implementation of parts of this Decree through hourly labor available from federal agencies, under customary terms and conditions for obtaining such labor.

49. Colonial shall not be a party to any contract entered into by or on behalf of the United States, Virginia or the District in carrying out activities performed or funded pursuant to this Decree. Neither the United States nor Virginia nor the District nor any contractor hired by them shall be considered an agent of Colonial.

50. Notwithstanding Paragraph 60 of this Decree, Colonial waives all claims against the United States, Virginia, and the District for damages or reimbursement or for set-off of any payments made or to be made to the United States, Virginia, or the District arising from or on account of any contract, agreement, or arrangement between Colonial and any person for performance of Work on or relating to this Decree, including, but not limited to, claims on account of construction delays. In addition, Colonial shall indemnify and hold harmless the United States, Virginia and the District with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Colonial and any person for performance of the requirements of this Decree, including, but not limited to, claims on account of construction delays. Nothing in this paragraph shall bar any claim or require

indemnity for injury or damage arising from the wilful and malicious act of any person on behalf of the governmental entities referred to herein.

51. No later than 15 days before commencing any Work required by this Decree, Colonial shall secure and maintain comprehensive general liability insurance and automobile insurance with limits of at least one million dollars, combined single limit, naming as additional insureds the United States, Virginia and the District. In addition, for the duration of this Decree, Colonial shall satisfy, or shall ensure by written agreement that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation for all persons performing the requirements of this Decree on behalf of Colonial in furtherance of this Decree. Prior to commencement of Work required by this Decree, Colonial shall provide to the Natural Resource Trustees certificates of such insurance and a copy of each insurance policy. Colonial shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Decree. If Colonial demonstrates by evidence satisfactory to the Natural Resource Trustees that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Colonial need provide only that portion of the insurance

described above which is not maintained by the contractor or subcontractor.

XIV. RESERVED

XV. FORCE MAJEURE

52. "Force Majeure," for purposes of this Decree, is defined as any event arising from causes beyond the control of and/or not reasonably foreseeable by Colonial or of any entity controlled by or in privity of contract with Colonial, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Decree despite Colonial's best efforts to fulfill the obligation. The requirement that Colonial exercise "best efforts to fulfill the obligation" includes best efforts to address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that the delay is minimized to the extent possible. "Force Majeure" does not include financial inability to complete required work or a failure to attain the Performance Standards.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Decree, whether or not caused by a Force Majeure event, Colonial shall orally notify the Contact Person for the Natural Resource Trustees, or, in the event that person is unavailable, the Contact Person's supervisor, within 5 Working days of when Colonial first knew or should have known that the event would cause a delay. The Contact Person for the Natural Resource Trustees shall be the

person to whom Colonial has been directed in writing to submit deliverables, data or other submissions under this Decree. Within 10 Working days thereafter, Colonial shall provide in writing to the Natural Resource Trustees 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; and, Colonial's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim. Colonial shall include with any notice all available documentation supporting its claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Colonial from asserting any claim of Force Majeure for that event. Colonial shall be deemed to have notice of any circumstance of which its contractors or subcontractors had actual notice.

54. If the Natural Resource Trustees agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Decree that are affected by the Force Majeure event will be extended by the Natural Resource Trustees, 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. If the Natural Resource



Trustees do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, the Natural Resource Trustees will, within 30 days, notify Colonial in writing of their decision. If the Natural Resource Trustees agree that the delay is attributable to a Force Majeure event, the Natural Resource Trustees will, after discussion with Colonial, notify Colonial in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

55. If Colonial elects to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), it shall do so no later than 20 days after receipt of the Natural Resource Trustees' notice pursuant to Paragraph 55. In any such proceeding, Colonial shall have the burden of demonstrating by a preponderance of the evidence that the delay anticipated delay, or failure of performance has been or will be caused by a Force Majeure event, that the duration of the delay or the extension or excuse sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the Force Majeure event, and that Colonial complied with the requirements of Paragraphs 53 and 54. If Colonial carries this burden, the delay at issue shall be deemed not to be a violation by Colonial of the affected obligation of this Decree identified to the Natural Resource Trustees and the Court.

XVI. COVENANTS NOT TO SUE

56. In consideration of the payments made and actions performed by Colonial pursuant to this Decree, the United States, Virginia and the District, covenant not to sue or take administrative action against Colonial for natural resource damages pursuant to Section 1006 of the Oil Pollution Act of 1990, 33 U.S.C. § 2706, and for civil penalties under Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), as amended by OPA, DCWPCA, D.C. Code 6-937, and Sections 62.1-44.34:18.C and 62.1-44.34:20.C, Code of Virginia, resulting from the Spill. This Covenant Not To Sue is conditioned upon the complete and satisfactory performance by Colonial of its obligations under this Decree. This Covenant Not To Sue applies only to the Spill and extends only to Colonial and does not extend to any other person.

Colonial hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States under the CWA or OPA with respect to the Spill, including but not limited to, any direct or indirect claim for reimbursement from the Spill Fund established pursuant to OPA, or under any provision of law, or for events arising out of removal activities in connection with the Spill.

XVII. RESERVATIONS OF RIGHTS

57. The Covenants Not To Sue set forth in the preceding Section do not pertain to any matters other than those expressly specified therein. The United States, Virginia, and

the District reserve, and this Decree is without prejudice to, all rights against Colonial with respect to all other matters. Except as provided in Section XVI above (Covenants Not To Sue), nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States, Virginia, or the District to initiate appropriate action, either judicial or administrative, with respect to any claim not expressly alleged in Plaintiffs' Complaints, including but not limited to the following:

- (1) claims based upon a failure of Colonial to meet the requirements of this Decree; and
- (2) claims based upon criminal liability.

58. The United States, Virginia and the District reserve, and this Decree is without prejudice to, any civil cause of action or claim for relief not arising directly out of the Spill. In addition, notwithstanding the Covenant Not To Sue in Paragraph 57, the United States, Virginia and the District reserve all rights to take any action, including administrative or judicial actions against Colonial, to address any imminent and substantial endangerment to human health or the environment.

59. Except as expressly stated in this Decree, each Party reserves against any person not a Party to this Decree all rights, claims, or defenses available to it arising out of or relating to the Spill.

60. Nothing in this Decree creates, nor shall it be construed as creating, any claim in favor of any person not a

Party to this Decree. Nothing in this Decree shall be construed as limiting, barring, or otherwise prejudicing claims Colonial may have for insurance, contribution, and/or indemnification arising from this settlement against any person not a Party to this Decree.

#### XVIII. NOTICES AND SUBMISSIONS

61. Except as otherwise provided herein, if written notice or submission is required to be given by one Party to another Party or entity for any reason, it shall be directed to the individuals and addresses specified below, unless the individuals specified or their successors give notice, in writing, to the other Parties that notice or submission shall be directed to a different individual or address. All notices shall reference the action United States v. Colonial Pipeline Company, Inc., its action number and the United States Department of Justice file number, 90-5-1-1-4055.

##### Notice and submissions to the United States:

(Notices and submissions to the United States shall be sent to all persons listed under this subheading. Notices and submissions to EPA shall be sent to the person denoted with an \*. Notices and submissions to DOI shall be sent to the person denoted with a \*\*.)

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
D.O.J. no. 90-5-1-1-4055

\* Wayne R. Walters (3RC21)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III

841 Chestnut Building  
Philadelphia, Pennsylvania 19107

\*\* Chief, Environmental Response, Planning and Assessment  
Branch  
Environmental Quality Division  
National Park Service  
U.S. Department of the Interior  
1849 C Street, N.W. MS-2741  
Washington, D.C. 20240

Notice to Commonwealth of Virginia

Department of Environmental Quality  
Office of Enforcement  
629 East Main Street  
Richmond, Virginia 23219

Notice to the District of Columbia

Hampton Cross, Director  
Department of Consumer & Regulatory Affairs  
614 "H" Street, N.W.  
Washington, D.C. 20001

Notice to Colonial

Carole P. Sims, Esquire  
Colonial Pipeline Company  
945 East Paces Ferry Road  
Atlanta, Georgia 30326

**XIX. REPRESENTATIVES**

62. Each undersigned representative of Colonial certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind Colonial to this Decree.

XX. CERTIFICATION OF COMPLETION OF WORK

63. Within thirty (30) days after Colonial concludes that it has completed the Work under this Consent Decree, including that Colonial has implemented the RPL, Colonial shall schedule and conduct a pre-certification inspection and meeting with the Natural Resource Trustees. Provided that, following such a meeting, Colonial still believes that the Work is complete and the RPL has been implemented, it shall submit a written report to the Natural Resource Trustees pursuant to Section VII (Submissions Requiring Natural Resource Trustee Approval) within thirty (30) days following the pre-certification inspection and meeting.

64. If, after review of the report described above, the Natural Resource Trustees conclude that Colonial has completed the Work and implemented the RPL in accordance with this Consent Decree, including achievement of Performance Standards, the Natural Resource Trustees will issue a certification of completion pursuant to this Section. If the Natural Resource Trustees instead conclude that Colonial has not completed the Work and implemented the RPL in accordance with this Consent Decree, including achievement of Performance Standards, the Natural Resource Trustees will notify Colonial in writing of the activities that must be undertaken pursuant to this Consent Decree to complete such Work, implement the RPL, and achieve the Performance Standards. Colonial shall perform all activities described in such notice in accordance with the

specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution).

**XXI. MISCELLANEOUS**

65. The Parties agree that this Decree may be executed in counterpart.

66. All activities undertaken by Colonial pursuant to this Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

67. Where any activity required by this Decree requires a federal or state permit or approval, Colonial shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Colonial may seek relief under the provisions of Section XV (Force Majeure) of this Decree for any delay resulting from a failure to obtain, or a delay in obtaining, any required permit. This Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation. The United States, Virginia and the District of Columbia agree to use reasonable efforts to assist Colonial in obtaining necessary permits and approvals.

**XXII. MODIFICATION**

68. Minor modifications not materially altering this Decree may be effected by the written agreement of the Parties. Modifications to the RPL or Work Plan schedules which are agreed