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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

August 19, 2002

Mr. Stan Yonkauski, Esq.
Illinois Department of Natural Resources
Office of Legal Counsel
One Natural Resources Way
Springfield, IL 62702-1271

Re: *People v. Williams Pipe Line Company*
Menard County Case No. 96-CH-5

Dear Stan:

Please find enclosed the original Consent Order for the above-referenced case. I ask that you obtain Mr. Lawley's signature and return the document to me. I will then forward it to Williams for signature.

Sincerely,

Jane E. McBride
Assistant Attorney General
(217) 782-9033

cc: John Waligore, Esq., IEPA

RECEIVED
AUG 21 2002
Dept. of Natural Resources
OFFICE OF LEGAL COUNSEL

500 South Second Street, Springfield, Illinois 62706 (217) 782-1090 · TTY: (217) 785-2771 · FAX: (217) 782-7046
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IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT

MENARD COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
v.	)	NO. 96-CH-5
WILLIAMS PIPE LINE COMPANY, LLC, a Delaware LLC, successor in interest to Williams Pipe Line Company, a Delaware corporation,	)	
Defendant.	)	

CONSENT ORDER

This action was commenced on behalf of the PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency and the Illinois Department of Natural Resources. The Plaintiff and the Defendant, WILLIAMS PIPE LINE COMPANY, LLC ("WPL"), having agreed to the making and entry of this Consent Order, do hereby stipulate and agree as follows:

I.

STIPULATION OF USE AND AUTHORIZATION

The parties stipulate that this Consent Order is entered into for the purposes of settlement only, and that neither the fact that a party has entered into this Consent Order, nor any of the facts stipulated herein, shall be used for any purpose in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. Notwithstanding the foregoing, this Consent Order may be used in any future permitting or enforcement action as

evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act"), for purposes of Sections 39(i) and Section 42(h) of the Act, 415 ILCS 5/39(i), 42(h) (2000). The undersigned representative for each party certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Order and to bind legally the party he or she represents to the Consent Order.

II.

STATEMENT OF FACTS

1. The Attorney General of the State of Illinois brings Counts I, II, III, V, VI, VII, and VIII of the Third Amended Complaint on his own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in him under Section 42 of the Act, 415 ILCS 5/42 (1996).

2. The Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1996), and charged, inter alia, with the duty of enforcing the Act.

3. The designated natural resources trustees ("trustees") for the State of Illinois, that being the Illinois Department of Natural Resources ("IDNR") and the Illinois Environmental Protection Agency ("Illinois EPA"), on behalf of the People of the State of Illinois, ex rel. James E. Ryan, the Attorney General of the State of Illinois, bring Count IV and IX of the Third Amended Complaint pursuant to 33 USC §2702(a), (b)(2)(a) and §2706, for damages for lost use of and injuries to natural resources and for all costs of assessing and recovering such damages and restoring natural resources in connection with the discharges of petroleum product from a facility owned and operated by Defendant WPL.

4. Jurisdiction is proper in this court pursuant to Section 1017 of the Oil Pollution Act of 1990, 33 USC §2717(b), which provides as follows:

> A State trial court of competent jurisdiction over claims for removal costs or damages, as defined in this chapter, may consider claims under this chapter or State

law and any final judgment of such court (when no longer subject to ordinary forms of review) shall be recognized, valid, and enforceable for all purposes of this chapter.

5. Pursuant to a letter dated March 28, 1996, signed by the Governor of Illinois, Jim Edgar, addressed to the United States Environmental Protection Agency, the designated natural resources trustees for the State of Illinois are the Illinois EPA and the IDNR.

6. The trustees, pursuant to 33 USC §2706(b)(3), represent the State of Illinois in its capacity to hold all natural resources, including but not limited to the land, fish, wildlife, habitat, air, surface water and groundwater, located within the political boundaries of the State of Illinois in trust on behalf of and for the benefit of the public. As trustee of the natural resources located within its boundaries, the State owes a duty to the public to protect and conserve its natural resources for present and future generations of Illinois citizens.

7. The Defendant, WPL, a Delaware LLC, is successor in interest to Williams Pipe Line Company, a Delaware corporation, and is qualified to do business in Illinois.

8. WPL owns and operates a 12-inch diameter transmission pipeline that carries or carried refined petroleum products through rural areas of Menard and Logan Counties, Illinois, as part of an interstate pipeline (the "pipeline") regulated by the Office of Pipeline Safety, a division of the United States Department of Transportation.

A. Menard County Release Incident

9. On or before July 17, 1994, Defendant's pipeline released an unknown quantity of petroleum product in a rural area located approximately 1.5 miles southeast of the City of Petersburg in Menard County, Illinois (the "Menard County site"). More precisely, the Menard County site is located in the NE 1/4 of Section 19, Township 18 North, Range 6 West, on the Petersburg 7.5 Minute Series Quadrangle topographic map.

10. According to information provided by Defendant to the Illinois EPA, the release was believed to be a result of a weld irregularity in one of the pipes.

11. An underground drainage tile in the area of the release carries waters to a creek located approximately 1,000 feet west of the release site and a tributary to the Sangamon River.

12. On at least July 18, 1994, the above-described creek exhibited petroleum product sheen.

13. Causing or allowing the release of petroleum from a pipeline to the creek constitutes a violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (1996). WPL denies it caused or allowed any release.

14. On at least August 3, 1994, groundwater samples collected from borings proximate to the release site showed exceedances of Class II groundwater for benzene and toluene.

15. On at least October 28, 1994, area monitoring wells proximate to the release site showed exceedances of Class II groundwater standards for benzene, toluene, and BETX.

16. Causing or allowing the release of petroleum from a pipeline so as to cause an exceedance of Class II groundwater standards for benzene, toluene, and BETX constitutes a violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (1996), and 35 Ill. Adm. Code 620.115, 620.405, and 620.420 (1996). WPL denies it caused or allowed any release.

17. The groundwater in the area of the release site exhibited a layer of free product as well as dissolved phase petroleum constituents.

18. Causing or allowing the release of petroleum from a pipeline to the area groundwater constitutes a violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (1996). WPL denies it caused or allowed any release.

19. On September 2, 1994, a soil sample collected from the bed of the above described creek near the drainage tile discharge point indicated 0.011 milligrams per kilogram benzene.

20. Causing or allowing the release of petroleum from a pipeline so as to contaminate the soil matrix and the drain tile constitutes a violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (1996). WPL denies it caused or allowed any release.

21. The Plaintiff alleges that as a result of the release of petroleum from the Defendant's underground pipeline, the soil and groundwater in the vicinity of the release became, and continued to be until the time of completion of remediation, contaminated with petroleum product and that the contaminated soil constituted a continuing source of water pollution upon the area groundwater and surface water, thereby creating and maintaining a public nuisance at common law.

22. The Plaintiff alleges as a result of the discharge of oil from the Defendant's pipeline into the environment, natural resources held in trust by the State of Illinois, including but not limited to land, fish, wildlife, habitat, surface water and groundwater, have been injured, destroyed or lost. WPL denies the Plaintiff's allegations.

23. Pursuant to Section 1006 of the Oil Pollution Act of 1990, 33 U.S.C. § 2706, the Plaintiff asserts Defendant WPL is liable to the State of Illinois for all natural resource damages resulting from the discharge of oil. WPL denies the Plaintiff's assertions.

B. Logan County Release Incident

24. On or before March 28, 1997, Defendant's pipeline released an unknown quantity of petroleum product in a rural area located approximately 2.5 miles west of the Village of Broadwell in Logan County, Illinois (the "Logan County site"). More precisely, the Logan County site is located in the SW 1/4. NE 1/4, Section 25, Township 19 North, Range 4 West, of the 3rd Principal Meridian.

25. According to information provided by Defendant to the Illinois EPA, the release was due to the corrosion caused by the fusing of a metal gauging box with the pipe.

26. The pipeline release site is located approximately 80 yards away from a waterway. The Plaintiff contends the waterway is a creek and constitutes waters of the State. The Defendant contends the waterway is a seasonal drainage ditch.

27. On at least March 28, 1997, the petroleum mixture migrated through area groundwater and subsurface strata into the above-described waterway. The Plaintiff contends the waterway is a creek and constitutes waters of the State. The Defendant contends the waterway is a seasonal drainage ditch.

28. On at least March 28 and 31, 1997, the above-described waterway exhibited a petroleum sheen on its waters. The Plaintiff contends the waterway is a creek and constitutes waters of the State. The Defendant contends the waterway is a seasonal drainage ditch.

29. Causing or allowing the release of petroleum from a pipeline to the waterway constitutes a violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (1996). WPL denies it caused or allowed any release. The Plaintiff contends the waterway is a creek and constitutes waters of the State. The Defendant contends the waterway is a seasonal drainage ditch.

30. Causing or allowing the release of petroleum from a pipeline so as to contaminate the soil matrix constitutes a violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (1996). WPL denies it caused or allowed any release.

31. On at least March 28, 1997, the groundwater in the area of the release site exhibited a layer of free product, as well as dissolved phase petroleum constituents.

32. Groundwater samples taken from monitor wells 2 and 2B for the purpose of remediation confirmation at the Logan County site during the fall of 1999 indicated levels of benzene that exceeded Class II groundwater standards. WPL conducted modeling using TACO Plus software, pursuant to 35 Ill. Adm. Code 742, to determine alternate risk-based closure action levels for wells 2 and 2B, and the benzene levels were predicted to meet the Class II groundwater remediation objectives at the property boundary.

33. Causing or allowing the release of petroleum from a pipeline to the area groundwater constitutes a violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (1996), and 35 Ill. Adm. Code 620.115, 620.405, and 620.420 (1996). WPL denies it caused or allowed any release.

34. As a result of the release of petroleum from the Defendant's underground pipeline, the soil and groundwater in the vicinity of the release became contaminated with petroleum product. As of the time of completion of remediation, Defendant has reduced the residual petroleum contamination present at the site to levels sufficiently low that based upon modeling done pursuant to 35 Ill. Adm. Code 742, the contamination will not migrate off-site. Further, Defendant shall, pursuant to this Consent Order, restrict groundwater usage and provide for construction worker precautions in accordance with a No Further Remediation letter to be issued by the Illinois EPA following the entry of this Order.

35. The Plaintiff alleges that as a result of the release of petroleum from the Defendant's underground pipeline, the soil and groundwater in the vicinity of the release became, and continued to be until the time of completion of remediation, contaminated with petroleum constituents above clean up levels allowable under 35 Ill. Adm. Code 742, considering the possibility of off-site migration, and that the contaminated soil constituted a continuing source of water pollution upon the area groundwater and surface water, thereby creating and maintaining a public nuisance at common law.

36. Plaintiff alleges as a result of the discharge of oil from the WPL's pipeline into the environment, natural resources held in trust by the State of Illinois, including but not limited to land, fish, wildlife, habitat, surface water and groundwater, have been injured, destroyed or lost. WPL denies the State's allegations.

37. Pursuant to Section 1006 of the Oil Pollution Act of 1990, 33 U.S.C. § 2706, the Plaintiff asserts Defendant WPL is liable to the State of Illinois for all natural resource damages resulting from the discharge of oil. WPL denies the State's assertions.

III.

APPLICABILITY

This Consent Order shall apply to and be binding upon the State, the Defendant Williams Pipe Line Company, LLC ("WPL") and the Defendant's successors and assigns and any entities related to Williams Pipe Line Company, LLC ("WPL") which may come to own or operate the pipeline or any portion thereof in Illinois, and all officers, agents and employees thereof. The Defendant shall not raise, as a defense to any action to enforce this Consent Order, the failure of any of its agents or employees to take such action as shall be required to comply with the provisions of this Consent Order.

IV.

COVERED MATTERS

This Consent Order covers all claims asserted, in the Plaintiff's Complaint as amended concerning violations of the Act, 415 ILCS 5/1 *et seq.* (1996), and all regulations promulgated thereunder, and natural resource damage claims under Section 311 of the Clean Water Act ("CWA"), 33 USC 1321, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601-9675, Sections 1002, 1006, and 1017 of OPA, 33 U.S.C. 2702, 2706 and 2717, or the Oil Spill Responders Liability Act, 740 ILCS 113/1-99, and all regulations promulgated thereunder. Covered matters specifically include liability for natural resource damages, including lost use value or for assessment of natural resource damages as a result of the release incidents described in the Complaint, under Section 311 of the CWA, 33 U.S.C., 1321, the Comprehensive Environmental Response,

Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601-9675, OPA, 33 U.S.C. 2700, et seq., or the Oil Spill Responders Liability Act, 740 ILCS 113/1-99. Covered matters do not include:

i) Criminal liability;

ii) Claims based on Defendant's failure to meet the requirements of this Consent Order;

iii) Liability for past unreported and/or unknown releases of oil or other hazardous substances from the pipe lines under the ownership and control of Williams Pipe Line Company. LLC ("WPL"); and

iv) Liability for future violation of state, local, federal, and common laws and/or regulations.

V.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Consent Order in no way affects the responsibility of the Defendant to comply with any other federal, state or local statutes and regulations including but not limited to the Act, 415 ILCS 5/1 et seq. (2000), and the Board's rules and regulations, 35 Ill. Adm. Code Subtitles A through H.

VI.

VENUE

The parties agree that the venue of any action commenced in Circuit Court for the purposes of interpretation, implementation and enforcement of the terms and conditions of this Consent Order shall be in Menard County, Illinois.

VII.

SEVERABILITY

It is the intent of the parties hereto that the provisions of this Consent Order shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining clauses shall remain in effect.

VIII.

FINAL JUDGMENT ORDER

This Court having jurisdiction over the parties and subject matter, the parties having waived appearance with respect to the entry of this Order, the Court having considered the pleadings and being advised in the premises, the Court finds the following relief appropriate:

IT IS HEREBY ORDERED AND ADJUDGED:

A. WATER POLLUTION, AIR POLLUTION, COMMON LAW PUBLIC NUISANCE, COST RECOVERY CLAIMS: COUNTS I, II, III, V, VI, VII, and VIII.

1. **Penalty Payment**

a). The Defendant, Williams Pipe Line Company, LLC, shall make a penalty payment of thirty thousand dollars ($30,000.00) to the Environmental Protection Trust Fund, within thirty (30) days of the Circuit Court's entry of this Consent Order. This amount shall be paid by certified check or money order, payable to: "Illinois Environmental Protection Agency, for deposit in the Environmental Protection Trust Fund," and be delivered to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East, P.O. Box 19276
Springfield, Illinois 62794-9276

A copy of the penalty payment transmittal and check shall be simultaneously submitted to:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

The name and court number of this case and the Federal Employer Identification Number ("FEIN") of Defendant shall appear on the certified check or money order. For purposes of payment and collection, Defendant may be reached at the following address:

Mr. Brett Hughes
Williams Pipe Line Company, L.L.C.
One Williams Center
Suite 4100
Tulsa, OK 74172

The FEIN for Defendant is #73-0752608.

b). In the event that the penalty is not paid in a timely fashion, interest shall accrue and be paid by the Defendant at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2000), pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1996).

2. **Supplemental Environmental Project**

The Defendant has agreed to make a $72,000 payment that, for the purposes of this settlement, shall be designated as a supplemental environmental project. The amount of $72,000 shall be paid to Illinois Conservation Foundation within 30 days of entry of this Consent Order by certified check or money order, made payable to "The Illinois Conservation Foundation", and directed as specified in paragraph VIII.B.7 below. This supplemental environmental project will enable the purchase of a larger portion of property for wildlife habitat by the State than would be provided solely on the basis of the resolution of the claims asserted in this action for compensatory restoration of natural resource damages.

3. **Additional Consideration**

Defendant represents that it completed integrity testing of its pipe line from mile marker 678 to marker 640 in 1997 and 1998. The Defendant represents that the cost of the integrity testing for this segment of pipe line, using a "smart pig", was $120,000.

4. **Reimbursement of Response and Oversight Costs**

a). Within thirty (30) days of entry of this Consent Order, the Defendant shall reimburse the response and oversight costs incurred by the Illinois EPA's Office of Emergency Response (formerly office of Chemical Safety) relative to the Menard County site in the amount of $2,490.03. Defendant shall remit payment in the form of a certified check made payable to "Illinois Environmental Protection Agency," noted for deposit into the Hazardous Waste Fund, and shall send the certified check to the following:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

b). Within thirty (30) days of entry of this Consent Order, the Defendant shall reimburse the response and oversight costs incurred by the Illinois EPA's Office of Emergency Response (formerly office of Chemical Safety) relative to the Logan County site in the amount of $2,078.88. Defendant shall remit payment in the form of a certified check made payable to "Illinois Environmental Protection Agency," noted for deposit into the Hazardous Waste Fund, and shall send the certified check to the following:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

5. **Compliance**

a). **General.**

1). The Defendant shall diligently comply with, and shall cease and desist from violations of the Act, 415 ILCS 5/1 et seq. (2000), the Board's rules and regulations, 35 Ill. Adm. Code Subtitles A through H, and any and all federal laws and regulations.

2). Within 30 days of entry of this Consent Order, the Defendant shall submit a statement certified by an Illinois licensed Professional Engineer or a responsible corporate officer of the Defendant to the Illinois EPA that confirms that the Defendant has "smart pigged" and rehabilitated its pipeline from mile posts 678 to 640 in accordance with all applicable laws, regulations and relevant industry standards at the time of the "smart pig" project (1997/1998). Pursuant to the requirements of 49 CFR 195.452(j)(3), WPL is to conduct periodic integrity testing of pipelines through high consequence areas every five years. Upon performance of integrity testing on the pipeline through high consequence areas between mile post 678 and 640 pursuant to this provision, 49 CFR 195.452(j)(3), within the current five-year interval, and upon completion of all necessary pipeline rehabilitation work to address defects discovered during the integrity testing, WPL shall submit copies of all documentation produced and maintained pursuant to 49 CFR 195.452(l), 49 CFR 195 Appendix C VI (16), and 49 CFR 195.452(h)(5)(i)-(iv) to the Illinois EPA, within 30 days of completion.

3). With regard to the section of the pipeline running from mile post 640 to 550, if the Defendant does not take the line out of service within two months of entry of this Consent Order with written notice thereof to the Illinois

EPA, the Defendant shall "smart pig" this section of the line in accordance with all applicable laws, regulations and relevant industry standards as of the time the "smart pigging" is performed and make a determination as to whether the Defendant intends to take this section of the line, or any portion thereof, out of service. In the event that the Defendant does not take the line out of service within two months of entry of this Consent Order, then the Defendant shall, within six months of the entry of this Consent Order, provide Illinois EPA with a certified statement from an Illinois licensed Professional Engineer or a responsible corporate officer of the Defendant that confirms that the "smart pigging" of this section of the pipeline has been completed in accordance with all applicable laws, regulations, and relevant industry standards as of the time the "smart pigging" was performed and indicating whether the Defendant intends to take the entire section from mile post 640 to 550, or any portion thereof, out of service. Within 30 days of when Defendant has completed all pipeline rehabilitation work for those portion(s) of the pipeline from mile post 640 to 550 which were not taken out of service, the Defendant shall submit copies of all documentation produced and maintained pursuant to 49 CFR 195.452(l), 49 CFR 195 Appendix C VI (16), and 49 CFR 195.452(h)(5)(i)-(iv), and a statement in which an Illinois licensed Professional Engineer or a responsible corporate officer of the Defendant certifies that all such work has been completed in accordance with all applicable laws, regulations and relevant industry standards as of the time such work was performed, to the Illinois EPA.

4). With regard to any portion of the pipeline running from mile post 640 to 550 that is taken out of service by WPL pursuant to subparagraph (3)

above, Defendant shall perform integrity testing that is equivalent to or more rigorous than "smart pigging" and complete all necessary pipeline rehabilitation work to address defects discovered during the integrity testing which meet or exceed then current Office of Pipeline Safety regulations and/or industry standards applicable to the transportation of hazardous liquid materials as defined at 49 CFR 195.2, before that portion of the pipeline may again be used for the transportation of any liquid material other than uncontaminated water. The Defendant, WPL, shall notify Illinois EPA in writing within 30 days of when it has taken any portion of the pipeline out of service pursuant to subparagraph (3) above, and shall notify Illinois EPA in writing no less than 30 days in advance of when the Defendant intends to begin to conduct the integrity testing prior to bringing the line back into service. Within 30 days of when Defendant has completed the integrity testing of any portion of the pipeline from mile post 640 to 550 it intends to return to service, the Defendant shall provide Illinois EPA with a certified statement from an Illinois licensed Professional Engineer or a responsible corporate officer of the Defendant that confirms that the integrity testing of the relevant portion of the pipeline has been completed in accordance with the terms of this paragraph VIII.A.5.a.4 and all applicable laws, regulations and relevant industry standards as of the time such integrity testing was performed. Within 30 days of when WPL has completed all pipeline rehabilitation work for that portion of the pipeline that is to be returned to service, WPL shall submit copies of all documentation produced and maintained pursuant to 49 CFR 195.452(l), 49 CFR Appendix C IV (16), and 49 CFR 195.452(h)(5)(i)-(iv), and a statement in which an Illinois licensed Professional Engineer or a responsible corporate officer of the Defendant certifies that all

such work has been completed in accordance with the terms of this paragraph VIII.A.5.a.4 and all applicable laws, regulations and relevant industry standards as of the time such work was performed, to the Illinois EPA.

5). Upon execution of this Consent Order by WPL, WPL hereby certifies that it has removed all metal gauging boxes from all pipelines under its control, ownership or operation in Illinois.

6). All notices required under this Section VIII.A.5.a shall be sent to:

John Waligore
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

b) **Menard County Site**

1). The Defendant has submitted a Remedial Action Completion Report for the Menard County site to the Illinois EPA.

2). Illinois EPA has reviewed the Remedial Action Completion Report for the Menard County Site and has determined that it is acceptable. Within 30 days of entry of this Consent Order, Illinois EPA will issue a No Further Remediation Letter to the Defendant for the Menard County Site pursuant to Section 58.10 of the Act, 415 ILCS 5/58.10 (2000) . Such letter shall be recorded by the Defendant with the Menard County Recorder of Deeds within 45 days of the date it is issued by Illinois EPA.

c) **Logan County Site**

1) The Defendant has submitted a Remedial Action Completion Report for the Logan County site to Illinois EPA.

2) Illinois EPA has reviewed the Remedial Action Completion Report for the Logan County Site and has determined that it is acceptable. Within 30 days of entry of this Consent Order, Illinois EPA will issue a No Further Remediation letter to the Defendant for the Logan County Site pursuant to Section 58.10 of the Act, 415 ILSC 5/58.10. The No Further Remediation Letter will include reference to the groundwater use restriction and the need for construction worker precautions. Such letter shall be recorded by the Defendant with the Logan County Recorder of Deeds within 45 days of the date it is issued by Illinois EPA.

B. NATURAL RESOURCES DAMAGES CLAIMS: COUNTS IV and IX

1. The impacted State natural resources affected, or potentially affected by the release incidents described in the Complaint and herein, included flora, fauna, wildlife, surface waters, soil and aquatic life. After identifying the possibility of injuries to natural resources as a result of the release incidents and to avoid the significant delay that would occur if the State pursued litigation and adhered strictly to the natural resource damage assessment procedures provided in the federal natural resource damage regulations, the State did an assessment which employed a scaling approach, including the Habitat Equivalency Analysis ("HEA"), to scale the potential damages of natural resources to the appropriate restoration. This method took into consideration the locations of the release incidents, the possible effects the release incidents may have on natural resources, the time required to correct the losses in services provided by the natural resources, that the contamination resulting from the Menard County release incident has been eliminated, and that the contamination resulting from the Logan County release incident has been mitigated in accordance with 35 Ill. Adm. Code 742, such that it is not predicted to move off-site. The Defendant conducted a review and evaluation of the

potential injuries to natural resources resulting from the release incidents. The settlement set forth below is the result of negotiations between the parties based on the amount of restoration necessary to compensate for the known and potential injuries and make the public whole.

2. Neither execution of the Consent Order by any signatory nor its entry by the Court shall be used as a precedent to compel any signatory to employ or forego any particular method of evaluating potential damages to natural resources or to comply with or forego complying with the natural resource damage assessment procedures provided in the federal natural resource damage regulations.

3. Therefore, to resolve its liability for natural resources damages as a result of the release incidents as alleged herein and in the Complaint, the Defendant shall undertake the measures delineated in the following three paragraphs.

4. **Natural Resources Restoration Trust Fund:**

The Defendant has agreed to make a $28,000 payment, designated as compensatory restoration, to secure acreage in proximity to Logan County that consists of desirable habitat that can be accommodated within an Illinois DNR land management unit. The Defendant shall also make a payment of $5,965.84 in settlement of this matter. A total amount of $33,965.84 shall be paid to the Natural Resources Restoration Trust Fund pursuant to this paragraph VIII.B.4 within 30 days of entry of this Consent Order in the manner specified in paragraph VIII.B.7 below.

5. **Funding of Education Project**

The Defendant shall make a payment of $10,000 within 30 days of entry of this Consent Order to be utilized by the Trustees for an environmental education effort in Logan County regarding spill/Natural Resources Damages related issues in the manner specified in paragraph VIII.B.7 below.

6. **Assessment Costs for NRD Claim:**

The Defendant shall reimburse costs incurred by the Illinois Department of Natural Resources in the assessment of natural resource damages at the Logan County site, in the amount of $11,489.95, within 30 days of entry of this Consent Order in the manner specified in paragraph VIII.B.7 below.

7. The amounts set forth in paragraphs VIII.B. 4 through 6 may be paid with a single certified check or money order, in the amount of $55,455.79, payable to "the Illinois Department of Natural Resources, for deposit in the Natural Resource Restoration Trust Fund" and delivered to:

John Bandy, Director
Office of Fiscal Management
Illinois Department of Natural Resources
524 S. Second Street
Lincoln Tower Plaza
Springfield, Illinois 62701

A copy of the payment transmittal and check shall be simultaneously submitted to:

Michael Henry, Manager
Natural Resource Trustee Program
Illinois Department of Natural Resources
928 South Spring Street
Springfield, Illinois 62704

and to:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

and

John Waligore
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

The name and court number of this case, the phrases "Williams Pipe Line Company - Logan County site", and the Federal Employer Identification Number ("FEIN") of Defendant shall appear on the certified check or money order. Said amount shall then be appropriated pursuant to the terms of this Consent Order under the administration of the fund.

C. NONADMISSION OF NONCOMPLIANCE

The Defendant denies it violated the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (1996), and regulations promulgated thereunder, and denies it is liable for natural resource damage claims under Sections 1002, 1006, and 1017 of OPA, 33 U.S.C. 2702, 2706 and 2717, as alleged in Plaintiff's Third Amended Complaint. WPL further denies it violated any other law or regulation in connection with the release of petroleum product at the Menard or Logan County sites.

D. DISPUTE RESOLUTION

1. Any dispute between the parties regarding this Consent Order and its terms, any application, plan, record or report or schedule required thereunder, or with respect to the Defendant's compliance herewith or any delay thereunder shall, in the first instance, be the subject of informal negotiations. If the Plaintiff and WPL cannot resolve the dispute within thirty (30) calendar days, however, it may then be presented to the Court for appropriate resolution upon written notice by a party. The period for negotiations may be extended by mutual agreement among the parties.

2. The party seeking resolution of the dispute shall file a petition notifying the Court of this dispute, and thereafter the Court shall order the parties to file such pleadings as the Court deems necessary and proper. Such petition shall be filed with the Court within thirty (30) calendar days after the informal negotiation period (or any extension) has expired or the party shall have waived its right to seek Dispute Resolution.

3. Where the Defendant has violated any payment or compliance deadline within this Consent Order or any attachments, work plans or schedules incorporated herein, the Plaintiff may elect to file a petition for adjudication of contempt or rule to show cause and shall not be required to proceed through this Dispute Resolution procedure.

E. FORCE MAJEURE

1. Any failure by the Defendant to comply with any requirement of the Consent Order shall not be a violation if such failure is the result of actions by persons or events beyond the control of the Defendant, including, but not restricted to, acts of god, fires, floods, strikes, freight embargoes, or delays of contractors due to such causes. The failure of the Defendant to perform any requirement under this Consent Order because of alleged force majeure shall not excuse or otherwise postpone Defendant's continuing obligation to perform all other requirements of this Consent Order in accordance with the deadlines contained in this Consent Order.

2. When in the opinion of the Defendant, circumstances have occurred which constitute or may constitute force majeure, the Defendant shall notify the Illinois EPA and IDNR in writing as soon as practicable but not later than seven (7) calendar days after the claimed occurrence began. Failure to so notify the Illinois EPA and IDNR shall constitute a waiver of any defense under this paragraph E arising from said circumstances. Notification may be delivered by facsimile.

3. If the Illinois EPA, IDNR and Attorney General's Office agree that a delay or violation has been or will be caused by circumstances that constitute force majeure, the parties may agree in writing to extend the time for performance hereunder for a period not to exceed the delay resulting from such circumstances, and shall file a copy of such written agreement with the Court. If parties cannot agree whether the reasons for the delay or noncompliance were beyond the reasonable control of the Defendant, either party may present the dispute to

this Court for appropriate resolution. The Defendant shall have the burden of going forward and proving that the circumstances alleged to be causing the delay or noncompliance were beyond its control.

4. Increased costs associated with implementing the measures required by the Consent Order shall not, by themselves, excuse the Defendant from a failure to comply under the provisions of this Paragraph E.

F. JURISDICTION

This Court shall retain jurisdiction of this matter for the purpose of amending, interpreting, implementing and enforcing the terms and conditions of this Consent Order, and for the purpose of adjudicating all matters of dispute among the parties. The Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to the Court that it may be approved and entered.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Dated: 8/16/02

BY: _____
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Dated: 8-14-02

BY: _____
JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

ILLINOIS DEPARTMENT OF
NATURAL RESOURCES

Dated: 8/22/02

BY: _____
ROBERT LAWLEY
Chief Legal Counsel

WILLIAMS PIPE LINE COMPANY, LLC

Dated: _____

BY: _____

Entered: _____

_____
JUDGE

Illinois
Department of
Natural Resources

http://dnr.state.il.us

One Natural Resources Way • Springfield, Illinois 62702-1271

George H. Ryan, Governor • Brent Manning, Director

DATE: December 22, 2002

TO: John Schmitt, Illinois Conservation Foundation

FROM: Stephen Davis, OREP/Resource Review and Coordination SKD

SUBJECT: Williams Pipeline Oil Spill Settlement

Attached is a copy of the Consent Order for the *People v. Williams Pipe Line Company* case that resulted in a $72,000 supplemental environmental project donation to the Conservation Foundation and a payment of $55,000 to the Natural Resource Restoration Trust Fund.

You will note on pages 11 and 17 of the Consent Order, that funds payed to the Conservation Foundation are the result of a penalty levied by the Illinois EPA. These "penalty" funds are directed to be used in conjunction with the restoration (NRD) funds placed in the Natural Resource Restoration Trust Fund. The vision of the Natural Resource Trustee's for this incident, is to combine the funds for a total of $105,965.84 to be used "...to secure acreage in proximity to Logan County that consists of desirable habitat that can be accommodated within an Illinois DNR land management unit." This combination of funds will help to ensure a more significant acquisition of property, adding to the need for adequate compensation for injuries to natural resources.

I trust that the documentation offered in the attached Consent Order and the narrative above will assist you in your management of the $72,000 donation. Once an appropriate parcel of property has been identified, we will contact you to initiate discussions on what the appropriate next steps may be.

Again, thank you for your cooperation as well as the cooperation of the Foundation. Projects like this enable all of us to do what is needed to protect Illinois natural resources and the services they provide. The willingness of the Foundation to work out side of the box is greatly appreciated.

If you have any questions regarding this matter, please do not hesitate to contact me.

Attachment:

Cc: Division File
T. Flattery
N. Ciaccio
B. Whetsell

Printed on recycled and recyclable stock