

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN THE MATTER OF THE COMPLAINT OF)
)
ORIENTAL REPUBLIC OF URUGUAY)
(COMMANDO GENERAL DE LA ARMADA)
and SERVICIO DE BUGUES AUXILIARES))
as Owner and Operator of the)
M/V PRESIDENTE RIVERA for)
exoneration from or limitation of)
liability)

C.A. No. 90-404-SLR

CONSENT DECREE

WHEREAS, the parties to this Consent Decree agree that settlement of the claims in this case against Oriental Republic of Uruguay ("ORU") is in the public interest and that entry of this Consent Decree is the most appropriate means to resolve the matters covered herein;

WHEREAS, ORU is the owner and operator of the vessel, M/V Presidente Rivera ("Presidente Rivera");

WHEREAS, a spill of No. 6 fuel oil occurred from the Presidente Rivera on or about June 24, 1989 ("Spill");

WHEREAS, No. 6 fuel oil from the Spill entered into the waters of the State of New Jersey and the State of Delaware and reached the shorelines of, and property owned by the States of New Jersey and Delaware;

WHEREAS, the United States, the State of New Jersey, and the State of Delaware are trustees for certain natural resources damaged by the Spill;

WHEREAS, the United States, the State of New Jersey, and the State of Delaware (hereinafter jointly referred to as the "Governments") filed claims in this proceeding on, respectively, February 6, 1990, February 5, 1990, and January 25, 1990, ("the Claims"), alleging that ORU is responsible for the Spill and liable for all resulting damages to natural resources, cleanup, removal and monitoring costs, and all penalties and fines, pursuant to Federal and State law; and

WHEREAS, pursuant to separate previous settlement agreements, ORU has paid costs, penalties, and other claims arising from the Spill in the amount of \$276,318.01 to the United States, \$291,000.00 to the State of New Jersey, \$358,709.00 to the State of Delaware, \$200,600.00 to the State of Delaware on behalf of Delaware crabbers, \$23,367.00 to the City of Wilmington, and \$145,000.00 to the Commonwealth of Pennsylvania;

NOW THEREFORE, it is hereby Ordered, Adjudged and Decreed, and agreed among the parties:

I. JURISDICTION

The Court has jurisdiction over the subject matter and over the parties to this action pursuant to 28 U.S.C. §§ 1331, 1332, 1345, 1367 and 33 U.S.C. §§ 1319 and 1321. This action also falls within the admiralty and maritime jurisdiction of the Court as it is an admiralty and maritime claim within the meaning of Fed. R. Civ. P. 9(h). This Court also has jurisdiction over the subject matter of the pendent State law claims in this action.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c).

II. DEFINITIONS

"Natural Resources" shall have the meaning provided in Section 101(16) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601(16).

"Federal and State Law" shall mean the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., N.J.S.A. 23:5-28 (New Jersey Fish and Game Statute), the Delaware Oil Pollution Liability Act, 7 Del. C. Ch. 63, the common law of nuisance, and other provisions of statutory and common law;

"United States" shall mean the United States of America and the Department of Commerce through the National Oceanic and Atmospheric Administration, and the Department of the Interior.

"State of New Jersey" shall mean the State of New Jersey and Scott Weiner, Commissioner of the Department of Environmental Protection and Energy.

"State of Delaware" shall mean the State of Delaware and Thomas R. Carper, Governor, Charles M. Oberly, III, Attorney General, and Christophe Tolou, Secretary of the Department of Natural Resources and Environmental Control.

III. PAYMENT OF NATURAL RESOURCE DAMAGES, OUTSTANDING COSTS AND PENALTIES; ELECTRONIC TRANSFER UPON ENTRY OF CONSENT DECREE

A. ORU shall pay the sum of two million six hundred fifty thousand dollars (\$2,650,000.00) to the Governments for natural resource damages, outstanding costs and penalties. By stipulation among the parties to this Consent Decree entered by the Court on July 14, 1993, ORU caused to be delivered to the Clerk of the United States District Court for the District of Delaware the sum of two million six hundred fifty thousand dollars (\$2,650,000.00) for deposit into an interest-bearing escrow account established pursuant to the stipulation.

B. Upon entry of this Consent Decree, such payment, plus interest accrued in the escrow account, shall be released and made payable to the "Treasurer, United States of America." Such payment shall be made by electronic funds transfer in accordance with the "Instructions for Electronic Funds Transfer Messages to the U.S. Department of Justice" that are attached to this Consent Decree as Appendix A. As soon as is practicable following execution of such transfer, the transferred funds shall be disbursed in accordance with Paragraphs VII and VIII.

C. This Consent Decree shall be deemed an application for return of any registry fee deducted by the Clerk under Local Rule 67.2(f). Upon entry of this Consent Decree, any such registry fee shall be included in the disbursement to the United States provided for in Paragraph III.B.

IV. PUBLIC COMMENT

This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States, in consultation with the other Governments, reserves the right to withdraw its consent to this Consent Decree if comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. ORU consents to the entry of this Consent Decree without further notice and may not withdraw from this Consent Decree once signed by its authorized representative(s).

V. PARTIES BOUND

This Consent Decree shall apply to and be binding upon and inure to the benefit of the Governments and ORU, its present and former officials, representatives, and agents.

VI. DISMISSAL OF ACTIONS WITH PREJUDICE AND RELEASE OF CLAIMS

A. Upon entry of this Consent Decree as an Order of the Court:

(1) the Consent Decree shall become effective and constitute a final judgment between and among the Governments and ORU;

(2) each of the claims for relief asserted by ORU and the Governments in the Complaint and Claims filed in this action are, and shall be dismissed with prejudice and without court costs to any party; and

(3) ORU releases each of the Governments, their agencies, employees and agents from any and all claims by ORU whether legal, equitable or statutory, including without limitation any and all claims under common law, that ORU may have at the time of entry of this Consent Decree arising out of the transaction or occurrence that is the subject matter of the Governments' respective claims against ORU in this action.

VII. DISBURSEMENT OF NATURAL RESOURCE DAMAGE RECOVERY

A. The Governments' respective jurisdictions over the injured natural resources overlap and no determination has been made as to the amount of damages incurred with respect to natural resources within the jurisdiction of any of the individual Governments. However, pursuant to agreement among the Governments, the State of New Jersey and the State of Delaware shall each take lead responsibility with respect to one-half of the natural resource damage recovery as set forth in Paragraph VII.B, and each State shall expend the portion for which it has assumed lead responsibility in accordance with Paragraph IX.

B. From the funds paid to the Treasurer, United States of America from escrow in accordance with Paragraph III.B, the sum of two million one hundred forty thousand nine hundred seventy-two dollars (\$2,140,972.00), plus interest accrued in the escrow account (i.e., the difference between \$2,650,000.00 and the amount of the electronic funds transfer from the escrow account), is designated as "natural resource damage recovery." Fifty

percent (50%) of such natural resource damage recovery shall be made payable to the Treasurer, State of New Jersey for deposit into an interest-bearing trust account to be established for purposes of this Paragraph and Paragraph IX.A, and shall be sent to:

Patricia C. Hannigan
Assistant United States Attorney
Chemical Bank Plaza
1201 Market Street, Suite 1100
P.O. Box 2046
Wilmington, Delaware 19899-2046

who shall promptly cause delivery of said payment to:

Matthew R. Gabrielson
Deputy Attorney General
Division of Law, Hazardous Site
Litigation Section
Hughes Justice Complex
CN 093
Trenton, New Jersey 08625

The remaining fifty percent (50%) of the natural resource damage recovery shall be made payable to the "Delaware State Park Trust Fund" and shall be sent to:

Patricia C. Hannigan
Assistant United States Attorney
Chemical Bank Plaza
1201 Market Street, Suite 1100
P.O. Box 2046
Wilmington, Delaware 19899-2046

who shall promptly cause delivery of said payment to:

Jeanne L. Langdon
Keith A. Trostle
Deputy Attorneys General
Department of Natural Resources and
Environmental Control
89 Kings Highway, P.O. Box 1401
Dover, Delaware 19901

VIII. DISBURSEMENT OF RECOVERY FOR OUTSTANDING COSTS AND PENALTIES

A. From the funds paid to the Treasurer, United States of America from escrow in accordance with Paragraph III.B, the sum of one hundred thousand dollars (\$100,000.00) shall be disbursed to the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce ("NOAA") in settlement of costs incurred by NOAA in connection with the Spill. The funds shall be electronically transferred by the U.S. Department of Justice/Debt Accounting Operations Group to NOAA via the Treasury GOALS system by on-line payment and collection system (OPAC). Notice of the transfer, referencing the Consent Decree in Oriental Republic of Uruguay (M/V Presidente Rivera), C.A. No. 90-404-SLR, shall be sent to:

Marguerite Matera
Office of General Counsel
National Oceanic and Atmospheric
Administration, Northeast Region
One Blackburn Drive, 2d Floor
Gloucester, Massachusetts 01930

B. From the funds paid to the Treasurer, United States of America from escrow in accordance with Paragraph III.B, the sum of seven thousand twenty-eight dollars (\$7,028.00) shall be disbursed to the U.S. Department of the Interior ("DOI") in settlement of costs incurred by DOI in connection with the Spill. The funds shall be electronically transferred by the U.S. Department of Justice/Debt Accounting Operations Group to DOI, U.S. Fish and Wildlife Service, agency location code 14160006, via the Treasury GOALS system by on-line payment and collection

system (OPAC). Notice of the transfer, referencing the Consent Decree in Oriental Republic of Uruguay (M/V Presidente Rivera), C.A. No. 90-404-SLR, shall be sent to:

Mark Barash
Office of Regional Solicitor
Department of Interior
Suite 612
One Gateway Center
Newton Corner, Massachusetts 02158

C. From the funds paid to the Treasurer, United States of America from escrow in accordance with Paragraph III.B, the sum of one hundred seven thousand dollars (\$107,000.00) shall be payable to "Delaware Department of Natural Resources and Environmental Control" in settlement of outstanding costs incurred by the State of Delaware and penalties due under Delaware law in connection with the Spill. The disbursement shall include on its face or be accompanied by a statement that it is a payment of costs and penalties pursuant to the Consent Decree in Oriental Republic of Uruguay (M/V Presidente Rivera), C.A. No. 90-404-SLR. The payment shall be sent to:

Patricia C. Hannigan
Assistant United States Attorney
Chemical Bank Plaza
1201 Market Street, Suite 1100
P.O. Box 2046
Wilmington, Delaware 19899-2046

who shall promptly cause delivery of said payment to:

Jeanne L. Langdon
Keith A. Trostle
Deputy Attorneys General
Department of Natural Resources and
Environmental Control
89 Kings Highway, P.O. Box 1401
Dover, Delaware 19901

D. From the funds paid to the Treasurer, United States of America from escrow in accordance with Paragraph III.B, a total of two hundred ninety five thousand dollars (\$295,000.00) shall be disbursed to the State of New Jersey in two separate payments in settlement of outstanding costs incurred by the State of New Jersey and penalties due under New Jersey law in connection with the Spill. The first disbursement shall be payable to "Treasurer, State of New Jersey" in the amount of one hundred eighty-three thousand dollars (\$183,000.00), and shall include on its face or be accompanied by a statement that it is a payment of costs pursuant to the Consent Decree in Oriental Republic of Uruguay (M/V Presidente Rivera), C.A. No. 90-404-SLR. The second disbursement shall be payable to "Treasurer, State of New Jersey" in the amount of one hundred twelve thousand dollars (\$112,000.00), and shall include on its face or be accompanied by a statement that it is a payment of penalties pursuant to the Consent Decree in Oriental Republic of Uruguay (M/V Presidente Rivera), C.A. No. 90-404-SLR. The payments shall be sent to:

Patricia C. Hannigan
Assistant United States Attorney
Chemical Bank Plaza
1201 Market Street, Suite 1100
P.O. Box 2046
Wilmington, Delaware 19899-2046

who shall promptly cause delivery of said payments to:

Matthew R. Gabrielson
Deputy Attorney General
Division of Law, Hazardous Site
Litigation Section
Hughes Justice Complex
CN 093
Trenton, New Jersey 08625

IX. USE OF NATURAL RESOURCE DAMAGE RECOVERY

A. The natural resource damage recovery disbursed under Paragraph VII.B shall be expended for (i) restoration, rehabilitation, and replacement activities to address injuries to natural resources impacted or affected by the Spill; (ii) acquisition of fee title of, or conservation easements on, lands or property in the area of the Spill and related ecosystems constituting natural resources equivalent to any affected by the Spill; and (iii) performance of studies and projects necessary and appropriate to (i) and (ii) above. Such expenditures shall be made in accordance with applicable State and/or Federal fiscal management and appropriation laws. It is the intention of the Governments that the specific projects on which the State of New Jersey and the State of Delaware will each expend the share of the natural resource damage recovery for which it has lead responsibility will be as described in Appendix B to this Consent Decree. In the event of unforeseen or changed circumstances, expenditures may be made for additional or alternative projects meeting the criteria set forth in this Paragraph provided that,

in such circumstances, such expenditures shall first be approved by the United States in accordance with Paragraph IX.B below.

B. The State of New Jersey and the State of Delaware shall provide to the United States reasonable advance notice of, and an opportunity to consult with, participate in, and comment on the planning, development, implementation, and monitoring of all activities to be performed pursuant to Paragraph IX.A. In the event that projects are proposed other than the projects set forth in Appendix B to this Consent Decree, concurrence by the United States shall also be obtained. The State of New Jersey and the State of Delaware shall provide to the United States copies of final work plans and contracts showing the use to which the natural resource damage recovery disbursed to them under this Consent Decree is being put. Such documents shall be accompanied by a cover letter indicating that the documents being sent relate to Matter of Oriental Republic of Uruguay (M/V Presidente Rivera) - Natural Resource Damage Restoration Project(s). Notices required by this Paragraph shall be sent to the addressees listed in Paragraph VIII.A and B, or such other addressees as the United States may designate. Concurrences required by this Paragraph shall be communicated on behalf of NOAA and DOI by the individuals listed in Paragraph VIII.A and B, or such other individuals as the United States may designate.

C. In the event that any provision of this Consent Decree relating to payment or disbursement of natural resource damages, or any activity undertaken thereunder, is declared invalid by a

court of competent jurisdiction, any funds relating to the provision or activity in question (to the extent not already expended) shall be kept or deposited in an interest-bearing account pending an order by a court of competent jurisdiction providing for a disposition of the funds that is consistent with applicable law and the purposes of this Consent Decree as expressed, inter alia, in Paragraph IX.A.

X. REPRESENTATIVES

Each undersigned representative of a party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind such party to this document.

XI. COUNTERPARTS

This Consent Decree may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

* * *

SO ORDERED THIS _____ day of _____ 1993.

United States District Judge
District of Delaware

APPENDIX B

This Appendix describes the projects on which the Governments anticipate the State of New Jersey and the State of Delaware will each expend the share of the natural resource damage recovery for which it has lead responsibility under this Consent Decree.

1. New Jersey -- Alloway Creek Marsh Acquisition and Habitat Restoration

The State of New Jersey will utilize funds for acquisition and restoration in an area comprising approximately 1,800 acres of degraded marsh, 700 acres of natural marsh, and 500 acres of upland buffer. The Alloway Creek area is located adjacent to the northern boundary of Mad Horse Creek Wildlife Management Area and covers approximately 3.5 miles of shoreline that was affected by the Presidente Rivera oil spill. This marshland was impounded in historic times for agricultural purposes and has now been largely taken over by the introduced exotic plant, *Phragmites australis*. In its present condition, the marsh has lost much of its former productivity for waterfowl, endangered species, and as nursery areas for commercially and recreationally important finfish, shellfish and crustaceans. These marshes are part of the few remaining in the state which provide migration habitats for declining populations of waterfowl which breed in the midwestern "Prairie Pothole" region. In addition to acquisition, projects will be conducted to eliminate the *Phragmites* and restore these marshes to their former productivity. Public access enhancement projects may also be undertaken.

This Alloway Creek area project is a part of the much larger and publicly supported Salem River Wetlands Conservation Project: a cooperative venture under the North American Wetlands Conservation Act. A proposal was submitted to the North American Wetlands Council and was approved by the U.S. Fish and Wildlife Service in August 1991 for the acquisition and restoration of the approximately 17,000 acres which comprise the Salem River Project. As such, funds expended pursuant to the Presidente Rivera settlement for acquisition and restoration will augment various federal, state and private sources involved in the Salem River Project.

2. Delaware -- Pea Patch Island Shoreline Stabilization/Wetlands Restoration

Pea Patch Island is located in the Delaware River adjacent to Delaware City. Fort Delaware, a recognized historic area, is located on Pea Patch Island. Critical erosion on the eastern and southern portions of the island, due in part to ship traffic, is threatening the Fort structure and the location of historic artifacts. The U.S. Army Corps of Engineers is an owner of land where the stabilization of the erosion is considered crucial.

The heronry on Pea Patch Island provides habitat to thousands of birds, many of which were also affected by the Presidente Rivera oil spill. In addition to habitat for wildlife, the area provides active recreational access to the Delaware River.

The State of Delaware Division of Parks and Recreation and Wetlands Section will undertake, where technically feasible, shoreline stabilization projects utilizing rock/vegetation materials in areas subject to wetlands losses due to erosion on Pea Patch Island. Stabilizing these shorelines as described will reduce the area of wetlands lost due to erosion and will create and restore wetlands habitats.

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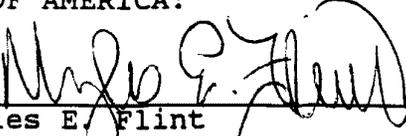
The State of Delaware Division of Parks and Recreation and Wetlands Section will undertake, where technically feasible, shoreline stabilization projects utilizing rock/vegetation materials in areas subject to wetlands losses due to erosion on Pea Patch Island. Stabilizing these shorelines as described will reduce the area of wetlands lost due to erosion and will create and restore wetlands habitats.

[First signature page of seven signature pages for Consent Decree
in Matter of Oriental Republic of Uruguay (M/V Presidente
Rivera)]

FOR THE UNITED STATES OF AMERICA:

DATE:

9/24/93


Myles E. Flint
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

- DATE:

8-13-93


David Roskam
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice

DATE:

8-27-93


Peter F. Frost
Attorney, Admiralty Section
Torts Branch
Civil Division
U.S. Department of Justice

[Second signature page of six signature pages for Consent Decree
in Matter of Oriental Republic of Uruguay (M/V Presidente
Rivera)]

FOR THE UNITED STATES OF AMERICA:

William C. Carpenter, Jr.
United States Attorney
District of Delaware

DATE: August 18, 1993 By:

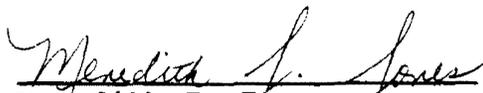


Patricia C. Hannigan
Assistant United States Attorney
Delaware Bar I.D. No. 2145

[Third signature page of six signature pages for Consent Decree
in Matter of Oriental Republic of Uruguay (M/V Presidente
Rivera)]

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
OF THE UNITED STATES DEPARTMENT COMMERCE:

DATE: 9/27/93


Meredith J. Jones
General Counsel

[Fourth signature page of six signature pages for Consent Decree
in Matter of Oriental Republic of Uruguay (M/V Presidente
Rivera)]

FOR THE STATE OF DELAWARE:

Charles M. Oberly, III
Attorney General

DATE: 8/17/93

By: Michael F. Foster
Michael F. Foster
State Solicitor
Delaware Bar I.D. No. 840

DATE: Aug 16, 1993

By: Keith A. Trostle
Keith A. Trostle
Deputy Attorney General
Delaware Bar I.D. No. 432

DATE: Aug 13, 1993

By: Jeanne L. Langdon
Jeanne L. Langdon
Deputy Attorney General
Delaware Bar I.D. No. 2161

[Fifth signature page of six signature pages for Consent Decree
in Matter of Oriental Republic of Uruguay (M/V Presidente
Rivera)]

FOR THE STATE OF NEW JERSEY:

Robert J. Del Tufo
Attorney General

DATE: 9/27/93

By:



Matthew R. Gabrielson
Deputy Attorney General

[Sixth signature page of six signature pages for Consent Decree
in Matter of Oriental Republic of Uruguay (M/V Presidente
Rivera)]

FOR ORIENTAL REPUBLIC OF URUGUAY (COMMANDO GENERAL DE LA
ARMADA) and SERVICIO DE BUGUES AUXILIARES as Owner and
Operator of the M/V PRESIDENTE RIVERA:

DATE:

August 9, 1983



James F. Young
Krusen, Evans & Byrne
Philadelphia, Pennsylvania

APPENDIX A

**INSTRUCTIONS FOR ELECTRONIC FUNDS
TRANSFER MESSAGES TO THE U.S. DEPARTMENT OF JUSTICE**

(Omitted items will be provided by the sending bank)

<u>Item</u>	<u>Explanation of Item</u>	<u>Information to be Coded</u>
2	Receiving Code (for U.S. Treasury)	021030004
3	Message Type Code	1000
7	Amount to be Transferred	\$ _____
9 & 10	Receiving Bank and Department of Justice Agency Location Code	TREAS NYC/(15030001)
11	Payee Name	Dept of Justice ENRD
12	Deposit Identifier Debtor Name Collection Office Claim No. /Referring Agency File No.	LND-3-EFT Oriental Republic of Uruguay 90-5-1-1-3609

Questions should be directed to: Saundra Doyle or Dolores Steenland
Environmental & Natural
Resources Division/DOJ

Phone #: (202) 616-3131

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: :
: :
ORIENTAL REPUBLIC OF URUGUAY :
(COMMANDO GENERAL DE LA ARMADA : Civil Action No. 90-404-SLR
and SERVICIO DE BUGUES :
AUXILIARES) as Owner and :
Operator of the M/V PRESIDENTE :
RIVERA for exoneration from :
or limitation of liability. :

CERTIFICATE OF SERVICE

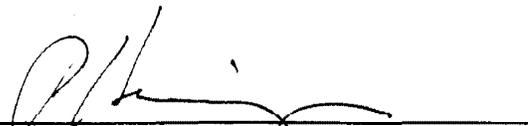
I, Patricia C. Hannigan, Assistant United States Attorney for the District of Delaware, and a member of the Bar of the United States District Court, hereby certify that I caused to be mailed on September 29, 1993, two copies of the attached document:

CONSENT DECREE

TO: Randall E. Robbins, Esquire James S. Green, Esquire
Ashby & Geddes Duane, Morris & Heckscher
One Rodney Square 1201 Market Street
P.O. Box 1150 P.O. Box 195
Wilmington, Delaware 19899 Wilmington, Delaware 19899

Paul M. Lukoff, Esquire
Prickett, Jones, Elliott,
Kristol & Schnee
1310 King Street
P.O. Box 1328
Wilmington, Delaware 19899

Matthew Gabrielson, Esquire
Deputy Attorney General
Hazardous Waste Litigation Section
Division of Law
Richard J. Hughes Justice Complex
CN 093
Trenton, New Jersey 08625-0093



Patricia C. Hannigan
Delaware Bar I.D. No. 2145