

SETTLEMENT AGREEMENT AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR, THE STATE OF INDIANA,
AND
MARATHON PIPE LINE LLC

I. Introduction

A. The United States of America, on behalf of the Department of the Interior (“DOI”) acting through the Fish and Wildlife Service (“FWS”), and the State of Indiana Natural Resource Co-Trustees (collectively referred to as the “Trustees”), and Marathon Pipe Line LLC (“Settling Defendant”) (the Trustees and Settling Defendant are referred to collectively as the “Parties,”) with the approval of the United States Department of Justice (“DOJ”), enter into this Settlement Agreement (“Agreement” or “Settlement Agreement”) to resolve, without litigation, the Trustees’ civil claims under the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701 *et seq.*; and any other applicable federal or state law for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources, including the reasonable costs of assessing the injuries, resulting from 1) the release of #2 diesel fuel on March 20, 2018 into Big Creek near Solitude, Indiana (the “Big Creek Site”), and 2) the release of natural gasoline on April 2, 2019, into a tributary of Billy Creek, in Clay County, Indiana (the “Knightsville Site”) (collectively the “Sites”).

B. The Trustees have shared jurisdiction for the natural resources and their services injured at or by the discharge at and from the Sites, and this Settlement Agreement is executed by the governmental agencies in their capacity as Natural Resource Trustees under OPA and the National Contingency Plan, 40 C.F.R. §§ 300.600-300.605.

C. Under OPA, each responsible party for a facility from which oil is discharged into or upon navigable waters is liable for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the injuries. 33 U.S.C. § 2702.

D. The execution of this Agreement shall not constitute, nor is it in any way an admission by Settling Defendant of any liability, and shall not be used in any other action against Settling Defendant as proof of liability.

E. Marathon has paid to the U.S. Coast Guard \$62,219.85 for certain Trustee assessment costs for the Big Creek Site.

II. Parties Bound

The provisions of this Settlement Agreement shall apply to and be binding upon Settling Defendant and all of its successors and assigns, and upon the Trustees.

III. Definitions

Except as otherwise expressly provided herein, the terms used in this Settlement Agreement which are used in OPA or in its Natural Resource Damage Assessment regulations promulgated by the National Oceanic and Atmospheric Administration pursuant to OPA (15 C.F.R. Part 990) shall have the meanings assigned to them by OPA or by its regulations.

“Big Creek Oil Spill” shall mean the March 20, 2018 release of #2 diesel fuel from a pipeline owned by Marathon Pipe Line LLC into Big Creek, Solitude, Indiana.

“Big Creek Site” shall mean the area near and downstream of Solitude, Indiana where natural resources were injured as a result of the Big Creek Oil Spill.

“Effective Date” shall mean the date upon which the DOI issues written notice to Settling Defendant that the public comment period pursuant to Section XI has closed and that comments received, if any, do not require modification of, or the United States withdrawal from, this Settlement Agreement.

“Knightsville Oil Spill” shall mean the April 2, 2019 release of natural gasoline from a pipeline owned by Marathon Pipe Line LLC into a tributary of Billy Creek, in Clay County, Indiana.

“Knightsville Site” shall mean the area in Clay County, Indiana where natural resources were injured as a result of the Knightsville Oil Spill.

“Natural resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, or any State government.

“Settlement Agreement” or “Agreement” shall mean this Settlement Agreement among DOI, the State of Indiana Natural Resource Co-Trustees, and Marathon.

IV. Payment of Certain Costs and Damages

A. Within 30 days after the Effective Date, Settling Defendant shall pay \$412,780.15 to the Trustees. The total amount paid shall be deposited into a segregated, case-specific sub-account (1131) within the DOI Natural Resource Damage Assessment and Restoration Fund (“NRDAR Fund”) to be managed jointly by the Trustees for the following:

- 1) reimbursement of Trustees' assessment costs;
- 2) development and implementation of a restoration plan to fund a freshwater mussel propagation effort within the Wabash River watershed to address injuries resulting from the Big Creek Oil Spill; and
- 3) development and implementation of a restoration plan to fund a small riparian restoration project in west central Indiana, likely in or near the Eel River sub-watershed of the Wabash River watershed, to address injuries resulting from the Knightsville Oil Spill.

B. Payment of the amount set forth in Section IV.A. shall be by EFT or in the form of a check made payable to the U.S. Department of the Interior, in accordance with payment instructions attached to this Agreement as Attachment I. At the time of payment, Settling Defendant shall send a written notice of payment and a copy of any transmittal documentation to:

Nancy King
General Counsel
Indiana Department of Environmental Management
100 North Senate Avenue
IGCN 1307
Indianapolis, IN 46204-2251

With a copy to:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
DJ # 90-5-1-1-12001

C. If Settling Defendant fails to make the payments specified at Section IV.A when due, Settling Defendant shall pay interest on those payments at the rate specified in 33 U.S.C. § 2705(b)(4). Interest shall be calculated from the Effective Date to the date of payment.

D. In addition, if Settling Defendant fails to make the payment specified in Section IV.A when due, it shall pay \$500 as a stipulated penalty for each day or portion thereof that the payment is overdue until all overdue payments (including stipulated penalties) are paid in full. A stipulated

penalty for failure to make the payment specified at Section IV.A shall be paid to the NRDAR Fund in accordance with the payment instructions in Section IV.B. The stipulated penalty is due and payable within 30 days of the date of the demand for payment of the stipulated penalty by the relevant Trustee.

E. Payments made under Subparagraph IV.D shall be in addition to any other remedies or sanctions available to the Trustees by virtue of Settling Defendant's failure to comply with the requirements of this Settlement Agreement. Notwithstanding any other provisions of this Section IV, the Trustees may, in their unreviewable discretion, waive payment of any portion of the stipulated penalty that has accrued pursuant to this Settlement Agreement.

F. Settling Defendant shall be liable for reasonable attorneys' fees and costs incurred by the Trustees to collect any amount due under this Settlement Agreement that is not timely paid.

V. Covenant Not to Sue and Reservation of Rights by the Trustees

A. In consideration of the payments made and to be made by Settling Defendant, the Trustees covenant not to sue or maintain any lawsuit, action, administrative proceeding, or other proceeding pursuant to OPA, 33 U.S.C. § 2701 *et seq.*, or any other applicable federal or state law, for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources, against Settling Defendant for: (i) damages for injury to, impairment of, destruction of, loss of, diminution in value of, or loss of use of natural resources caused by the Big Creek and Knightsville Oil Spills, and (ii) except as set forth in Section IV above, costs (including Natural Resource Damage Assessment costs), attorneys' fees, other fees, or expenses incurred by the Trustees to recover such natural resource damages relating to injuries at or from the Sites, including damage assessment costs.

B. These covenants not to sue are not effective until, and are conditioned upon, complete and satisfactory performance by Settling Defendant of its obligations under Section IV of this Settlement Agreement.

C. Notwithstanding any other provision of this Settlement Agreement, the Trustees reserve, and this Settlement Agreement is without prejudice to any claims not included in Section V.A and V.B., including, but not limited to:

- (1) Claims based upon a failure of Settling Defendant to meet a requirement of this Settlement Agreement;
- (2) Criminal claims; and

(3) Claims for response costs or damages that the United States, other than DOI, may have under applicable law.

VI. Covenant Not to Sue by Settling Defendant

A. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the Trustees, including their departments, agencies or instrumentalities, or their employees, agents, experts or contractors, for:

- (1) Claims related to natural resource damages at the Sites;
- (2) Any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund;
- (3) Any claim for costs, attorneys' fees, other fees, or expenses incurred in connection with this Settlement Agreement or claims resolved herein.

B. In any subsequent administrative or judicial proceeding initiated by DOI or the State of Indiana related to the Sites, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by DOI or the State of Indiana in the subsequent proceeding were or should have been settled in this Settlement Agreement; provided, however, that nothing in this Section VI affects the enforceability of the covenants set forth in Section V herein.

VII. Signatories

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such Party to this document.

VIII. Entire Agreement

This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Agreement and supersedes all prior agreements and understanding, whether oral or written. No other document, nor any representation, inducement, agreement, understanding or promise constitutes any part of this Agreement or the settlement it represents, nor shall it be used in construing the terms of this Agreement.

IX.Modification

The terms of this Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

X.Execution

This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

XI.DOJ Approval and Public Comment

The effectiveness of this Settlement Agreement (except with respect to Section XII) is subject to DOI's receipt of final approval from the DOJ. Prior to granting such approval, the federal trustee will cause a notice of the Settlement Agreement to be published in the Federal Register as well as a local newspaper of general circulation ("Notice"). The Notice must invite members of the public to submit comments regarding the Agreement to the federal trustee for review and evaluation for a period of 30 days after publication of the Federal Register notice. Settling Defendant agrees not to withdraw its consent to the Settlement Agreement pending consideration of public comments and approval of DOJ. If public comments disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate, DOI, in consultation with DOJ, may withdraw their approval of the Settlement Agreement. Should DOI withdraw their approval, this Agreement shall be null and void.

XII.Effective Date

The Effective Date of this Settlement Agreement shall be the date upon which the DOI issues written notice to the Settling Defendant that the public comment period pursuant to Section XI has closed and that comments received, if any, do not require modification or DOI's or the State of Indiana's withdrawal from this Settlement Agreement.

Signature Page: SETTLEMENT AGREEMENT AMONG THE UNITED STATES DEPARTMENT OF THE INTERIOR AND THE STATE OF INDIANA AND MARATHON FOR THE BIG CREEK and KNIGHTSVILLE OIL SPILLS

MARATHON PIPE LINE LLC

By: XE  Date: 12/6/20

JGS

Approved as to Form

Signature Page: SETTLEMENT AGREEMENT AMONG THE UNITED STATES DEPARTMENT OF THE INTERIOR AND THE STATE OF INDIANA AND MARATHON FOR THE BIG CREEK and KNIGHTSVILLE OIL SPILLS

UNITED STATES DEPARTMENT OF THE INTERIOR

PEG

By:

ROMANIK

Peg Romanik, Associate Solicitor

Office of the Solicitor, Division of Parks and Wildlife

Digitally signed by PEG
ROMANIK

Date: 2020.11.24
23:54:25 -05'00'

Date: _____

By:



Charles Wooley, Director Region 3 (Great Lakes)

U.S. Fish and Wildlife Service

Date:

11/16/2020

Marathon Big Creek and Knightsville NRD Settlement Agreement

Signature Page: SETTLEMENT AGREEMENT AMONG THE UNITED STATES DEPARTMENT OF THE
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SPILLS

STATE OF INDIANA NATURAL RESOURCE CO-TRUSTEES

By: Elizabeth Admire

Date: 11/11/2020

Indiana Department of Environmental Management


By: John McDaniel

Date: 11-12-20

Indiana Department of Natural Resources

**Signature Page: SETTLEMENT AGREEMENT AMONG THE UNITED STATES DEPARTMENT OF THE
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SPILLS**

APPROVED BY: UNITED STATES DEPARTMENT OF JUSTICE

By:  Date: 12/10/2020

Nicholas A. McDaniel
U.S. Department of Justice
Environmental Enforcement Section