

Brook

**Defendant.**

Civil Action No.  
IP 96-110-C-M/S

DATE:

3/26/96

Tamy L

90-5-1-4158

DEPARTMENT OF JUSTICE

APR 7 5

LANDS DIVISION  
ENFORCEMENT RECORDS

C. As a result of the Spills, the United States on behalf of the United States Department of Interior acting through the Fish and Wildlife Service, and the State of Indiana on behalf of the Indiana Department of Environmental Management and the Indiana Department of Natural Resources, contemporaneously with the lodging of this Consent Decree, filed complaints alleging that Marathon had violated the Clean Water Act ("CWA"), 33 U.S.C.

§ 1251 et seq., and the Oil Pollution Act ("OPA"), 33 U.S.C.

§ 2701 et seq., and caused Natural Resource Damages;

D. The State of Indiana also alleged in its complaint that Marathon had violated the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permit and other provisions of State law, including the Environmental Management Act, Indiana Code 13-7-2;

E. The Secretary of the United States Department of Interior, and duly designated officials of the Indiana Department of Environmental Management and the Indiana Department of Natural Resources, are Trustees for certain Natural Resources allegedly injured or destroyed by the Spills;

F. The United States, the State of Indiana and Marathon agree that the settlement of the claims in this case is in the public interest and that entry of this Consent Decree is the most appropriate means to resolve matters covered herein;

G. The parties agree that neither this Consent Decree, nor any part hereof, nor entry into, nor any performance under this Consent Decree by Marathon, shall constitute or be construed as a finding or admission or acknowledgement of the factual or legal statements contained in this Consent Decree, or of any liability, fault, or wrongdoing, or evidence of such, or an admission of violation of any law, rule, regulation or policy, by Marathon or by its officers, directors, employees, agents, successors, or assigns, nor shall this Consent Decree nor any performance hereunder by Marathon create any rights on behalf of any person not a party hereto.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

II. JURISDICTION

The Court has jurisdiction over the subject matter and over the parties to this action pursuant to 28 U.S.C. §§ 1331, 1345, 1367 and 33 U.S.C. §§ 1319, 1321, and 2717(b). The 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) and 33 U.S.C. § 2717(b).

III. DEFINITIONS

"Natural Resources" shall mean such resources as defined in Section 1001(20) of OPA, 33 U.S.C. § 2701(20);

"Natural Resource Damages" shall mean "Damages" as defined in Section 2702(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A);

"United States" shall mean the United States of America on behalf of the United States Department of Interior;

"State of Indiana" shall mean the State of Indiana on behalf of the Indiana Department of Environmental Management and the Indiana Department of Natural Resources;

"Federal Trustee" shall mean the Secretary of the United States Department of Interior acting through the Fish and Wildlife Service;

"State Trustees" shall mean the duly designated officials of the Indiana Department of Environmental Management and the Indiana Department of Natural Resources;

"Trustees" shall mean the Federal Trustee and the State Trustees;

"Marathon" shall mean the corporation Marathon Oil Company organized under the laws of the State of Ohio, with a place of business in Indianapolis, Indiana.

IV. PAYMENT OF NATURAL RESOURCE DAMAGE RECOVERY

A. Within twenty (20) days of entry of this Consent Decree by the Court, Marathon shall pay to the Trustees the sum of two hundred seventy three thousand three hundred eighty dollars (\$273,380) for Natural Resource Damages ("Payment"). The Payment shall be by cashiers check made payable to "Clerk, United States District Court" and shall be delivered to the Clerk of the Court for the Southern District of Indiana for deposit into an interest bearing Registry Account established in accordance with Fed. R. Civ. P. 67. A copy of the check shall be sent by overnight mail to:

Matthew Brock, Esq.  
Department of Justice  
Environmental Enforcement Section  
1425 New York Avenue, N.W.  
Washington, D.C. 20005

Mary Ann Habeeb, Esq.  
Fish and Wildlife Division  
Department of Natural Resources  
Indiana Government Center South  
100 North Senate  
Indianapolis, IN 46204

Douglas G. Wagner, Esq.  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204

B. Upon entry of this Consent Decree by the Court, the Payment, plus interest accrued thereon, shall be paid to the Trustees, at such times and in such amounts up to the full amount

of the Payment plus interest, as the Trustees jointly may request in writing from the Clerk.

C. This Consent Decree shall be deemed an application for return of any registry fee deducted by the Clerk to administer the Registry Account for the Trustees. Upon request to the Clerk by the Trustees for payment under Paragraph IV.B, any such registry fee shall be included in the disbursement to the Trustees.

V. USE OF NATURAL RESOURCE DAMAGE RECOVERY

The Payment including interest to be paid to the Trustees under paragraph IV.B shall only be expended by the Trustees consistent with Section 1006(f) of OPA, 33 U.S.C. § 2706(f), including expenditures for the following: (i) restoration, rehabilitation, and replacement activities to address Natural Resources Damages caused by or arising out of the Spills; (ii) acquisition of fee title of, or conservation easements on, lands or property in the area of the Spills or similar ecosystems constituting Natural Resources equivalent to any affected by the Spills; and (iii) performance of studies and projects necessary and appropriate to (i) and (ii) above.

VI. PAYMENT OF TRUSTEE ASSESSMENT COSTS

A. Within twenty (20) days of entry of this Consent Decree by the Court, Marathon shall pay to the Federal Trustee the sum of twelve thousand dollars (\$12,000) for natural resource damage assessment costs. The assessment cost payment shall be by cashiers check made payable to the Secretary of the Interior and shall be for deposit into the Natural Resource Damage Assessment and Restoration Fund. The face of the check shall state: "Re:

NRDAR #14X1618; Marathon Oil Company." The check shall be sent to:

Chief, Division of Finance  
U.S. Fish and Wildlife Service  
4401 North Fairfax Drive, Room 380  
Arlington, VA 22203

A copy of the check shall be sent by overnight mail to Matthew Brock, Esq. at the address provided in ¶ IV.A.

B. Within twenty (20) days of entry of this Consent Decree by the Court, Marathon shall pay to the State Trustees the sum of nineteen thousand two hundred fifty dollars (\$19,250) for natural resource damage assessment costs as follows:

1. Seven thousand two hundred fifty dollars (\$7,250) shall be paid by cashiers check made payable to the Indiana Department of Environmental Management. The check shall be sent to:

John Rose, Co-Trustee  
IDEM, N1255  
P. O. Box 6015  
Indianapolis, IN 46206-6015

2. Twelve thousand dollars (\$12,000) shall be paid by cashiers check made payable to the IDNR, Division of Fish & Wildlife, Damage Acct. 600-492. The check shall be sent to:

David L. Herbst  
Natural Resource Co-Trustee  
DNR, IGC-South, C256  
Executive Office  
402 W. Washington Street  
Indianapolis, IN 46204

A copy of the check shall be sent by overnight mail to Mary Ann Habeeb, Esq. and Douglas G. Wagner, Esq. at the addresses provided in ¶ IV.A.

VII. PAYMENT OF PENALTY STATE LAW VIOLATIONS

A. Within twenty (20) days of entry of this Consent Decree by the Court, Marathon shall pay to the State of Indiana Environmental Management Special Fund the sum of fifty thousand twenty five dollars (\$50,025) as a penalty for violations as alleged in the State's February 16, 1993 Notice of Violation cited as Cause No. B-1489.

B. Payment shall be made to:

Environmental Management Special Fund  
Cause No. B-1489  
P.O. Box 7060  
Indianapolis, IN 46206-7060

VIII. STIPULATED PENALTIES

A. If Marathon fails to comply with any of the requirements of this Consent Decree, Marathon shall pay as stipulated penalties \$1,000 per day for each violation. Payment for such violations shall be made to the Clerk as provided in Paragraph IV.A.

B. The stipulated penalties provided herein shall be in addition to other remedies or sanctions available to the United States and the State of Indiana by reason of Marathon's failure to comply with the terms of this Consent Decree.

IX. PARTIES BOUND

This Consent Decree shall apply to and be binding upon the United States and the State of Indiana, and upon Marathon, its successors and assigns.

X. RESOLUTION OF CLAIMS AND EFFECT OF SETTLEMENT

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



(1) the Consent Decree resolves the civil claims of the United States for the violations alleged in its complaint in this action, up to the date of lodging of the Decree;

(2) the Consent Decree resolves the civil claims of the State of Indiana for the violations alleged in its complaint in this action, up to the date of lodging of the Decree; and

(3) Marathon releases the United States and the State of Indiana, their agencies, employees and agents, from any and all claims by Marathon whether legal, equitable or statutory, including without limitation any and all claims under common law, that Marathon 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 Plaintiffs' respective claims against Marathon.

#### XI. NON-WAIVER PROVISION

A. This Consent Decree does not affect or relieve Marathon's responsibility to comply with any Federal, State, or local law or regulation. Nothing contained in this decree shall be construed to prevent or limit the right of United States or the State of Indiana to obtain penalties or injunctive relief except as expressly specified herein.

B. This Consent Decree constitutes the entire agreement among the parties with regard to the subject matter hereof and no term or condition can be waived or modified except by express written consent of all parties to this Consent Decree.

#### XII. 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.

XIII. PUBLIC COMMENT


Consistent with the policy of the United States, this Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States and the State of Indiana reserve the right to withdraw their consent to this Consent Decree if comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Marathon 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.

XIV. CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder.

\* \* \*

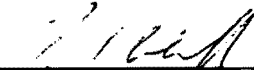
SO ORDERED THIS 26 day of March - 1996.

  
United States District Judge  
Southern District of Indiana  
Larry J. McKinney

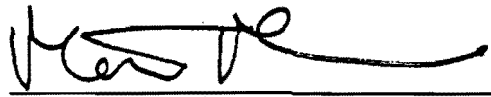
[First signature page for Consent Decree in United States et al.  
v. Marathon Oil Company

FOR THE UNITED STATES OF AMERICA:

DATE: 12/12/95

  
\_\_\_\_\_  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice


DATE: 1/23/96

  
\_\_\_\_\_  
MATTHEW BROCK  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-2687


JUDITH A. STEWART  
United States Attorney  
Southern District of Indiana

DATE: 1/24/96

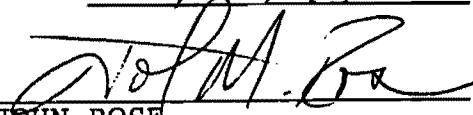
By:

  
\_\_\_\_\_  
MARSHA MASSEY  
Assistant United States Attorney  
U.S. Courthouse, 5th Floor  
46 East Ohio Street  
Indianapolis, Indiana 46204  
(317) 226-6333


FOR THE STATE OF INDIANA:

  
KATHY PROSSER  
Commissioner  
Indiana Department of  
Environmental Management

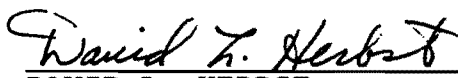
DATE: 12-4-95

  
JOHN ROSE  
Assistant Commissioner  
Office of Environmental  
Response  
Co-Trustee for  
Natural Resources

DATE: Oct 31, 1995

  
PATRICK R. RALSTON  
Director  
Indiana Department of  
Natural Resources


DATE: 10/10/95

  
DAVID L. HERBST  
Deputy Director  
Bureau of Land and Water  
Resource Regulation  
Co-Trustee for  
Natural Resources

DATE: 10-18-95

PAMELA CARTER  
Attorney General  
of Indiana

BY:

  
TIMOTHY J. JUNK  
Deputy Attorney General

DATE:

12/6/95

[Third signature page for Consent Decree in United States et al.  
v. Marathon Oil Company

FOR MARATHON OIL COMPANY:

DATE:

10/11/95



Manfred Spindler  
Vice President  
Refining Division

