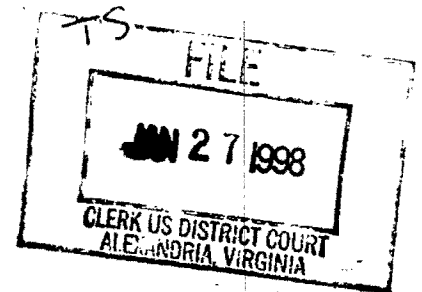


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA



UNITED STATES OF AMERICA,  
COMMONWEALTH OF VIRGINIA,  
DISTRICT OF COLUMBIA,

Plaintiffs,

v.

COLONIAL PIPELINE COMPANY,

Defendant.

CIVIL ACTION NO. 97-1680-A

CONSENT DECREE

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Appendix A is the Restoration Project List and Description of Natural Resource Restoration Projects.

Appendix B is a detailed outline to be followed in the production of Work Plans under this Consent Decree.

### CONSENT DECREE

WHEREAS, concurrently with the filing of this Consent Decree ("Decree"), the United States of America, on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI") (the National Park Service ("NPS") and the United States Fish and Wildlife Service ("FWS")), filed an action against Colonial Pipeline Company ("Colonial") pursuant to the Oil Pollution Act ("OPA"), 33 U.S.C. § 2701 et seq., and the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., seeking civil penalties and natural resource damages arising out of the discharge of oil into navigable waters of the United States and adjoining shorelines. This Decree resolves the claims raised in the United States' Complaint filed simultaneously with this Decree (the "Complaint").

WHEREAS, concurrently with the filing of this Decree, the Commonwealth of Virginia ("Virginia") filed an action against Colonial seeking natural resource damages and damage assessment costs arising out of the discharge of oil to navigable waters of the United States and adjoining shorelines pursuant to OPA and the CWA, and seeking response costs, natural resource damages, and, on behalf of the Virginia State Water Control Board and Thomas L. Hopkins, Director, Virginia Department of Environmental Quality, civil penalties, for the discharge of oil into or upon state waters and lands pursuant to the State Water Control Law ("SWCL"), Code of Virginia, Section 62.1-44.2 et seq. This Decree resolves claims raised in Virginia's Complaint filed simultaneously with the Decree.

WHEREAS, concurrently with the filing of this Decree, the District of Columbia (the "District") has filed an action seeking civil penalties and natural resource damages arising out of the discharge of oil into navigable waters of the United States and adjoining shorelines pursuant to OPA, the CWA, DC Water Pollution Control Act (DCWPCA), D.C. Code 6-921 et seq. This Decree resolves the claims raised in the complaints filed simultaneously with this Decree by Virginia and the District, as well as the Complaint (together the "Plaintiffs' Complaints").

WHEREAS, the United States, Virginia, the District, and Colonial agree that this Decree is fair, reasonable, in the public interest, and in furtherance of the statutory goals of OPA, the CWA, the SWCL and the DCWPCA, and will avoid difficult, prolonged and complicated litigation among the United States, Virginia, the District, and Colonial.

#### BACKGROUND

I. Colonial owns and operates a subsurface pipeline system for the transport of oil that runs from Pasadena, Texas to Linden, New Jersey. A portion of Line 3 of this pipeline system runs from Chantilly, Virginia to Dorsey Junction, Maryland (the "Pipeline").

1. On or about March 28, 1993, the Pipeline ruptured near Sugarland Run behind the Reston Hospital Center, 813 Town Center Parkway, Reston, Fairfax County, Virginia. Before the rupture was repaired, approximately 408,000 gallons (9700

barrels) of Fuel Oil No. 2 (also known as diesel fuel) were discharged into the environment (the "Spill").

2. Several federal, state and local agencies responded to the Spill. On April 2, 1993, EPA issued Colonial an Administrative Order, pursuant to Sections 311(c), (e) and (m) of CWA, 33 U.S.C. §§ 1321(c), (e) and (m), for the comprehensive assessment and cleanup of the Spill. Despite containment efforts, the area directly contaminated with oil consists of approximately 48 square miles of surface water, shorelines, islands and wetlands.

3. The United States, Virginia and the District have been engaged in the process of assessing natural resource damages and developing a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of such damaged natural resources. Colonial has proposed and the Parties have agreed, subject to the provisions in Section XII (RPL Work Plans) of this Consent Decree, that Colonial will implement a list and description of natural resource restoration projects attached hereto as Appendix A.

4. This Decree is a settlement of a contested matter. The Parties hereto dispute many factual and legal issues. Participation in this settlement does not constitute or represent any admission of law or fact by any Party.

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

## I. JURISDICTION

5. This Court has jurisdiction over the subject matter and over the Parties to this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1395(a); CWA Section 311(b)(7)(E), 33 U.S.C. § 1321(b)(7)(E); and OPA Section 1017(b), 33 U.S.C. § 2717(b) and any pendent state law claims, including the pendent claim by Virginia pursuant to Section 62.1-44.34:18C and 62.1-44.34:20C, Code of Virginia. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). Plaintiffs' Complaints in this action state claims upon which relief may be granted. Solely for the purposes of this Decree and its enforcement and Plaintiffs' Complaints, Colonial waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District and shall not challenge this Court's jurisdiction to enter and enforce this Decree. The Parties agree to be bound by the terms of this Decree and not to contest its validity in any subsequent proceeding arising from it.

## II. PARTIES BOUND

6. This Decree shall apply to and be binding upon and inure to the benefit of the United States, Virginia, the District, and Colonial, its officers, directors, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Colonial under this Decree.

### III. DEFINITIONS

7. Unless otherwise provided herein, whenever terms listed below are used in this Decree or in the appendices attached hereto and incorporated hereunder, terms used in this Decree that are defined in OPA or in regulations promulgated under OPA shall have the meaning assigned to them in OPA or in such regulations. Whenever terms listed below are used in this Decree, the following definitions shall apply:

"Appendix" means one of the two alphabetically designated attachments to this Decree labeled as an appendix.

The "Restoration Project List and Description" ("RPL") means the list and description of projects, attached as Appendix A, or as modified pursuant to Section XII (RPL Work Plans) of this Decree, to restore, rehabilitate, replace, or acquire the equivalent of, natural resources and/or the services they provide and to compensate the public for interim losses resulting from injury to or destruction of natural resources until the completion of restoration. The RPL includes a conceptual description of all projects, performance standards and monitoring requirements for completion of that work.

"Damage Assessment Costs" shall mean the costs incurred by the Natural Resource Trustees of assessing damages from the Spill as defined in Section 1001(5) of OPA, 22 U.S.C. § 2701(5).

"Decree" means this Consent Decree and all appendices attached hereto. In the event of a conflict between this Decree and any appendix, this Decree shall control.



"Day" means a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"FWS" means the United States Fish and Wildlife Service, an agency of the United States Department of the Interior, and any successor departments or agencies of the United States.

"NPS" means the National Park Service, an agency of the United States Department of the Interior, and any successor departments or agencies of the United States.

"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, Virginia or the District.

"Natural Resource Trustees" refers to the designated federal and state officials who may act on behalf of the public as trustees for the natural resources in and around Sugarland Run and the Potomac River; the United States Department of the Interior, represented by the United States Fish and Wildlife Service and the National Park Service, is the federal trustee for

natural resources and federal lands in and around Sugarland Run and the Potomac; the trustee for natural resources in and around Sugarland Run for Virginia is the Department of Environmental Quality; the trustees for the natural resources in and around the Potomac River within the District of Columbia are the Department of the Interior and the District of Columbia.

"Paragraph" means a portion of this Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, Virginia, the District of Columbia, and Colonial.

"Performance Standards" means the completion of the projects set forth in the RPL as described in the "Work Plans" or as modified pursuant to Section XII ( RPL Work Plans) of this Consent Decree to the satisfaction of the Natural Resource Trustees.

"Restoration Planning Process" is the process under OPA by which the Natural Resource Trustees are responsible for developing a plan for restoration of the injured natural resources and services, providing adequate opportunity for public review and comment, and complying with applicable law.

"Section" means a portion of this Decree identified by a Roman numeral.

"Spill" refers to the approximately 408,000 gallons (9700 barrels) of oil released into the environment as a result of a pipeline rupture on or about March 28, 1993, in Fairfax County, Virginia.

"United States" means the United States of America.

"Work" shall mean all activities Colonial is required to perform under this Decree relating to the RPL.

"Work Plan(s)" shall mean the detailed description of work to be performed for implementation of each project included within the RPL, as required by Section XII of this Decree and addressing each element of the Work set out in the outline attached hereto as Appendix B.

IV. CIVIL PENALTY, COST REIMBURSEMENT,  
AND PROJECT FUNDING CONTRIBUTION

8. Civil Penalty. Within thirty (30) days of the entry of this Decree, Colonial shall pay to the United States \$750,000 as a civil penalty. Payment of this amount shall be made by Fedwire Electronic Funds Transfer ("EFT") or wire transfer to the Federal Reserve Bank of New York City for deposit to agency account code 69-02-5102, referencing this action and DOJ number 90-5-1-1-4055. Any EFT received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited to the next business day. Notice of payment pursuant to this subparagraph shall be sent to the United States as provided in Section XVIII (Notices and Submissions). Within thirty (30) days of the entry of this Decree, Colonial shall pay to Virginia \$750,000 as a civil penalty. Payment of this amount shall be made in accordance with instructions to be provided to Colonial by Virginia. Notice of payment pursuant to this subparagraph shall be sent to Virginia as provided in Section XVIII (Notices and Submissions).

9. Reimbursement of Past Assessment Costs. Within thirty (30) days of entry of this Decree, Colonial shall pay the following amounts as reimbursement for costs incurred by the Natural Resource Trustees in assessing the damages to natural resources resulting from the Spill:

\$147,008.14 to the United States;

\$97,000 to Virginia;

\$38,271 to the District.

The payments above shall be made as provided below:

For the United States:

Checks shall be made payable to the Department of Interior and include the following:

NRDAR Account # 14X5198 (NRDAR)  
The SITE or CASE NAME  
The LOCATION of the Site -- Reston, Virginia  
The PAYING PARTY -- Colonial Pipeline Company

The checks should be sent to:

Chief, Division of Finance  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive  
Arlington, Virginia 22203

For Virginia:

Checks shall be made payable to the Department of Environmental Quality and sent to:

Virginia Department of Environmental Quality  
Office of Financial Management  
P.O. Box 10150  
Richmond, Virginia 23240

For the District:

The check shall be made payable to:

D.C. Treasurer  
Oil Spill Contingency Fund  
Account #2548

and sent to:

Ms. Karen E. Bonilla  
Budget Officer  
Department of Consumer and Regulatory Affairs  
614 "H" Street, N.W.  
Washington, D.C. 20001

Notice of payment pursuant to this subparagraph shall be sent to the United States, Virginia, and the District as provided in Section XVIII (Notices and Submissions).

10. Interest on Late Payments. In the event Colonial fails to make timely payments of any amounts required under this Decree, Colonial shall be liable for interest on the unpaid balance at the rate specified in Section 1005 of OPA, 33 U.S.C. § 2705. The interest shall be calculated from the first day following the date payment is due until the entire outstanding balance has been received.

11. Monitoring and Oversight Costs. Colonial shall pay to the Natural Resource Trustees monitoring and oversight costs associated with the RPL or any substitute projects thereto under Section XII in accord with the following:

To the United States: For monitoring and oversight activities undertaken by the National Park Service, Colonial's payment shall not exceed ten percent (10%) of the costs of performing the Work planned for the National Park Service on DOI

property as set forth in Appendix A hereto. For monitoring and oversight activities undertaken by the U.S. Fish and Wildlife Service, Colonial shall pay \$48,295. This payment is for monitoring and oversight costs associated with on-the-ground oversight and monitoring by U.S. Fish and Wildlife Service personnel for the Aquatic Habitat Enhancement, the Forest Enhancement, and Wetlands enhancement projects set forth in Appendix A hereto, for a period of eight years following entry of this Decree. At the end of this eight year period, the need for additional monitoring, if any, shall be discussed by the Natural Resource Trustees and Colonial.

To the Commonwealth of Virginia: For monitoring and oversight activities undertaken by Virginia for projects set forth in Appendix A hereto, Colonial shall pay \$25,000. At the end of this eight year period, the need for additional monitoring, if any, shall be discussed by the Natural Resource Trustees and Colonial.

11b. Project Funding Contribution by Colonial Toward Notching of Little Falls Dam on the Potomac River. Within thirty (30) days of entry of this Decree, Colonial will pay \$253,314 toward the notching of Little Falls Dam project which is described in further detail in the RPL. This payment is in partial satisfaction of claims of the District for natural resource damages. Following entry of this Decree, the Natural Resource Trustees will provide payment instructions in Colonial with respect to this payment. However, in the event that entry

of this Decree does not take place before September 15, 1997, Colonial agrees to establish an escrow account in the above listed amount for purposes of matching funds for the notching of Little Falls Dam project, by no later than September 30, 1997. Such escrow account shall be maintained by Colonial and \$253,314 from this escrow account shall be made available for use for the notching of Little Falls Dam project within thirty (30) days of entry of the Decree. Following entry of the Decree, the Natural Resources Trustee will provide payment instructions to Colonial with respect to this payment. Any and all interest accruing in the escrow account shall revert to Colonial. In the event that the Court declines to enter the Decree, the escrow account shall revert to Colonial, along with any and all interest accrued in such account. In the event that this Decree is not lodged with the Court before January 1, 1998, this escrow account shall revert to Colonial.

#### V. GENERAL PROVISIONS

##### A. Objectives of the Parties

12. The objectives of the Parties in entering into this Decree are to restore, rehabilitate, replace, or acquire the equivalent of the injured or destroyed Natural Resources and to compensate the public in accordance with OPA, the CWA, the DCWPCA, and SWCL, and all applicable implementing regulations, for interim losses resulting from injury to or destruction of natural resources through implementation of the RPL projects contained in Appendix A or any substituted project or projects

providing substantially equivalent benefits selected under Section XII of this Decree, and for Colonial to reimburse the United States, Virginia, and the District, as applicable, for Damage Assessment Costs, monitoring and oversight costs associated with the RPL, and for recovery of a civil penalty for the Spill.

B. Commitments by Colonial

13. Colonial shall finance, design, plan, implement and perform the projects set forth in the RPL, at Appendix A, as described in the Work Plans under Section XII (RPL Work Plans) of this Decree, subject to any modification thereto pursuant to Section XII. Colonial shall also conduct Restoration Planning Process activities as directed by the Natural Resource Trustees. Colonial shall also reimburse the United States, Virginia and the District for Damage Assessment Costs, and oversight costs associated with the RPL as set forth in Section IV (Civil Penalty and Cost Reimbursement). Colonial shall also pay civil penalties to the United States and Virginia as set forth in Section IV (Civil Penalty and Cost Reimbursement).

14. Colonial shall achieve and ensure that the Performance Standards set forth in this Decree and the RPL Work Plans(as applicable) are met.

C. Compliance With Applicable Law

15. All activities undertaken by Colonial pursuant to this Decree and any associated Work Plans shall be performed in accordance with the requirements of applicable federal and state



laws and regulations. The Natural Resource Trustees agree to make good faith efforts to inform Colonial of any such requirements known to them.

D. Monitoring and Oversight

16. The Natural Resource Trustees shall conduct monitoring and oversight of actions required of Colonial under this Decree relating to implementation of the RPL or any substitute projects thereto under Section XII. The Natural Resource Trustees shall notify Colonial in writing of the name and address of the person who will act as the Contact Person(s) ✓ for purposes of submissions relating to the RPL and notification pursuant to Section XV (Force Majeure). The Contact Person(s) may be changed by the Natural Resource Trustees at any time upon written notification to Colonial.

E. Determination of Restoration

17. Notwithstanding anything to the contrary, for purposes of this Decree, Restoration or Recovery of Natural Resources affected by the Spill shall be demonstrated through attainment and maintenance of Performance Standards in accordance with the criteria set forth in the Work Plans developed under Section XII (RPL Work Plans) of this Consent Decree and the RPL, including any modifications to the RPL or Work Plans pursuant to Section XII (RPL Work Plans) of this Consent Decree.

VI. SELECTION OF CONTRACTOR

18. All components of the Work to be performed by Colonial pursuant to this Decree shall be under the direction and

supervision of a contractor, the selection of which shall be subject to approval by the Natural Resource Trustees or, subject to the approval of the Natural Resource Trustees, such Work may be performed by Colonial personnel. Within the time schedules set forth for each component of the RPL, Colonial shall notify the Natural Resource Trustees in writing of the name, title, and qualifications of any proposed contractor, and of any changes in the selection of a contractor during the time this Decree remains in effect. The Natural Resource Trustees will notify Colonial in writing of the approval or disapproval of the selection of a proposed contractor.

VII. SUBMISSIONS REQUIRING NATURAL RESOURCE TRUSTEE APPROVAL

19. After review of any Work Plan, report or other item which is required to be submitted for approval pursuant to this Decree, the Natural Resource Trustees, after reasonable opportunity for review and comment, shall: (a) approve, the submission, in whole or in part, unless it is inconsistent with the objectives of this Decree; (b) approve the submission upon specified conditions necessary to conform it to the objectives of this Decree; (c) modify the submission to cure the deficiencies to conform it to the objectives of this Decree; (d) disapprove, in whole or in part, the submission, directing Colonial to modify the submission in order to conform it to the objectives of this Decree; or (e) any combination of the above.

20. Upon receipt of a notice of disapproval pursuant to Paragraph 20 above, Colonial shall, within 14 days or such

other reasonable time as specified by the Natural Resource Trustees in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Stipulated penalties shall not accrue until after Colonial has had the opportunity to revise the submission in accordance with the Natural Resource Trustees' written comments.

21. All Work Plans, reports, and other items required to be submitted to the Natural Resource Trustees under this Decree shall be, upon approval or amendment by the Natural Resource Trustees, enforceable obligations under this Decree. In the event that the Natural Resource Trustees approve or amend a portion of a plan, report, or other item required to be submitted to the Natural Resource Trustees under this Decree, the approved or amended portion shall be enforceable under this Decree.

#### VIII. DISPUTE RESOLUTION

22. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. However, the procedures set forth in this Section shall not apply to actions by the Plaintiffs to enforce Colonial's obligations that have not been disputed in accordance with this Section.

23. Any dispute which arises under or with respect to this Decree shall in the first instance be the subject of informal negotiations between the Parties for a period not to exceed 30 days from the time the dispute arises, unless it is extended by written agreement of the Parties. The dispute shall

be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

24. a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Natural Resource Trustees shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period referenced above, Colonial invokes the formal dispute resolution procedures of this Section by serving on the Natural Resource Trustees a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Colonial. Colonial shall simultaneously serve a copy of its Statement of Position on the Chief, Environmental Enforcement Section, United States Department of Justice at the address indicated in Section XVIII (Notices and Submissions).

b. Within 20 days of service of Colonial's Statement of Position, the Natural Resources Trustees will serve on Colonial their Statement of Position, including but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Natural Resources Trustees. Within 14 days of service of the Natural Resources Trustees' Statement of Position, Colonial may serve on the Natural Resources Trustees a response to the Natural Resources Trustees' Statement of Position.

c. If there is disagreement between the Natural Resources Trustees and Colonial as to whether dispute resolution should proceed under Paragraph 26 or Paragraph 28, the Parties shall follow the procedures set forth in the paragraph determined by the Natural Resources Trustees to be applicable. However, if Colonial ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards identified in Paragraphs 26 and 28.

25. Formal dispute resolution for disputes pertaining to the adequacy of any submittal requiring Natural Resource Trustee approval under Section VII (Submissions Requiring Natural Resource Trustee Approval), approval by the Natural Resource Trustees of the Work Plan or Plans and reports submitted pursuant thereto, whether a substituted project or projects under Section XII (RPL Work Plans) of this Decree provides substantially equivalent benefits, according to the scaling metric used to select the original project or projects, to natural resources and/or the public as the project or projects in the RPL as set forth in Appendix A, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph.

a. An administrative record of the dispute shall be maintained by the Natural Resource Trustees and shall contain all Statements of Position and responses thereto, including supporting documentation, submitted pursuant to Paragraph 25.

Where appropriate, the Natural Resource Trustees may allow submission of supplemental Statements of Position by the Parties.

b. DOI, which serves as the lead administrative trustee, or its designee will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph a above. These decision(s) shall be binding upon Colonial and shall not be subject to judicial review, unless, within 30 days of the service upon Colonial of the decision, Colonial serves upon the Plaintiffs and files with this Court a motion challenging the decision. Such motion shall be served upon the Plaintiffs as provided in Section XVIII (Notices and Submissions). Plaintiffs shall have 30 days from the date of service to serve and file a response or responses to Colonial's motion. Colonial's motion shall inform the Court of this provision regarding the length of time allowed to the Plaintiffs for a response.

26. In any proceeding to review a determination made pursuant to Paragraph 26(b), Colonial shall have the burden of demonstrating that the decision of the designated decision-maker of the Natural Resources Trustees is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the Natural Resources Trustees' decision shall be on the administrative record compiled pursuant to Paragraph 26(a) with either Party having the right to request oral argument.

27. Formal dispute resolution for disputes that are neither explicitly identified in Paragraph 26 nor are otherwise

accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Colonial's Statement of Position submitted pursuant to Paragraph 25, the designated decision-maker of the Natural Resources Trustees, will issue a final decision resolving the dispute. This decision shall be binding upon Colonial and shall not be subject to judicial review unless, within 20 days of the service upon Colonial of the decision, Colonial serves upon the Plaintiffs and files with this Court a motion challenging the decision. Such motion shall be served upon the Plaintiffs as provided in Section XVIII (Notices and Submissions). The Plaintiffs shall have 60 days from the date of service to serve and file a response to Colonial's motion, and Colonial's motion shall inform the Court of this provision regarding the length of time allowed for a response.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

28. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Colonial's under this Decree not directly in dispute, unless the obligation in question is directly dependant upon the prior performance of the obligation in dispute or unless the Natural Resource Trustees or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be

stayed pending resolution of the dispute as provided in Paragraphs 41 and 42.

29. For the purposes of this Section, service is complete when the documents are deposited for delivery with an overnight delivery service or with the United States Postal Service if sent certified mail, return receipt requested, or, if any other method is used, service is complete upon actual receipt.

#### IX. ACCESS TO INFORMATION AND PROPERTY

30. Colonial shall provide to the Natural Resource Trustees, upon written request, copies of all non-privileged documents and information within its possession or control or that of its contractors or agents (to the extent that Colonial has the authority to require its contractor or agent to produce such documents or information) relating to activities to be taken pursuant to the RPL under this Decree including, but not limited to, sampling, analysis, chain of custody records, manifests, receipts, reports, correspondence, or other documents. Colonial must provide all documents, regardless of privilege, upon which it relies to assert, support, document, and otherwise prove up its position in a dispute. Colonial shall take appropriate steps to ensure that it is contractually entitled to all documents and information which is compiled and/or produced by its agents or contractors relating to activities to be undertaken pursuant to this Decree.



31. Commencing on the date of lodging of this Decree, Colonial agrees to provide the Natural Resource Trustees, and their representatives, including their contractors, access at all reasonable times to any property in or adjacent to the location of all projects identified in the RPL that are owned or controlled by Colonial for the purposes of:

- a. Monitoring and overseeing implementation of the RPL;
- b. Verifying any data or information submitted to the Natural Resource Trustees, including any data collected pursuant to the RPL Work Plan;
- c. Conducting investigations relating to the RPL;
- d. Obtaining samples; and
- e. Assessing the need for, or planning the implementation of, the RPL.

Colonial further agrees to use its best efforts to obtain access to property not owned by Colonial necessary to implement the RPL. Failure to obtain access after exercise of best efforts shall relieve Colonial only of its obligations to perform that restoration project or part thereof on the RPL for which access to the property is necessary. This does not release Colonial from the requirement of implementing substitute projects in accordance with Section XII (RPL Work Plans).

32. Notwithstanding any provision of this Decree, the United States, Virginia and the District retain all of their

access authorities and rights, including enforcement authorities related thereto, under any applicable statute or regulations.

#### X. REPORTING REQUIREMENTS

33. In addition to any other requirement of this Decree, Colonial shall submit to DOI, Virginia and the District written progress reports every 3 months that: (a) describe the actions which have been taken pursuant to the RPL during the previous 3 months, (b) identify all work plans, plans and other deliverables required by the RPL completed and submitted during the previous 3 months; (c) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next 3 months; and (d) include any modifications to the work plans or other schedules that Colonial has proposed to DOI, Virginia, and the District under the RPL or this Decree. Colonial shall submit these progress reports to DOI, Virginia, and the District of Columbia by the tenth day of January, April, July, and October of each year following the entry of this Decree until the Natural Resource Trustees have informed Colonial that it has completed the implementation of the Work and the RPL pursuant to Section V of this Consent Decree. In the event that no reportable events have occurred within any three month period, the report shall so state.

34. All reports and other documents submitted by Colonial to DOI, Virginia and the District that purport to document Colonial's compliance with the terms of this Decree shall be signed by an authorized representative of Colonial. The

person signing such report or document shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### XI. STIPULATED PENALTIES

35. Colonial shall be liable to the Plaintiffs for stipulated penalties in the amounts set forth below in this Paragraph for failure to comply with the requirements of this Decree specified below, unless excused under Section XV (Force Majeure). Colonial shall pay one third of any penalty accrued under this Section to the United States, one third to Virginia, and one third to the District. Colonial shall make such payment by forwarding a check payable to the United States Treasury to the Assistant Attorney General, Environment and Natural Resources Division, and by forwarding check to Virginia and the District as per the instructions set forth in Paragraph 10 of this Decree (Section IV). "Compliance" shall include completion of the activities required under this Decree or any work plan approved under this Decree in accordance with the terms of this Decree or the approved plan.

a. The following stipulated penalties shall be payable per violation per day to the Plaintiffs:

Penalty Per Violation  
Per Day

- a. \$300
- b. \$750
- c. \$3,000

Period of Noncompliance

- a. Day 1 through 10
- b. Day 11 through 20
- c. Day 21 and each day thereafter

36. All stipulated penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

37. Following the Natural Resource Trustees' determination that Colonial has failed to comply with a requirement of this Decree, the Natural Resource Trustees shall give Colonial written notification of the same and describe the noncompliance. The Natural Resource Trustees may send Colonial a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Natural Resource Trustees have notified Colonial of a violation.

38. All penalties owed to the Plaintiffs under this Section shall be due and payable within 30 days of receipt from the Natural Resource Trustees of a demand for payment of the penalties, unless Colonial invokes the Dispute Resolution procedures under Section VIII (Dispute Resolution). All payments under this Section shall be made in the same manner as the payment required by Paragraph 10.

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

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

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

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

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

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

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

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

#### XII. RPL WORK PLANS

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

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

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

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

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

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

XIII. INDEMNIFICATION AND INSURANCE

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



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

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

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

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

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

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

XIV. RESERVED

XV. FORCE MAJEURE

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

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

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

54. If the Natural Resource Trustees agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Decree that are affected by the Force Majeure event will be extended by the Natural Resource Trustees, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. If the Natural Resource

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

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

#### XVI. COVENANTS NOT TO SUE

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

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

#### XVII. RESERVATIONS OF RIGHTS

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

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

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

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

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

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

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

#### XVIII. NOTICES AND SUBMISSIONS

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

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

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

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

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



841 Chestnut Building  
Philadelphia, Pennsylvania 19107

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

Notice to Commonwealth of Virginia

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

Notice to the District of Columbia

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

Notice to Colonial

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

**XIX. REPRESENTATIVES**

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

XX. CERTIFICATION OF COMPLETION OF WORK

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

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

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

XXI. MISCELLANEOUS

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

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

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

XXII. MODIFICATION

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

to in writing by Colonial and the Natural Resource Trustees shall be considered minor modifications to this Decree and shall not require the Court's approval. Modifications to the RPL through substitution of projects with substantially equivalent benefits to natural resources and/or the public pursuant to Section XII (RPL Work Plans) of this Consent Decree shall be considered minor modifications. No other modifications of this Decree may be made unless the Parties agree in writing to the modification and the Court approves of the requested modification.

**XXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

69. This 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 and Virginia each reserve the right to withdraw consent to this Decree if the comments regarding the Decree disclose facts or considerations which indicate that the Decree is inappropriate, improper, or inadequate. Colonial consents to the entry of this Decree without further notice.

70. If for any reason the Court should decline to approve this Decree in the form presented, this agreement is voidable at the discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

**XXIV. TERMINATION**

71. Upon the complete satisfaction of all of the requirements of this Decree, and after at least 60 days written

notice to the United States, Colonial may move this Court for a termination of this Decree. If the Court determines that Colonial has satisfied all of its obligations hereunder, the Court may terminate this Decree.

XXV. CONTINUING JURISDICTION

72. The Court retains jurisdiction to enforce the terms of this Decree.

DONE SO and ENTERED this 27<sup>th</sup> day of January, 1998.

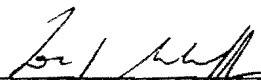
Claude M. Hilton  
UNITED STATES DISTRICT JUDGE

United States v. Colonial Pipeline Company, Inc. Consent Decree


WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE UNITED STATES OF AMERICA:

9/27/97  
Date

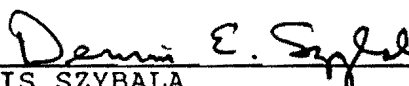
  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice  
10th St. and Pennsylvania Ave N.W.  
Washington, D.C. 20530

10/07/97  
Date

  
MICHAEL D. GOODSTEIN  
CATHERINE M. ROJKO  
Attorneys  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611 Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1111

HELEN F. FAHEY  
United States Attorney  
Eastern District of Virginia

10/8/97  
Date

  
DENNIS SZYBALA  
Assistant United States Attorney  
Eastern District of Virginia  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
(703) 299-3700  
State Bar #22785

United States v. Colonial Pipeline Company, Inc., Consent Decree  
FOR THE UNITED STATES, CONTINUED:

10/1/97  
Date

W. Michael McCabe  
for W. MICHAEL MCCABE  
Regional Administrator  
Region III  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

9/30/97  
Date

Marcia E. Mulkey  
MARCIA E. MULKEY  
Regional Counsel  
U.S. Environmental Protection Agency  
Office of Regional Counsel  
Region III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

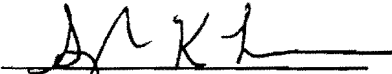
9/30/97  
Date

Wayne R. Walters  
WAYNE R. WALTERS  
Senior Attorney  
U.S. Environmental Protection Agency  
Office of Regional Counsel  
Region III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

United States v. Colonial Pipeline Company, Inc. Consent Decree

**FOR THE UNITED STATES, CONTINUED:**

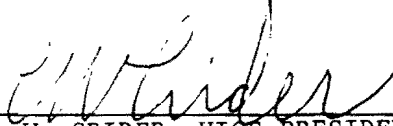
10/16/97  
Date

  
STEVEN A. HERMAN  
Assistant Administrator  
Office of Enforcement and  
Compliance Assurance  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460



United States v. Colonial Pipeline Company, Inc. Consent Decree  
FOR COLONIAL PIPELINE COMPANY:

September 23, 1997  
Date

  
C. W. CRIDER, VICE PRESIDENT

United States v. Colonial Pipeline Company, Inc. Consent Decree

FOR THE COMMONWEALTH OF VIRGINIA, the Virginia State Water Control Board, and Thomas L. Hopkins, Director, Virginia Department of Environmental Quality:

October 2, 1997

Date



RICHARD CULLEN

Attorney General of Virginia

CARL JOSEPHSON  
Assistant Attorney General  
Virginia State Bar Number 12496  
900 East Main Street  
Richmond, Virginia 23219  
(804)786-2452

United States v. Colonial Pipeline Company, Inc. Consent Decree  
FOR THE DISTRICT OF COLUMBIA:

\_\_\_\_\_  
Date

W. David Watts

W. DAVID WATTS

Director

Department of Consumer And Regulatory Affairs

*Appendix A:*  
*Sugarland Run Oil Spill Restoration Project List*

**I. SUGARLAND RUN LOST ECOLOGICAL SERVICES**

**Proposed Project:** Aquatic Habitat Enhancement

**Location:** Sugarland Run near Sunset Business Park, west of Fairfax Co. Parkway between Dulles Toll Road and Spring Street (Area B1-1).

**Ownership/Management:** INVESTIN Real Estate Development/Ed Nachazel, Reston, VA

**Performance Objectives:** Enhance aquatic habitat services within a portion of Sugarland Run by 80% by increasing both water quality improvement and fish and wildlife habitat functions of 2.9 acres of stream and riparian habitat over a 20 year project lifespan.

**Project Description:** The proposed aquatic habitat enhancement project will restore eroding streambanks and re-establish a vegetated riparian buffer along a developed/developing portion of Sugarland Run. Vegetative "bioengineering" techniques will be used to 1) repair a severely eroding section of streambank (outside meander bend, western bank), 2) prevent the expansion of a newly forming side-channel, and 3) protect less eroded streambanks from further damage. Planned bioengineering treatments include grading selected areas of streambank; boulder placement; installation of fascines (bundles of unrooted cuttings), unrooted cuttings/live stakes, coconut fiber "logs", and erosion control matting; transplanting native, nursery-grown herbaceous vegetation; and seeding with a native grass seed mixture for rapid stabilization. Re-establishment of riparian buffer will be achieved by planting low-growing native shrubs and trees within a 50' buffer zone on each side of Sugarland Run in areas where shrubs and/or trees are not already growing. In riparian areas where bioengineering is planned, shrubs will be planted shoreward of the bioengineering areas. Appropriate bottomland/floodplain species possessing high wildlife value (i.e., production of hard or soft mast, edible seeds/browse, cavities, etc.) will be selected. All trees and shrubs planted will be nursery-grown, containerized rooted seedlings. The proposed project will enhance aquatic habitat by 1) reducing sediment inputs from streambank erosion, 2) improving habitat diversity and cover, 3) increasing food sources, 4) moderating temperature and light by shading, and 5) improving water quality through reduction of non-point source pollutants entering Sugarland Run. Implementation of this project is subject to obtaining access to the site.

**Project Size:** 2.9 acres

**Proposed Project:** Forest Enhancement

**Location:** Sunset Business Park, between Fairfax County Parkway and Sugarland Run from Dulles Toll Road to Spring Street (Area B1-3).

**Ownership/Management:** State of Virginia, Virginia Department of Transportation/Virginia Power Company (portion of site within transmission line right-of-way easement)

**Performance Objectives:** Enhance wildlife habitat services of 2.4 acres of early successional/right-of-way habitat by 50% over a 35 year project lifespan.

**Project Description:** The proposed forest enhancement at this site will consist of planting shrubs and some trees in a managed right-of-way located between Sugarland Run and the Fairfax County Parkway. A diverse mixture of native shrubs and scattered hardwood trees will be planted on the site. Species with high wildlife food and/or cover value will be specified. All tree and shrub seedlings will be nursery-grown, containerized rooted seedlings. Planting trees and shrubs will 1) increase the number of vegetation layers present, 2) improve habitat diversity, and 3) enhance food and cover value of vegetation for birds and small mammals. Portions of this enhancement project will encroach upon an existing Virginia Power Company transmission line right-of-way easement and are, therefore, subject to certain design restrictions imposed by Virginia Power Company. However, these design restrictions are not anticipated to significantly alter the proposed enhancements or the benefits they will provide.

**Project Size:** 2.4 acres

**Proposed Project:** Aquatic Habitat Enhancement

**Location:** Unnamed tributary to Sugarland Run west of Fairfax County Parkway, between Dulles Toll Road and Fairbrook Drive (Area B2-1)

**Ownership/Management:** Fairbrook Business Park Association/Virginia Power Company (portion of site within transmission line right-of-way easement)

**Performance Objectives:** Enhance aquatic habitat services within portions of a headwater tributary to Sugarland Run by 80% by increasing both water quality improvement and fish and wildlife habitat functions of 0.2 acres of stream and riparian habitat over a 20 year project lifespan.

**Project Description:** The proposed aquatic habitat enhancement at this site will consist of vegetative streambank stabilization and re-establishment of a vegetated riparian buffer along portions of an unnamed tributary to Sugarland Run. Vegetative streambank stabilization will be achieved using bioengineering techniques such as facines and unrooted cuttings. Where necessary, streambanks may be graded to reduce slope. If necessary, jute matting or other erosion control material will be placed on newly graded banks and seeded with a native grass seed mixture to provide stabilization until woody vegetation becomes established. Shrub seedlings will be planted behind the bioengineering treatments on both sides of the tributary. Native species with high wildlife food and/or cover value will be selected. All shrubs will be nursery-grown, containerized rooted seedlings. The proposed project will enhance aquatic habitat by 1) reducing sediment inputs from streambank erosion, 2) improving habitat diversity and cover, 3) increasing food sources, 4) moderating temperature and light by shading, and 5) improving water quality through reduction of non-point source pollutants. Portions of this enhancement project may encroach upon an existing Virginia Power Company transmission line right-of-way easement and may, therefore, be subject to certain design restrictions imposed by Virginia Power Company. However, these design restrictions are not anticipated to significantly alter the proposed enhancements or the benefits they will provide. Project implementation is subject to obtaining access to this site.

**Project Size:** 0.2 acres

**Proposed Project:** Wetlands Enhancement

**Location:** West of Fairfax County Parkway, between Dulles Toll Road and Fairbrook Drive (Area B2-2)

**Ownership/Management:** Fairbrook Business Park Association/Virginia Power Company (portion of site within transmission line right-of-way easement)

**Performance Objectives:** Enhance wildlife habitat services within 0.5 acres of existing wetlands by 10% over a project lifespan of 8 years.

**Project Description:** The proposed wetlands enhancement at this site will consist of planting clusters of wetland shrubs in the existing wetland area downstream of the beaver pond. Wetland shrub species with high wildlife food and/or cover value will be selected. All wetland shrubs will be nursery-grown, containerized rooted seedlings. The addition of shrubs to the existing wetland is designed to enhance wildlife habitat value by improving both vertical and horizontal plant diversity. Planting clusters of wetland shrubs will 1) increase the number of wetland types present, 2) increase the number of vegetation layers present, 3) increase interspersion of vegetation classes, and 4) enhance food and cover value of vegetation for birds and small mammals. Portions of this enhancement project will encroach upon an existing Virginia Power Company transmission line right-of-way easement and are, therefore, subject to certain design restrictions imposed by Virginia Power Company. However, these design restrictions are not anticipated to significantly alter the proposed enhancements or the benefits they will provide. Project implementation is subject to obtaining access to this site.

**Project Size:** 0.5 acres

**Proposed Project:** Wetlands Enhancement

**Location:** Runnymede Park, east of Cavendish Street and Criton Court (Area D).

**Ownership/Management:** Town of Herndon, VA

**Performance Objectives:** Enhance water quality improvement services within 1.2 acres of existing freshwater wetlands by 10% over an 8 year project lifespan.

**Project Description:** The proposed wetlands enhancement at this site will consist of increasing the water quality improvement functions of two existing wetland areas by stabilizing water levels and promoting sheet flow (vs. channelized flow) of surface water through the wetlands. Sheet flow will be promoted by installing a single level spreader at the upstream end of each wetland area. Level spreaders will consist of low weir structures constructed from pressure-treated lumber or large logs placed across the width of each wetland, perpendicular to the direction of flow. Shallow pools (4-8 inches) will form on the upstream side of each structure. Since the elevation of the spreader is level across its width, the ponded water will spill evenly over the spreader across the entire width of the wetland, thereby maximizing contact between water and vegetation. Existing channels downstream of the spreaders will be backfilled or plugged, and adequate measures will be taken to ensure that spreaders will not be undermined by erosion or scour during high flow events.

Water levels (i.e., hydroperiod) within the two wetlands will be stabilized and lengthened by installing water control structures in both the upper and lower wetland areas. In their current state, these wetlands are subject to summertime drawdown and a subsequent reduction in pollutant filtering capacity. Adjustable water control structures (i.e., flashboard risers) will be installed at outflow points in each wetland. The use of adjustable water control devices will enable the creation of permanent shallow water pools in each wetland (which maximizes pollutant removal by settling), while retaining the option to manipulate water levels as necessary. A total of three (3) flashboard risers will be installed (two in upstream wetland and one in downstream wetland).

**Project Size:** 1.2 acres



**Proposed Project:** Wetlands Enhancement

**Location:** Sugarland Run Stream Valley Park, east of Dranesville Road near the intersection with Sugarland Road (Area H1-1).

**Ownership/Management:** Fairfax County, VA, Fairfax County Park Authority.

**Performance Objectives:** Enhance wildlife habitat services within 3.1 acres of existing wetlands by 10% over a project lifespan of 8 years.

**Project Description:** The proposed wetlands enhancement at this site will consist of planting clusters of wetland shrubs in the existing area of wet meadow/marsh habitat. Approximately 10 clusters of nursery-grown shrub seedlings will be planted randomly throughout the existing wetland area. Each cluster will be 30-40' in diameter and contain 25-35 shrubs each. Wetland shrub species with high wildlife food and/or cover value will be selected. All wetland shrubs will be nursery-grown, containerized rooted seedlings. The addition of shrubs to the existing wetland is designed to enhance wildlife habitat value by improving both vertical and horizontal plant diversity. Planting clusters of wetland shrubs will 1) increase the number of wetland types present, 2) increase the number of vegetation layers present, 3) increase interspersions of vegetation classes, and 4) enhance food and cover value of vegetation for birds and small mammals.

**Project Size:** 3.1 acres

**Proposed Project:** Forest Enhancement

**Location:** Sugarland Run Stream Valley Park, east of Dranesville Road near the intersection with Sugarland Road (Area H1-2).

**Ownership/Management:** Fairfax County, VA, Fairfax County Park Authority.

**Performance Objectives:** Enhance wildlife habitat services within 4.5 acres of early successional, "old field" habitat by 50% over a project lifespan of 35 years.

**Project Description:** The proposed forest enhancement at this site will consist of reforestation of early successional "old field" habitat. Invasive non-native vegetation present at the site (multiflora rose & autumn olive) will be removed by mechanical cutting and limited use of approved herbicides. A diverse mixture of native bottomland hardwood tree and shrub seedlings will then be planted in open portions of the site. Both trees and shrubs will be planted in order to encourage the development of multiple vegetation layers. All tree and shrub seedlings will be nursery-grown, containerized rooted seedlings. Species with high wildlife food and/or cover value will be planted. Reforestation of this area will enhance habitat for wildlife by 1) increasing the width of the Sugarland Run riparian corridor, 2) improving the vertical diversity of vegetation present, and 3) accelerating the development of mature forest habitat containing a greater diversity of vegetation beneficial to wildlife.

**Project Size:** 4.5 acres

**Proposed Project:** Wildlife Forage Enhancement

**Location:** Algonkian Regional Park, between Sugarland Run and golf course from 10<sup>th</sup> hole fairway to the driving range (Area K/L)

**Ownership/Management:** Northern Virginia Regional Park Authority

**Performance Objectives:** Enhance wildlife forage services of 6.9 acres of existing forest habitat by 30% over a 20 year project lifespan.

**Project Description:** The proposed wildlife forage enhancement at this site will consist of implementing various forest management actions intended to improve the structural diversity and wildlife value of a relatively young, even-aged stand of bottomland forest present at this location. The prescribed management actions, which are described below, will be implemented in specified forest management areas or "blocks" located within the 34 acre forest stand.

Selective thinning will be performed to open or thin the existing canopy in scattered patches throughout the stand. Canopy thinning actions will include small clear-cuts designed to create herbaceous openings with little or no overhead canopy. In addition, selective "snagging" (i.e., intentional killing trees by girdling or herbicide injection) to reduce, but not eliminate, overhead tree canopy will also be performed. Selective thinning will also be used to "release" individual high wildlife value trees (i.e., mast producing) from competition by less valuable neighboring trees. Canopy thinning increases light penetration into the forest understory which, in turn, stimulates growth in the groundcover and shrub layers. Snagging increases both light penetration and the density of snags (i.e., standing dead trees), which provide valuable food sources and nesting/breeding cavities for certain species. Tree and shrub seedlings will be planted in selected canopy thinning or clear cut areas to increase species diversity, promote development of multiple vegetation layers, and/or provide additional wildlife food sources. Planted trees and shrubs will be containerized, nursery-grown rooted seedlings. A limited number of wildlife attractors such as brush piles and bird nesting boxes will be installed as appropriate.

**Project Size:** 6.9 acres (combined area of multiple forest management blocks)

**Proposed Project:** Forest Enhancement

**Location:** Algonkian Regional Park, northwest corner of Lowe's Island (Area M1)

**Ownership/Management:** Northern Virginia Regional Park Authority

**Performance Objectives:** Enhance wildlife habitat and water quality improvement services of 3.6 acres of early successional, "old field" habitat by 50% over a project lifespan of 35 years.

**Project Description:** The proposed forest enhancement at this site will consist of reforestation of abandoned farmland (1990-91) currently under-going "old field" succession. The existing low-diversity, low-value woody and herbaceous vegetation will be removed by mechanical clearing and/or prescribed burning. Following soil preparation (i.e., disking), a diverse mixture of bottomland hardwood trees and shrubs will be planted in a band along the perimeter of the site extending 75' inward from the existing forest edge. An appropriate grass seed mixture will then be applied to the reforestation area to provide soil stabilization. Both trees and shrubs will be planted in order to encourage the development of multiple vegetation layers. All tree and shrub seedlings will be nursery-grown, containerized rooted seedlings. Species with high wildlife food and/or cover value will be specified. Reforestation of this area will enhance habitat for wildlife by 1) increasing the width of the riparian corridor adjacent to Sugarland Run and the Potomac River, 2) improving the vertical and horizontal diversity of vegetation present, and 3) accelerating the development of mature forest habitat containing a greater diversity of vegetation beneficial to wildlife.

**Project Size:** 3.6 acres

**Proposed Project:** Wildlife Forage Enhancement

**Location:** Algonkian Regional Park, northwest corner of Lowe's Island (Area M2)

**Ownership/Management:** Northern Virginia Regional Park Authority

**Performance Objectives:** Enhance wildlife forage services of 2.0 acres of early successional, "old field" habitat by 30% over a project lifespan of 20 years.

**Project Description:** The proposed wildlife forage enhancement at this site will consist of establishing an area of open meadow habitat in the unforested (i.e., center) portion of the reforestation area described above (Area M1). The existing low-diversity, low-value woody and herbaceous vegetation will be removed by mechanical clearing and/or prescribed burning. Following soil preparation (i.e., discing), the meadow establishment area will be seeded with a diverse mixture of high wildlife value native grasses and forbs (i.e., herbaceous non-grass plants/wildflowers). A limited number of wildlife attractors such as brush piles and bird nesting boxes will be installed as appropriate. The proposed meadow establishment will enhance the wildlife forage value of this site by 1) increasing the species diversity of the herbaceous plant community, 2) creating habitat for insect pollinators, 3) increasing production of seeds and browse eaten by wildlife, 4) providing dormant season nesting and escape cover for birds and small mammals, and 5) increasing habitat diversity and edge.

**Project Size:** 2.0 acres

**Proposed Project:** Stormwater Management/Aquatic Habitat Enhancement

**Location:** Spring Branch at Herndon Parkway (preferred)  
Hughes Branch at Dranesville Road (preferred)  
Sugarland Run at Spring Street (preferred)  
Muddy Branch at Sugarland Road (alternate)

**Project Description:** Three structural stormwater management projects will be implemented by Colonial as partial compensation for spill-related impacts to Sugarland Run aquatic habitats. These structural stormwater management projects are provided in conjunction with other non-structural aquatic habitat enhancement projects described previously. Collectively, these projects satisfy the aquatic habitat enhancement requirements outlined in the Habitat Equivalency Analysis.

The proposed stormwater management projects address water *quality* (vs. water *quantity*) impacts resulting from increases in non-point source pollution associated with watershed development and urbanization. Each of these projects involves the creation of structural Best Management Practices (BMPs) designed to improve the water quality of urban stormwater runoff. The proposed water quality BMPs will be created by "retrofitting" culverts at three (3) roadway stream crossings by attaching engineered water control structures. Water control structures will be designed to temporarily impound water within the natural floodplain upstream of the road embankment under specific flow conditions. The impounded water will then be slowly released over a period of several hours following the storm event. As designed, these water quality BMPs will function as extended detention "dry ponds". Water quality improvements derived from extended detention include effective removal of particulate pollutants (i.e., sediment, phosphorus, nitrogen, organic matter--BOD/COD, and trace metals) primarily by settling. Extended detention may also provide *water quantity* control benefits such as peak flow reduction and decreased downstream bank erosion during certain design flows.

The concept of utilizing roadway stream crossings for urban runoff water quality BMPs was proposed by officials from the Fairfax County and Town of Herndon Departments of Public Works. Each of the three proposed stormwater management projects were selected from a list of potential stormwater project options compiled by representatives from these departments at the trustee's request. Final implementation of these stormwater management projects will be contingent upon approval by local and county stormwater agencies, landowners/affected parties, and all applicable regulatory authorities (e.g., Corps of Engineers, etc.). In the event that any one (1) of the preferred stormwater projects cannot be implemented, the alternate stormwater project will be completed. In the unlikely event that any two (2) of the listed stormwater projects cannot be implemented, Colonial and the trustees will resume negotiations to identify suitable alternatives.

**Project Size:** Not Applicable

**Proposed Project:** Sugarland Run Stream Valley Regional Trail

**Location:** Town of Herndon, from Washington & Old Dominion Trail northward along Sugarland Run to Fairfax County Line.

**Project Description:** The proposed trail project is taken from the Town of Herndon's Comprehensive Plan--Master Trails Plan and the Town's FY1997 - 2002 Capital Improvements Program. As planned, the Sugarland Run Stream Valley Regional Trail will be a one (1) mile paved, multi-purpose recreational trail segment connecting the Washington & Old Dominion Trail (W&OD) and the Fairfax County Sugarland Run Trail. The new trail segment is intended for use by pedestrians, bicyclists, in-line skaters, etc., and will be located along Sugarland Run within the town of Herndon, Virginia. At present, travel between the W&OD Trail and the Fairfax County Sugarland Run Trail requires passage along busy urban streets. The southern end of the new trail segment will connect to the W&OD near the intersection with Herndon Parkway, while the northern end of the new segment will connect to the existing Fairfax County Sugarland Run Trail near the southern end of Runnymede Park. The Sugarland Run Stream Valley Regional Trail, therefore, represents a key segment linking regional trail systems in a greenway network serving suburban northern Virginia.

The proposed trail will consist of an 8-foot wide asphalt-paved trail (Fairfax County Public Facilities Manual Type I TX-2 8-foot asphalt trail). The proposed trail alignment includes three stream crossings. Utilization of existing stream crossings is assumed, as is use of the existing foot bridge located at Stuart Woods Apartments. The trail will be designed to minimize potential streambank erosion, structural barriers to passage of stormwater flows, and removal and destruction of natural resources presently established along Sugarland Run.

The proposed trail alignment is located primarily on public land. Private property traversed by the proposed alignment is within the floodplain and is, therefore, most likely unsuitable for development. Although private landowners have not been approached to date, difficulty obtaining permission to use these lands via easement agreements is not anticipated (John Dudzinski, Town of Herndon Urban Forester, pers. comm.).

The Sugarland Run Stream Valley Regional Trail is included in the Master Trails Plan within the Town of Herndon's adopted Comprehensive Plan. The trail has also been included in the Town's FY1997 - 2002 Capital Improvements Program, adopted in 1993. There is no known opposition to this trail. In fact, local organizations, including the Friends of Sugarland Run, Potomac River Greenways, and the Northern Virginia Regional Park Authority, fully support this new trail segment which will enhance the established regional trail network by increasing linkages between existing facilities.

Colonial proposes to facilitate implementation of this project through a cash grant of \$150,000 to the local entity proposing its construction.

**Project Size:** Not Applicable

## II. POTOMAC RIVER LOST USE

**Proposed Project:** Dyke Marsh Wildlife Viewing Facilities

**Location:** Dyke Marsh Wildlife Preserve, near Belle Haven Picnic Area/Marina and the George Washington Memorial Parkway/Mount Vernon Trail, Fairfax County, VA.

**Ownership:** United States Department of Interior, National Park Service, George Washington Memorial Parkway Unit.

**Project Description:** The proposed Dyke Marsh facilities enhancement project will consist of constructing wildlife viewing and wetland interpretation facilities at Dyke Marsh Wildlife Preserve located along the Potomac River in Fairfax County, Virginia. Current access to these wildlife viewing and nature study areas is severely restricted by wetlands.

Proposed improvements at Dyke Marsh focus primarily on construction of a raised boardwalk passing through the sensitive wetland areas. The wetland boardwalk will extend outward from the terminus of the upland trail in a "Y" configuration, pass through both emergent marsh and scrub-shrub wetlands. One of the boardwalk segments will terminate at an observation platform overlooking the Potomac River and Dyke Marsh. A portions of the platform will be slightly elevated (2-3') to improve viewing opportunities. In addition to construction of the boardwalk, improvements to the upland trail leading to the boardwalk will be completed using a timber-edged gravel trail design similar to existing trail segments. One or more interpretive signs will be placed in areas of interest, and limited landscape will be performed near the current trail head.

The Dyke Marsh project will be conducted in collaboration with the National Park Service, George Washington Memorial Parkway Unit. All work will comply with Park Service standards and specifications, as well as all other applicable rules and regulations. The proposed Dyke Marsh project is currently in the conceptual design phase.

**Project Size:** Not Applicable



**Proposed Project:** Great Falls National Park: Rehabilitation of Scenic Overlook #2

**Location:** Great Falls National Park, Fairfax County, VA

**Ownership/Management:** United States Department of Interior, National Park Service

**Project Description:** The proposed facilities enhancement at Great Falls National Park will consist of rehabilitating Scenic Overlook #2. Rehabilitation of the overlook will include expanding and refurbishing the current structure, resulting in a newer, larger decked overlook at this site. In addition, a 4' wide paved, wheelchair accessible path extending from the main trail to the renovated viewing structure will be constructed. Trail construction may require limited grading and removal of boulders depending upon exact trail alignment. In addition to these actions, permanent fencing will be installed to direct visitor traffic to and from the overlook and discourage the use of social trails. Erosion control and limited landscaping will be conducted in the immediate areas surrounding the new construction. Detailed planning and design of the rehabilitation project will be conducted in collaboration with the National Park Service. All work will comply with Park Service standards and specifications, as well as all other applicable rules and regulations (i.e., ADA, etc.).

**Project Size:** Not Applicable

**Proposed Project:** Fletcher's Boathouse Facilities Rehabilitation

**Location:** Chesapeake & Ohio Canal National Historic Park, Washington, D.C.

**Ownership:** United States Department of Interior, National Park Service

**Project Description:** The proposed project focuses on rehabilitation of visitor facilities at Fletcher's Boathouse, including the picnic and boat launch areas. Enhancements to the picnic area will include remulching the defined picnic area with bark chips and repairing and/or replacing picnic tables and free-standing barbecue grills (max. 10 each). The existing boat launching area will be enhanced by limited grading (if necessary) and stabilization with coarse gravel or stone. Erosion control measures in the vicinity of boat launch and picnic area will be performed as necessary. Limited landscape beautification will also be conducted around the picnic and boat launching areas. The Fletcher's Boathouse project will be conducted in collaboration with the National Park Service. All work will comply with Park Service standards and specifications, as well as all other applicable rules and regulations. The proposed Fletcher's Boathouse project is currently in the conceptual design phase.

**Project Size:** Not Applicable

**Proposed Project:** Little Falls Dam Fishway Funding Contribution

**Location:** Little Falls Dam, Potomac River, upstream of Chain Bridge

**Ownership/Management:** United States Army Corps of Engineers

**Project Description:** Compensation for lost recreational fishing will be provided through a funding contribution supporting the construction of a fishway for Little Falls Dam on the Potomac River. The goal of the fishway project is to restore a viable American shad population in the Upper Potomac River by eliminating a major barrier to seasonal migration. Construction of Little Falls Dam over 35 years ago has restricted migration of American shad and other anadromous fishes attempting to return to prime spawning habitat located between Little Falls Dam and Great Falls. This barrier to migration has been cited as the primary factor currently limiting shad populations on the Potomac. Based on information from the U.S. Fish and Wildlife Service and the use of a consumer surplus scaling metric, Colonial's contribution to the fishway project is \$253,314.

**Project Size:** Not Applicable

## *Appendix B:* *Work Plan Outline*

Work plans developed in support of implementing the restoration projects described in Appendix A will contain the following information as necessary and appropriate.

Proposed Project

Location

Ownership/Management

Project Description

Goals & Objectives

Site Survey/baseline information

Grading/Earthwork Plan

Construction Specifications

Construction Schedule

Erosion and Sediment Control Plan

Planting Plan

- Plant Materials Specifications

- Stocking Density

- Structural Composition

- Species List, Composition and Acceptable Substitutes

- Planting Schedule

- Site Preparation Specifications

- Plant Installation Specifications

Monitoring/Performance Plan

- Performance Standards

- Monitoring Parameters

- Methods and Procedures

- Timing

- Duration

- Corrective Actions (i.e., mid-course corrections)

- Reporting Requirements

Construction/Site Drawings (i.e., blueprints, site plan, etc.)



## COMMONWEALTH of VIRGINIA

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Richmond 23219

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### NATURAL RESOURCES SECTION TELEFAX TRANSMITTAL COVER SHEET

TO: MICHAEL D. GOODSTEIN, ESQ.  
U.S. Department of Justice

FAX NO: (202) 616-658<sup>3</sup><sub>2</sub>

FROM: CARL JOSEPHSON  
ASSISTANT ATTORNEY GENERAL  
Telephone: 804-786-2452 / Fax 804-786-0034

DATE: October 2, 1997

SUBJECT: Colonial Pipeline Consent Decree

COMMENTS: Michael, please include, or request AUSA lodging subject decree to include, the following in the lodging letter to the Clerk.

Pursuant to paragraph 69 of the proposed consent decree, Virginia reserves the right to withdraw consent to the decree if the comments regarding the Decree disclose facts or considerations which indicate that the Decree is inappropriate, improper, or inadequate. Virginia's State Water Control Board has approved the proposed decree subject to gubernatorial approval. Virginia's final approval of this lodged consent decree by Governor George Allen, as required by section 2.1-127 of the Code of Virginia, pending results of the public comment period.

Thank you, Carl.

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 1

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