

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,

and

THE STATE OF OHIO,

Plaintiffs,

v.

MID VALLEY PIPELINE COMPANY
LLC.,

and

SUNOCO PIPELINE L.P.,

Defendants.

Civil Action No. 1:24-cv-00238-SJD
Honorable Judge Susan J. Dlott

CONSENT DECREE

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I. INTRODUCTION

A. WHEREAS, on or about March 17, 2014, a discharge of approximately 450 barrels of crude oil occurred from a pipeline owned and operated by Mid Valley Pipeline Company LLC and Sunoco Pipeline L.P., (hereinafter collectively “Defendants”), into, upon or adjacent to the Oak Glen Nature Preserve in Hamilton County, Ohio and nearby areas (the “Site”) and into or upon adjoining shorelines of an unnamed creek, a vernal pond, and a large forested wetland approximately 1,500 feet from the Great Miami River (the “Discharge”). The Discharge resulted in injuries to, destruction of, loss of, and/or loss of use of natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and the State of Ohio, including injuries resulting from removal actions required to clean up the Discharge.

B. WHEREAS, the United States of America (“United States”) on behalf of the Administrator of the United States Environmental Protection Agency (“USEPA”), and the Secretary of the Department of the Interior (“DOI”), acting through the United States Fish and Wildlife Service (“USFWS”), has filed a complaint (“Complaint”) alleging that Defendants are liable for civil penalties under 311(b)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(3), for removal costs and natural resource damages under Sections 1002(a), 1002(b)(1), and 1002(b)(2)(A) of the Oil Pollution Act (“OPA”), 33 U.S.C. §§2702(a) and (b)(2)(A), pertaining to the Discharge. The State of Ohio (“State”), by and through the Ohio Environmental Protection Agency (“OEPA”), joined the Complaint and alleges that Defendants are liable for removal costs and natural resource damages under Sections 1002(a), 1002(b)(1), and 1002(b)(2)(A) of the Oil Pollution Act (“OPA”), 33 U.S.C. §§2702(a) and (b)(2)(A).

C. WHEREAS, the responsible Natural Resource trustees are the USFWS and the State, on behalf of the OEPA (collectively, the “Trustees” and individually, a “Trustee”).

D. WHEREAS, Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300, subpart G, DOI, through the USFWS, has been delegated authority to act on behalf of the public as the Federal Trustee for Natural Resources for the assessment and recovery of damages injured by the Discharge; the Governor of Ohio has designated the Director of OEPA as the State Trustee for Natural Resources for the State.

E. WHEREAS, the Trustees began assessing natural resource damages at the Site upon notification of the Discharge, finding that oil had been discharged into the Site; that public trust natural resources had likely been injured by the Discharge; that data sufficient to pursue a natural resource damage assessment were available or could be attained at a reasonable cost; and that without further action, implemented or planned response actions would not adequately remedy the resource injuries.

F. WHEREAS, Defendants have previously reimbursed \$109,741.72 of Natural Resource Damage Assessment Costs incurred by Federal Trustees, including DOI costs and \$226,353.46 of State Trustee costs.

G. WHEREAS, the Trustees have incurred unreimbursed Natural Resource Damage Assessment (“NRDA”) costs resulting from the Discharge.

H. WHEREAS, Defendants previously performed remedial work at the Site, including but not limited to Phase I Primary Stream Restoration, Phase II Primary Stream Restoration, Phase III Primary Restoration, Invasive Vegetation Removal and Management, Installation of Native Trees and Shrubs, and Installation of Native Seed and Herbaceous Plugs.

I. WHEREAS, the Trustees intend to prepare a Restoration Plan for Natural Resources and services injured, destroyed, or lost as a result of the Discharge and Defendants' Response. The Trustees intend to make a draft of the Restoration Plan available for public comment and to adopt the final Restoration Plan after considering all timely comments received from the public. Trustees have initiated but not yet completed this process and have developed and analyzed information sufficient to support a settlement that is fair, reasonable and in the public interest.

J. WHEREAS, Defendants, by signing this Consent Decree, do not admit the facts or liability for the allegations detailed in the Complaint.

K. WHEREAS, the Parties have previously agreed to the terms of the Primary Restoration Completion & 2018 Annual Post-Construction Performance Monitoring Report attached as Appendix C ("Monitoring Report"). Defendants agree to continue to comply with the terms set forth in the Monitoring Report, specifically in Section 8.2 in accordance with the schedule established in Table 8.1 (Schedule for Annual Post-Construction Performance Monitoring, attached to this Consent Decree as Appendix C). Defendants agree that the future monitoring reports are subject to OEPA's review and approval and that any deficiency in the monitoring reports noted by OEPA shall be addressed to the satisfaction of OEPA.

L. WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Decree (a) has been negotiated by the Parties in good faith; (b) will avoid prolonged and complicated litigation between the Parties on the claims addressed in the Decree; (c) will expedite natural resource protection and restoration actions; and (d) is fair, reasonable, and in the public interest.

NOW, THEREFORE, without adjudication of any issue of fact or law, except as provided in Section II (Jurisdiction), and with the consent of the Parties, IT IS ADJUDGED, ORDERED AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. §§ 1331 and 1345, and over the Parties to this action for the sole purpose of entry and enforcement of this Consent Decree.

2. Venue lies in the Southern District of Ohio pursuant to 33 U.S.C. § 2717(b) and 28 U.S.C. § 1391. Solely for the purposes of this Decree or any action to enforce the Decree, the Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge this Court's jurisdiction to enter and enforce this Decree.

III. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the Parties and each of their successors, assigns, or other entities or persons otherwise bound by law to comply with this Decree. Any change in ownership or corporate status of the Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Defendants' or their successors' and assigns' rights or responsibilities under this Decree. In any action to enforce this Decree, the Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree; nor shall Defendants contest the right of the United States or any of the Trustees to enforce the provisions of this Decree.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA, OPA, in the regulations promulgated under OPA, 15 C.F.R. Part 990, and applicable State law shall have the meaning assigned to them in their respective statute or in such regulations. Whenever the following terms are used in this Decree or in the appendices attached hereto and incorporated hereunder, the definition specified hereinafter shall apply.

a. “Complaint” shall mean the complaint filed by the United States and the State in this action.

b. “Consent Decree” or “Decree” shall mean this Consent Decree and appendices attached hereto. In the event of a conflict between this Decree and any appendix, this Decree shall control.

c. “Covered Clean Water Act Claims” shall mean any and all claim(s) for damages, penalties or injunctive relief for alleged violations of the CWA arising out of the Discharge and/or Defendants’ Response (as defined in Paragraph 4.g.) that occurred prior to the date of lodging of this Consent Decree, including, without limitation civil penalties under CWA Section 311(b)(7)(A), 33 U.S.C. § 1321(b)(7)(A) related to the Discharge and/or activities at or in the vicinity of the Site.

d. “Covered Natural Resource Damages” shall mean any and all damages recoverable by the United States or the State as trustees of natural resources on behalf of the public under Sections 1002(b)(2)(A) and 1006 of OPA, 33 U.S.C. §§ 2702(b)(2)(A) and 2706, as compensation for injury to, destruction of, or loss of Natural Resources and the human and ecological services they provide resulting from the Discharge and Defendants’ Response. Such damages include, without limitation: (i) assessment costs; (ii) the costs of restoration,

rehabilitation, or replacement of injured or lost Natural Resources and natural resource services or acquisition of equivalent Natural Resources; (iii) the costs of planning, overseeing, and monitoring such restoration activities; and (iv) any other compensation for diminution in value or loss of use or non-use values of Natural Resources resulting from the Discharge and/or Defendants' Response.

e. "Day" shall mean a calendar day unless expressly stated otherwise. Where the due date for a deliverable would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next business day.

f. "Defendants" shall mean Mid Valley Pipeline Company LLC and Sunoco Pipeline L.P.

g. "Defendants' Response" shall mean response and removal actions taken by Defendants to address the Discharge.

h. "Discharge" shall mean the release of approximately 450 barrels of crude oil into, upon or adjacent to the Oak Glen Nature Preserve and the environment from a 20-inch pipeline owned and operated by Defendants discovered on or about March 17, 2014.

i. "DOI" shall mean the United States Department of the Interior.

j. "Date of Lodging" shall mean the day that this Consent Decree is lodged with the Court for public comment pursuant to Section XVII.

k. "Effective Date" shall have the definition provided in Section XV.

l. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

m. "Facility" shall mean Defendant's Hebron-Lima 20-inch crude-oil pipeline that traverses Ohio and which experienced a release on or about March 17, 2014.

n. “Federal Trustee” shall mean the federal officials designated by the President under OPA § 1006(b)(2), 33 U.S.C. § 2706(b)(2), to act as trustees on behalf of the public for natural resources that have been injured as a result of the Discharge, including the Secretary of the Interior, acting through the USFWS.

o. “Interest,” as that term is used in Sections V (Civil Penalty), VI (Other Payments by Defendants), and VII (Stipulated Penalties) of this Consent Decree, shall mean interest earned at the rate and by the method specified in 28 U.S.C. § 1961(a) and (b) on the day 15 Days before a payment is due unless a different date is specified herein.

p. “Interim Natural Resource Damage Assessment Costs” shall mean all costs within the meaning of Sections 1002(b)(2)(A) and 1006(d)(1)(C) of OPA, 33 U.S.C. §§ 2702(b)(2)(A), 2706 (d)(1)(C), incurred by the Trustees after September 30, 2022, through the Effective Date of this Decree, including, but not limited to, direct, indirect, and administrative costs in assessing the alleged injury to, destruction of, loss of, or loss of use of Natural Resources resulting from the Discharge, and all costs directly or indirectly related to negotiating this Decree.

q. “Monitoring Report” shall mean the Primary Restoration Completion & 2018 Annual Post-Construction Performance Monitoring Report attached as Appendix C.

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

s. “Natural Resource Damages” shall mean any damages recoverable by the United States or the State as Trustees or *parens patriae* on behalf of the public, under Section

1002(b)(2)(A) of OPA, as compensation for injury to, destruction of, loss of, or loss of use of Natural Resources and natural resource services they provide, resulting from a release or threat of release of crude oil linked to the Discharge (including any injury, destruction or losses to Natural Resources from removal actions to address the Discharge). Natural Resource Damages include, without limitation: (i) Natural Resource Damage Assessment Costs; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources and natural resources services, or of acquisition of equivalent resources; (iii) the costs of planning and monitoring such restoration activities; and (iv) any other compensation for diminution in value or loss of use or non-use values resulting from the Discharge.

t. “Natural Resource Damage Assessment Costs” shall mean, for purposes of this Consent Decree, all costs within the meaning of Sections 1002(b)(2)(A) and 1006(d)(1)(C) of OPA, 33 U.S.C. §§ 2702(b)(2)(A), 2706 (d)(1)(C), incurred by the Trustees on or before the Effective Date, including, but not limited to, Interim Natural Resources Damage Assessment Costs, Past Natural Resource Damage Assessment Costs, direct, indirect, and administrative costs in assessing the alleged injury to, destruction of, loss of, or loss of use of Natural Resources resulting from the Discharge, and all costs directly or indirectly related to negotiating this Decree.

u. “NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund.

v. “OEPA” shall mean the Ohio Environmental Protection Agency.

w. “OPA” shall mean the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. §§ 2701-2761.

x. “OSLTF” shall mean the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. §§ 4611 and 9509.

y. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper-case letter.

z. “Parties” shall mean the parties to this Consent Decree.

aa. “Plaintiffs” shall mean the United States on behalf of the United States Environmental Protection Agency and the United States Department of the Interior and the State of Ohio on behalf of the Ohio Environmental Protection Agency.

bb. “Past Natural Resource Damage Assessment Costs” shall mean, for purposes of this Consent Decree, all Natural Resource Damage Assessment Costs incurred and paid by the USFWS and the State from the period June 30, 2017 through September 30, 2022.

cc. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

dd. “Site” shall have the definition provided in Section I.

ee. “State Trustee” shall mean OEPA.

ff. “Subparagraph” shall mean a portion of this Consent Decree identified by a lower case letter.

gg. “Sunoco/Mid-Valley Pipeline Spill OH Account” shall mean a separate account that DOI has established within the NRDAR Fund, “Sunoco/Mid-Valley Pipeline Spill OH Account.” Expenditures from this Account shall be subject to approval of the Trustees in accordance with Section VIII, and the Trustee Memorandum of Understanding, attached hereto Appendix B.

hh. “Trustee Memorandum of Understanding” shall mean the Memorandum of Understanding Between the Ohio Environmental Protection Agency and the United States Department of the Interior attached hereto as Appendix B.

ii. “Trustees” shall mean DOI, acting through the USFWS and OEPA.

jj. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, DOI, and USFWS.

kk. “USFWS” shall mean the United States Fish and Wildlife Service and any of its successor departments or agencies.

V. CIVIL PENALTY

5. Within thirty (30) Days of the Effective Date, Defendants shall pay the sum of \$550,000 as a civil penalty, together with Interest accruing from the Date of Lodging at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

6. Defendants shall pay the civil penalty due under the preceding Paragraph by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions provided to Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Southern District of Ohio after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Stephen E. Fitzgerald
Morgan, Lewis & Bockius LLP
1717 Main Street #3200
Dallas, TX 75201
Email: stephen.fitzgerald@morganlewis.com
Tel.: 214-466-4130

Kevin Dunleavy, Esq.
Assistant General Counsel
Evergreen Resources Group, LLC
2 Righter Parkway, Suite 120
Wilmington, DE 19803
kdunleavy@evergreenresmgmt.com

on behalf of Defendants. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XIII (Notices). Such monies are to be deposited in the OSLTF. At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the penalty is for the civil penalty owed pursuant to the Consent Decree in this case, and shall reference the Civil Action Number assigned to this case, and DOJ case number 90-5-1-1-11543/1 to: (i) EPA via email at acctsreceivable.cinwd@epa.gov and via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) the United States via email or regular mail in accordance with Section XIII. Such notice shall reference the CDCS Number and DOJ case number 90-5-1-1-11543/1 and shall specify that the payment is made for CWA civil penalties to be deposited into the OSLTF pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8). Any funds received after 3:00 p.m. Eastern Standard Time shall be credited on the next business day.

7. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating their federal, state or local income tax.

VI. NATURAL RESOURCES DAMAGES PAYMENTS

8. Payments for Natural Resources Damages. Within thirty (30) Days of the Effective Date, Defendants shall pay \$1,250,000, plus Interest accruing from November 29, 2022

through the date of payment, for Natural Resources Damages. This payment shall be deposited and allocated as follows:

a. Defendants shall pay \$1,100,000 plus Interest accruing on the total \$1,250,000 payment, by FedWire EFT to the U.S. Department of Justice account, in accordance with current EFT procedures, referencing DOJ Case Number 90-5-1-1-11543 to be deposited into the Natural Resource Damage Assessment and Restoration (“NRDAR”) Fund, Treasury symbol 14X5198, for the joint use and benefit of the Federal and State Trustees. This payment shall be made in accordance with instructions provided to Defendants by the FLU of the United States Attorney’s Office for the Southern District of Ohio following entry of the Decree. The Payment instructions provided by the FLU shall include the CDCS number, which the Defendant shall use to identify all payments required to be made in accordance with the Decree. A copy of the paperwork documenting the EFT and any accompanying correspondence shall be sent by the Defendants to the persons listed in Section XIII (Notices) for notices to DOI, USFWS, and OEPA. Notices shall reference the DOJ case number 90-5-1-1-11543 and indicate that (1) the payment relates to the “Oak Glen Nature Preserve Pipeline Discharge,” and (2) that the payment is to be deposited into the “Sunoco/Mid-Valley Pipeline Spill OH Account” and shall include the name of the Defendants. Any funds received after 3:00 p.m. Eastern Standard Time shall be credited on the next business day. The FLU will provide the payment instructions to:

Stephen E. Fitzgerald
Morgan, Lewis & Bockius LLP
1717 Main Street #3200
Dallas, TX 75201
Email: stephen.fitzgerald@morganlewis.com
Tel.: 214-466-4130.

Kevin Dunleavy, Esq.
Assistant General Counsel
Evergreen Resources Group, LLC
2 Righter Parkway, Suite 120
Wilmington, DE 19803
kdunleavy@evergreenresmgmt.com

b. Defendants shall pay \$75,000 to be deposited in a sub-account segregated in the NRDAR Fund by the DOI Restoration Fund Manager for Federal Trustee future administrative costs to be paid to the DOI consistent with the payment instructions in Paragraph 8.a., and

c. Defendants shall pay \$75,000 to the State for State Trustee future administrative costs, consistent with the payment instructions in Paragraph 11.

9. Reimbursement of Past Natural Resources Damage Assessment Costs of Federal Trustees. Within thirty (30) Days of the Effective Date of this Consent Decree, Defendants shall pay \$171,907.52, plus Interest accruing from June 29, 2021 through the date of payment, to the United States by Fedwire EFT to the U.S. Department of Justice account, in accordance with current EFT procedures, referencing DOJ Case Number 90-5-1-1-11543. This payment includes costs incurred from July 1, 2017 through September 30, 2022. This payment shall be made in accordance with instructions provided to Defendants by the FLU of the United States Attorney's Office for the Southern District of Ohio following lodging of the Consent Decree. Any payments received by the Department of Justice after 3:00 p.m. Eastern Standard Time will be credited on the next business date.

10. Reimbursement of Interim Natural Resources Damage Assessment Costs of Federal Trustees. Within sixty (60) Days of the Effective Date of this Consent Decree, the Federal Trustees shall provide a demand for Interim Natural Resource Damage Assessment

Costs; Defendants shall pay those costs within thirty (30) Days of the demand, after which date stipulated penalties shall begin to accrue. Payment shall be made consistent with the payment instructions provided in the preceding Paragraph.

11. Reimbursement of Past Natural Resources Damage Assessment Costs of State Trustees. Within thirty (30) Days of the Effective Date of this Consent Decree, Defendants shall pay \$447,080.72, plus Interest accruing from June 29, 2021 through the date of payment, to the State by EFT to the Treasurer, State of Ohio, in accordance with current EFT procedures, referencing the Sunoco/Oak Glen NRD matter. This payment includes costs incurred from December 31, 2020 through September 30, 2022. This payment shall be made in accordance with instructions provided to Defendants by the State Trustees following lodging of the Decree. A copy of the EFT transmittal shall be sent to: Jessica Dyer or her successor, DERR Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049; and to Hannah Smith, Paralegal, or her successor, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The money shall be deposited in the Hazardous Waste Clean-Up Fund, in reimbursement of the State Trustee's Past Natural Resource Damage Assessment costs. Payments for cost recovery for review of operation and maintenance reports done by OEPA pursuant to the Monitoring Report shall be made in accordance with this Paragraph.

12. Reimbursement of Interim Natural Resources Damage Assessment Costs of State Trustees. Within sixty (60) Days of the Effective Date of this Consent Decree, the State Trustees shall provide a demand for Interim Natural Resource Damage Assessment Costs; Defendants shall pay those costs within thirty (30) Days of the demand, after which date

stipulated penalties shall begin to accrue. Payment shall be made consistent with the payment instructions provided in Paragraph 11.

13. Interest. Unless otherwise specified, Defendants shall pay Interest on any unpaid balance due under this Consent Decree commencing on the date the payment was demanded or the date the payment was due, whichever is earlier, and accruing through the date of full payment. Payment of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Defendants' failure to make timely payments. Such remedies include payment of stipulated penalties pursuant to Section VII (Stipulated Penalties).

14. A copy of the paperwork documenting EFT payments and any accompanying correspondence shall be sent by the Defendants to the persons listed in Section XIII (Notices) of this Consent Decree for notices to the Trustees, as well as to:

Bruce Nessler
Restoration Fund Manager
Office of Restoration and Damage Assessment (ORDA)
Mail Stop 2653, MIB
1849 C Street, N.W.
Washington, D.C. 20240
Bruce_A_Nessler@ios.doi.gov

15. Notices shall reference DJ # 90-5-1-1-11543 and indicate that the payment relates to the "Oak Glen Nature Preserve Pipeline Discharge," account in the DOI NRDAR Fund at Treasury Symbol 14X5198, and include the name(s) of the paying responsible party.

16. The Defendants are jointly and severally liable for all payments required under this Consent Decree.

VII. STIPULATED PENALTIES

17. Assessment of Stipulated Penalties.

a. For each failure to make any payment required under Sections V and/or VI when due, stipulated penalties shall accrue at a rate of two thousand dollars (\$2,000) per Day plus Interest for each of the first thirty (30) Days that a payment is late, and at a rate of five thousand dollars (\$5,000) per Day plus Interest for each additional Day that a payment is late.

18. Payment of any stipulated penalties shall be made in accordance with payment instructions provided concurrent with the demand. All transmittal correspondence shall reference the Civil Action Numbers assigned to this case and DJ# 90-5-1-1-11543 and 90-5-1-1-11543/1, and state that any such payment to the United States is for stipulated penalties due under this Consent Decree. Payments to the United States shall be deposited into the United States Treasury.

19. Stipulated penalties shall begin to accrue on the Day a payment is due and shall continue to accrue until full payment is made. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

20. Notice and Demand. In the event of a failure to make a timely payment required by this Consent Decree, the United States and/or the State of Ohio after consulting with the other Plaintiff may provide Defendants with a written notice of noncompliance and a demand for payment of stipulated penalties, in the manner specified in Section XIII (Notices).

21. Defendants shall pay any stipulated penalty plus accrued Interest within thirty (30) Days of receiving a written demand from the United States and/or the State of Ohio.

22. The United States may, in the unreviewable exercise of its discretion, and after consulting with the State, reduce or waive stipulated penalties otherwise due to the United States under this Consent Decree.

23. Subject to the provisions of Section XI (Effect of Settlement), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and the State for Defendants' violation of this Decree or applicable law.

VIII. SUNOCO/MID-VALLEY PIPELINE SPILL OH ACCOUNT

24. All joint funds deposited in the Sunoco/Mid-Valley Pipeline Spill OH Account, including any interest thereon, shall be held in the Sunoco/Mid-Valley Pipeline Spill OH Account solely for use by the Trustees to restore, replace, rehabilitate, or acquire the equivalent of Natural Resources or natural resource services alleged to have been injured, lost or destroyed as a result of the Discharges. Such activities may include jointly planning, implementing, overseeing, or monitoring of the restoration of Natural Resources in accordance with the Final Restoration Plan. DOI shall, in accordance with law, and for the benefit of the Trustees, manage the funds in the Sunoco/Mid-Valley Pipeline Spill OH Account on behalf of the Trustees.

IX. COVENANT NOT TO SUE BY PLAINTIFFS

25. This Consent Decree resolves the civil claims of the Plaintiffs for the violations alleged in the Complaint filed in this action that occurred through the Date of Lodging. Except as specifically provided in Paragraph 26 (Plaintiffs' General Reservations of Rights) and 27 (Additional Reservation Concerning Natural Resource Damages) below, Plaintiffs covenant not to sue or to take administrative action against Defendants with respect to Covered Clean Water Act Claims and for Covered Natural Resources Damages. This covenant not to sue will take

effect upon Plaintiffs' receipt of all payments required by Sections V and VI and all stipulated penalties, if any, that accrue if any of those payments is delayed. This covenant not to sue extends only to Defendants, their successors and assigns, and does not extend to any other person.

26. Plaintiffs' General Reservations of Rights. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Decree is without prejudice to, all rights against the Defendants with respect to all matters other than those expressly specified in the covenant not to sue in Paragraph 25, including, but not limited to:

a. Claims against the Defendants for their failure to satisfy a requirement of this Consent Decree;

b. Claims against the Defendants for penalties and damages, including Natural Resource Damage Assessment Costs, under the OPA and any other applicable law, for injury to, destruction of, loss of, or loss of use of, Natural Resources that are not related to the Discharge or Defendants' Response;

c. Claims for criminal liability;

d. Claims for all legal and equitable remedies provided by federal or State law to address any imminent and substantial endangerment to the public health or welfare or the environment arising from, or posed by the Facility, whether related to the violations addressed in this Consent Decree or otherwise;

e. Claims for damages that are not Covered Natural Resource Damages as defined in this Consent Decree, including claims for any economic losses or damages paid by the OSLTF established pursuant to 26 U.S.C. §§ 4611 and 9509;

f. Claims under 33 U.S.C. § 2702(a) and (b)(1)(A) relating to the Discharge or Defendants' Response, including any liability for removal costs claims paid by the OSLTF;

g. Claims based on violations of State or Federal law that occur after the Date of Lodging of this Consent Decree; and

h. Claims based on violations of any CWA permit or authorization that occur after the Date of Lodging of this Consent Decree.

27. Additional Reservation Concerning Natural Resource Damages.

Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Decree is without prejudice to, the right to institute proceedings against the Defendants in this action or in a new action seeking recovery of Natural Resource Damages, including Natural Resource Damage Assessment Costs, based on: (a) conditions unknown to the Trustees as of the Date of Lodging of this Decree resulting from the Discharge or Defendants' Response that cause or contribute to injury to, destruction of, or loss of Natural Resources; or (b) information received by the Trustees after the date of lodging of this Decree that, together with any other relevant information, indicates that the Discharge or Defendants' Response resulted in injury to, destruction of, or loss of Natural Resources of a type unknown or a magnitude significantly greater than was known to the Trustees as of the date of lodging of this Decree. For purposes of this Subparagraph, conditions or information known to the Trustees shall consist of any conditions or information in the files of, or otherwise in the possession of, any of the Trustees, or their contractors or consultants who worked on the Trustees' NRDA projects.

X. COVENANT NOT TO SUE BY DEFENDANTS

28. Defendants covenant not to sue and agree not to assert or maintain any claims or causes of action against the United States or the State, and their employees, agents, contractors,

departments, agencies, administrations and bureaus, related to the Discharge or Defendants' Response, including removal activities in connection with the Discharge through the Date of Lodging of this Consent Decree and Covered Natural Resource Damages, pursuant to the CWA, the OPA, or any other state or federal law or regulation.

XI. EFFECT OF SETTLEMENT

29. This Consent Decree does not limit or affect the rights of Plaintiffs or Defendants against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against Defendants, except as otherwise provided by law, including but not limited to 33 U.S.C. § 1365(b)(1)(B) and 42 U.S.C. § 7604(b)(1)(B).

30. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

31. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of any costs, or damages, including Natural Resource Damages Assessment Costs, or other relief relating to the Discharge or Defendants' Response, the Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not To Sue, as set forth in Sections IX and X.

32. This Consent Decree shall not preclude the United States or the State from instituting a separate or ancillary action to enforce the terms of this Decree.

XII. ENFORCEMENT AND LITIGATION COSTS

33. The Parties shall bear their own costs of this action and this Consent Decree, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty, stipulated penalties, or other payments due but not paid by Defendants.

XIII. NOTICES

34. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Decree, they shall be made in writing, sent by U.S. Mail (and also by electronic mail where provided), and addressed as follows:

To the United States (by email): eescasemanagement.enrd@usdoj.gov
Re: DJ # 90-5-1-1-11543 and 90-5-1-1-11543/1

To the United States (by mail): EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-11543 and 90-5-1-1-11543/1

To EPA (by mail and email): Richard Clarizio
Associate Regional Counsel
Environmental Protection Agency, Region 5
77 West Jackson Blvd. (C-14J)
Chicago, IL 60604-3590
(312) 886-0559
clarizio.richard@epa.gov

and

Monika Chrzaszcz
Environmental Protection Agency, Region 5
77 West Jackson Blvd. (SE-5J)
Chicago, IL 60604-3590
chrzaszcz.monika@epa.gov

and

Kelly Brantner
Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Mail Code 2243-A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Brantner.kelly@epa.gov

To DOI (by mail and email):

Office of the Solicitor
U.S. Department of the Interior
5600 American Blvd., Suite 650
Bloomington, MN 55437
Attention: Kelly Brooks Bakayza
Kelly.Bakayza@sol.doi.gov

To USFWS (by mail and email):

Amber Bellamy
NRDA Case Manager
4625 Morse Road, Suite 104
Columbus, Ohio 43230
deborah_millsap@fws.gov

To the Ohio Attorney General's Office
(by mail and email):

Ohio Attorney General's Office
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Attention: Karrie Kunkel (or her successor)
Karrie.Kunkel@OhioAGO.gov

To OEPA (by mail or email):

Ohio EPA – DERR
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Kurtis Herlocher (or his successor)
Kurtis.Herlocher@epa.ohio.gov

As to Defendants (by mail and email): Jim Wright, Esq.,
Energy Transfer L.P.
1300 Main Street
Houston, TX 770022
Jim.Wright@energytransfer.com.

With a copy to: Stephen E. Fitzgerald
Morgan, Lewis & Bockius LLP
1717 Main Street #3200
Dallas, TX 75201
Email: stephen.fitzgerald@morganlewis.com

Kevin Dunleavy, Esq.
Assistant General Counsel
Evergreen Resources Group, LLC
2 Righter Parkway, Suite 120
Wilmington, DE 19803
kdunleavy@evergreenresmgmt.com

35. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

36. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. RETENTION OF DOCUMENTS

37. Until one (1) year after the Effective Date, Defendants shall preserve and retain all non-identical copies of records (including records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to compliance with this Consent Decree. Each Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any records (including records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to Defendants'

compliance with this Decree. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

38. At the conclusion of this record retention period, Defendants shall notify the United States and the State at least ninety (90) Days prior to the destruction of any such records, and, upon request by the United States or the State, and except as to records subject to claims of privilege or protection, Defendants shall deliver any such records to the United States or the State.

39. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XV. EFFECTIVE DATE

40. The Effective Date of this Consent Decree shall be the date upon which this Decree is entered by the Court or a motion to enter the Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

41. The Court shall retain jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or material modification of this Decree, or to effectuate or enforce compliance with its terms. Nothing in this Decree shall be deemed to alter the Court's power to enforce this Decree.

XVII. PUBLIC PARTICIPATION

42. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with OPA Section 1006(c)(5), 33 U.S.C. § 2706(c)(5), and 28 C.F.R. § 50.7. The Parties agree and acknowledge that final approval by the United States and the State and the entry of this Decree are subject to notice of lodging of the Decree and consideration of public comments. The United States and the State reserve the right to withdraw or withhold consent to the proposed settlement if public comments disclose facts or considerations which indicate that the Decree is inappropriate, improper, or inadequate.

43. Defendants agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Decree. Defendants consent to entry of this Decree without further notice except through the Court's electronic case filing system.

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

XVIII. APPENDICES

45. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A is a map of the Site.

Appendix B is the Memorandum of Understanding Between the OEPA and the United States Department of the Interior.

Appendix C is the Primary Restoration Completion & 2018 Annual Post-Construction Performance Monitoring Report.

XIX. SIGNATORIES/SERVICE

46. Each undersigned representative of Defendants, the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

47. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION AND MODIFICATION

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

49. This Consent Decree shall not be modified by any prior oral or written agreement, representation, or understanding. Any material modification of this Decree shall be made only by written agreement of the Parties and shall take effect only upon approval by the Court.

50. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

51. Economic hardship or changed financial circumstances of a Defendant shall not serve as a basis for modification of this Consent Decree.

XXI. TERMINATION

52. After Defendants have made all payments under Section V (Civil Penalty) and Section VI (Natural Resources Damages Payments), including the payment of Interest on such payments, and paid all applicable stipulated penalties under Section VII (Stipulated Penalties), Defendant may serve upon the United States and the State a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation. If Plaintiffs agree with the request, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree. If Plaintiffs disagree that Defendants have satisfied all requirements for termination, Defendants may move the Court for termination, provided that, no motion for termination shall be filed prior to 120 Days after service of the request for termination.

53. The provisions and effect of Section III (Applicability), Section IX (Covenant Not to Sue by Plaintiffs), Section X (Covenant Not to Sue by Defendants), Section XI (Effect of Settlement), and XIV (Retention of Documents) shall survive Termination of this Consent Decree.

XXII. 26 U.S.C. SECTION 162(F)(2)(A)(II) IDENTIFICATION

54. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2),

performance of Section XIV (Retention of Documents); and the \$1,250,000 plus Interest paid pursuant to Section VI (Natural Resources Damages Payments) are restitution, remediation, or required to come into compliance with the law.

XXIII. FINAL JUDGMENT

55. Upon approval and entry of this Consent Decree by the Court, this Decree shall constitute a final judgment of the Court as to the United States, the State, and Defendants.

SO ORDERED THIS ____ DAY OF _____, 20____.


UNITED STATES DISTRICT JUDGE
Southern District of Ohio

THE UNDERSIGNED PARTY enters into this Consent Decree resolving the claims in the matter *United States and the State of Ohio v. Mid Valley Pipeline Company, LLC and Sunoco Pipeline L.P.* (S.D. Ohio).

FOR THE UNITED STATES OF AMERICA

PATRICIA A. MCKENNA
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: April 29, 2024



LILA C. JONES
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

KENNETH L. PARKER
United States Attorney
Southern District of Ohio

BRANDI STEWART
Civil Chief
Southern District of Ohio
303 Marconi Blvd., Suite 200
Columbus, OH 43215

THE UNDERSIGNED PARTY enters into this Consent Decree resolving the claims in the matter *United States and the State of Ohio v. Mid Valley Pipeline Company, LLC and Sunoco Pipeline L.P.* (S.D. Ohio).

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

ROBERT KAPLAN

Digitally signed by ROBERT
KAPLAN
Date: 2024.04.25 12:24:39 -05'00'

ROBERT A. KAPLAN
Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

RICHARD J. CLARIZIO
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

THE UNDERSIGNED PARTY enters into this Consent Decree resolving the claims in the matter *United States and the State of Ohio v. Mid Valley Pipeline Company, LLC and Sunoco Pipeline L.P.* (S.D. Ohio).

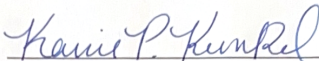
FOR THE STATE OF OHIO

DAVE YOST

Attorney General of Ohio

Date:

3/15/24



Karrie P. Kunkel (0089755)

John K. McManus (0037140)

Morgan L. Trivunic (01000589)

Assistant Attorneys General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215

THE UNDERSIGNED PARTY enters into this Consent Decree resolving the claims in the matter *United States and the State of Ohio v. Mid Valley Pipeline Company LLC and Sunoco Pipeline L.P.* (S.D. Ohio).

FOR DEFENDANT SUNOCO PIPELINE L.P.
By: Energy Transfer Operations GP LLC, its
general partner

Date: _____

3/11/24



Gregory McIlwain
Executive Vice President - Operations
Sunoco Pipeline L.P.

As Counsel to Sunoco Pipeline L.P.:
Stephen E. Fitzgerald
Morgan, Lewis & Bockius LLP
stephen.fitzgerald@morganlewis.com
214-466-4130

THE UNDERSIGNED PARTY enters into this Consent Decree resolving the claims in the matter *United States and the State of Ohio v. Mid Valley Pipeline Company, LLC and Sunoco Pipeline L.P.* (S.D. Ohio).

FOR DEFENDANT MID VALLEY PIPELINE
COMPANY LLC.

Date: 3/11/24

Gregory McIlwain

Gregory McIlwain
Executive Vice President - Operations
Mid Valley Pipeline Company LLC

As Counsel to Mid Valley Pipeline Company LLC:
Stephen E. Fitzgerald
Morgan, Lewis & Bockius LLP
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