

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

_____)(
In the matter of the Alleged Violations of
Article 3, 17 & 71 of the New York State
Environmental Conservation Law ("ECL"),
Article 12 of the Navigation Law of the
State of New York and Title 6 and 17 of the
Official Compilation of Codes, Rules and
Regulations ("6 NYCRR" and
"17 NYCRR") of the State of New York,

-by-

TOC Terminals, Inc.; Tennessee Gas
Pipeline Company; Tenneco, Inc.;
Tenneco Oil Company; TransMontaigne
Product Services LLC (formerly known
as TransMontaigne Product Services
Inc.), individually and as alleged successor
to Louis Dreyfus Energy Corp.; Corning
Incorporated; Ashland, Inc.; Ashland Oil, Inc.;
and Southern Oil Company of New York, Inc.,

Case No. 12-1111-A-SBC

Spill No: 8904923
Site No: S734146

Respondents.
_____)(

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is an agency of the State of New York ("State"), which, pursuant to Titles 3 and 10 of Article 17 of the Environmental Conservation Law ("ECL"), is authorized to regulate the storage and handling of petroleum in the State of New York.
2. Respondents are entities authorized to do business in the State of New York.
3. Respondents are included in list of parties that entered into a settlement agreement (dated December 15, 2008), and first amendment to the settlement agreement (dated June 17, 2009), with the State of New York (collectively "Settlement Agreement"), which are attached hereto as Exhibit A, and relate to 7430, 7431, 7433 and 7437 Hillside Road in the Town of Lysander, Onondaga County, New York ("Site").
4. The December 15, 2008 Settlement Agreement resolved liability, up to that effective date of the Settlement Agreement for the Settling Parties (as defined in the Settlement Agreement) for past costs that the State expended in remediating the Site and penalties attributable to the Settling Parties up to the effective date of the Settlement Agreement.

5. Navigation Law § 173 prohibits the discharge of petroleum and Navigation Law § 176 requires the timely remediation of any petroleum released (collectively, "NL").
6. The Department alleges that Respondents or their predecessors or successors in interest, as well as other entities that are not parties to this Consent Order ("Non-Settling Parties"), including Stratus Petroleum Corp; Buckeye Pipe Line Company; Buckeye Petrofuels Company and BP Products North America Inc. have discharged petroleum in violation of the Navigation Law at the Site.
7. Subsequent to the Settlement Agreement the Non-Settling parties have failed to enter into any settlement with the Department to fully address their legal responsibilities for the alleged violation of the NL and the ECL, and have failed to timely remediate the petroleum contamination at the Site.
8. The Department alleges that Respondents or their predecessors or successors in interest, as well as Non-Settling Parties, are responsible for remedial obligations, if any, relating to soil and groundwater as well as legal obligations for certain investigation and remediation responsibilities for the portion of the Site on which they or their predecessors conducted terminal operations (the "Southern Terminals"), as well as for contamination that has emanated from those terminal operations. While denying liability, Respondents affirmatively state that some of the contamination on the Southern Terminals was caused by operations other than operations conducted on their terminals, and some of the contamination was caused by operations subsequent to their involvement in the operations at the Southern Terminals.
9. Respondents, without admitting or denying the allegations made and the violations alleged herein, agree to enter into this Consent Order to address Light Non-Aqueous Phase Liquid ("LNAPL") petroleum contamination at, arising from or relating to the Site, which work is described in the proposed Remedial Action Plan ("RAP") which is attached hereto as Exhibit B. Respondents have consented to this Consent Order pursuant to the provisions of the Navigation Law and Articles 17 and 71 of the ECL, and have agreed to be bound by the provisions, terms and conditions herein.
10. The existence of this Consent Order or Respondents' compliance with this Order shall not be construed as an admission of liability or a finding of fault or wrongdoing by Respondents, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.
11. For those alleged violations and remedial obligations not covered in this Order, Respondents understand that the Department will be commencing a separate administrative action against any and all responsible parties, including the Non-Settling parties. The Department and the Respondents reserve any and all rights and defenses in any such separate action brought by the Department. The Respondents reserve any and all rights and defenses relating to other actions with any other parties which are not subject to this Order.

THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION HEREBY ORDERS THAT:

I. COMPLIANCE SCHEDULE

- A. Upon the effective date of this Order, this Consent Order shall supersede any Stipulation Agreement or any emergency authorization issued by the Department relating to the Respondents and shall govern hereinafter remedial activities required to remediate the Site, which activities are described in Exhibit B.
- B. The Department will review and provide comments to Respondents on Exhibit B, which is the proposed RAP, to address LNAPL contamination at the Site, in accordance with the provisions of this Order. All remedial or investigative plans or reports that Respondents must submit pursuant to this Order are subject to the Department's approval. Except as otherwise specifically provided, this approval process shall be as follows:
- 1) The Department shall make a good faith effort to review and respond in writing to Exhibit B and each of the submittals Respondents make pursuant to this Order within sixty (60) days of each submittal. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.
 - 2) If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within forty-five (45) days after the date of Respondents' receipt of the Department's written notice that Respondents' submittal has been disapproved, Respondents shall submit a revised submittal addressing the Department's comments. To the extent Respondents deem it necessary to have additional time to modify their submittal, Respondents may request such additional time with a justification for it. The Department's approval of such additional time shall not unreasonably be withheld.
 - 3) After the Department's receipt of Respondents' revisions, the Department shall notify Respondents in writing of its approval or disapproval. If the Department approves the revised submission, Respondents shall implement it in accordance with the schedule and terms, as approved.

- 4) If the Department determines that Respondents have failed appropriately to address the Department's comments, Respondents shall be in violation of this Order and the Department may take enforcement action as it deems appropriate, and Respondents reserve any and all defenses they may have, including the right to invoke the dispute resolution procedure described in Section IX. Respondents reserve rights they may have to file an Article 78 to challenge any final decision of the Department.
- 5) The Department agrees that any modifications to the RAP that it specifies will be reasonable to address the LNAPL contamination described in Exhibit B.

II. SPILL COMPENSATION FUND

Notwithstanding any other provision of this Order, if with respect to the Site there currently exists or may exist in the future a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against Respondents or any of its successors or assigns that has not been released under the Settlement Agreement or the express terms of this Order, nothing in this Order shall be construed, or deemed, to preclude the State of New York from recovering such claims including fines and/or penalties from Respondents or any of their successors or assigns. Respondents reserve any and all defenses they have to any such claims, and further reserve their rights to recover costs incurred under this Order from any appropriate third party, other than the State of New York or the New York State Environmental Protection and Spill Compensation Fund.

III. ACCESS

Respondents shall use "best efforts" to obtain all Site access, permits, easements, right-of-way, rights-of-entry, approvals, institutional controls, or authorization necessary to perform Respondents' obligations under this Order. If Respondents are unable to gain access to a location, which the Department has determined must be accessed for investigation and/or remediation required under this Order, or unable to obtain building, zoning or wetlands permits for the remediation work, solely at the request of Respondents, the Department agrees to the extent authorized by law, to assist the Respondents in gaining such access or permits. If, even with the Department assistance, such access is still unavailable to the Respondents, the Department will, to the extent that it deems necessary, legally obtain access for the Department's Contractors to do such work, in which case the Department shall consider hiring the Respondents' contractor to do such work. Providing that such consideration must be consistent with the Department's normal contractual procurement procedures, if the Department has to utilize its Contractors, Respondents shall, within 30 days of receipt of the bills, reimburse the Department for all costs that the State necessarily incurs ("Departmental Contractual Costs"). Respondents' inability to gain access to a location which the Department has determined must be accessed pursuant to this Order, or to obtain any permits necessary for the remediation work in a timely manner, despite good faith efforts, shall not be deemed non-compliance with this Order.

IV. RESERVATION OF RIGHTS

- A. If, for any other reason, Respondents fail to comply with any of the requirements of this Order, the Department reserves the right to perform the work. Under such circumstances, the Department will either bring administrative enforcement including cost recovery, or refer to the Attorney General a request that the Attorney General pursue Respondents or any of their successors or assigns, for reimbursement to the New York State Environmental Protection and Spill Compensation Fund [New York Navigation Law Article 12] of any costs relating to the work performed by the Department plus any applicable fines and/or penalties. Respondents reserve any and all defenses they have to any such actions.
- B. The Department hereby reserves any and all rights or claims it may have relating to any Natural Resource Damage (“NRD”) claims that may exist based on the release of petroleum into the environment from Respondents acts and/or omissions at the Site. Respondents reserve any and all defenses that they may have relating to any NRD actions that may be brought by the Department.
- C. The Department and the Respondents reserve any and all rights and defenses in any separate action brought by the Department. The Respondents reserve any and all rights and defenses relating to other actions with any other parties which are not subject to this Order.

V. PENALTIES

Respondents acknowledge that the Department has alleged non-compliance with the Navigation Law and ECL and that the Department therefore alleges that Respondents are liable to the State of New York for statutory penalties. As a compromise of the Department’s claim against Respondents, and without admitting that they are liable to the State of New York for penalties, Respondents agree to pay to the Department a civil penalty in the amount of Two Hundred and Fifty Thousand (\$250,000) dollars for the violations alleged herein, that shall be paid to the Department (pursuant to a separate agreement among the Respondents) upon Respondents’ signing of this Order and its return to the Department.

In the event that the Respondents fail to fully comply with the requirements of the Order in a timely fashion, Respondent shall be subject to penalties of up to \$25,000 per day for Navigation Law violations pursuant to § 192 of the Navigation Law.

The penalty assessed herein constitutes full settlement for past or future penalties against the Respondents in this case relating to the petroleum contamination at or emanating from the Site, except Respondents will be liable for further penalties at this site if they fail to timely comply with this order and any subsequent order or determination by the Commissioner relating to their liability to remediate the Site.

VI. PAYMENT OF STATE COSTS

- A. Within 30 days of the effective date of this Consent Order, Respondents shall pay to the Department the amount of \$45,000 for department oversight costs for the work to be completed under this order, which shall represent full settlement of Respondent's share of past and future oversight costs of the Department for the investigation and remediation of the Site, including, but not limited to 1) direct labor, 2) fringe benefits, 3) indirect costs, 4) travel incurred by the State of New York, 5) negotiation of this Consent Order, 6) review of submittals and revised submittals made pursuant to this Consent Order (collectively, "Department Oversight Costs"). It is also expressly agreed that Department Oversight Costs shall not include any Department Contractual Costs which have been or which may be incurred by the State of New York pursuant to the Environmental Conservation Law or the Navigation Law.
- B. The Department reserves its rights to seek payment of any additional State Costs it has or will incur in the future for this site, other than those paid under this Order, from any and all Responsible Parties other than those that are settling under this Order.

VII. REMEDIATION

Within 45 days (or such other time as the Respondents and the Department may agree) of the Department's determination that the RAP is approved, Respondents shall commence and thereafter fully implement the RAP in accordance with the approved schedule within the RAP.

VIII. CLOSURE

The Department, upon submission by Respondents of satisfactory documentation (as set forth in the RAP and any Investigation Plan) that Respondents have substantially complied with the requirements of this Order, shall issue a letter (within a reasonable time period) confirming that Respondents have completed the requirements of the Order.

IX. DISPUTE RESOLUTION

- A. In the event disputes arise under this Order, Respondent may, within fifteen (15) days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).
- B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

X. NOTICES

Any notice, request, consent, waiver or other communication required or permitted to be given throughout this Consent Order shall be effective only if in writing and shall be deemed

sufficient only if delivered in person or sent by first class mail, e- mail, telecopy, overnight or by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

Consultant TBD

With a copy to:

Steven M. Lucks, Esq.
Fishkin Lucks LLP
The Legal Center
One Riverfront Plaza, Ste. 350
Newark, NJ 07102
slucks@fishkinlucks.com

Thomas R. Smith, Esq.
Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, NY 13202
smithtr@bsk.com

Joseph M. Finnerty, Esq.
Barclay Damon LLP
Suite 1100
200 Delaware Avenue
Buffalo, New York 14202-2150
jfinnerty@barclaydamon.com

and

Laurence S. Kirsch, Esq.
Goodwin Procter LLP
901 New York Avenue, N.W.
Washington, D.C. 20001
T: 202-346-4440
F: 202-204-7254
lkirsch@goodwinprocter.com

To the Department:

Richard Brazell, P .E.
NYSDEC-Region 7
615 Erie Boulevard West Syracuse, New York 13204
Richard.Brazell@dec.ny.gov

With Copy to:

Ben Conlon, Esq.
NYSDEC-Office of General Counsel
625 Broadway, 14th Floor
Albany, New York 12233-1500
Benjamin.conlon@dec.ny.gov

Or such other people as the parties may designate.

STANDARD PROVISIONS

Respondents shall comply with the standard provisions which are attached as EXHIBIT C, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: August 25, 2016

New York State Department of Environmental Conservation

By: [Signature]

CONSENT BY RESPONDENTS

Respondents hereby consent to the issuing and entering of this Order without further notice, and agree to be bound by the terms, conditions and provisions contained in this Order.

July 13, 2016
Date

[Signature]
Company Name: Tenneco
Name: James Holland
Title: Vice President

ACKNOWLEDGMENT

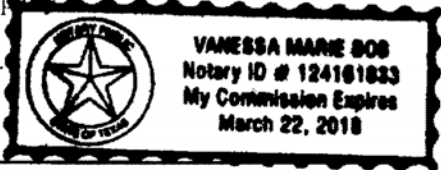
STATE OF Texas

COUNTY OF Harris ss:

On the 13th day of July in the year 2016, before me personally came James Holland to me known, who being by me duly sworn, did depose and say that he/she is Vice President of Tenneco and that he/she executed the above instrument; and that he/she signed his/her name thereto by authority of said company.

Notary Public, Signature and Office of individual taking acknowledgment:

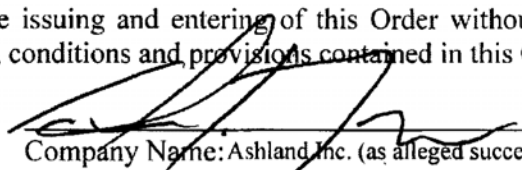
[Signature]



CONSENT BY RESPONDENTS

Respondents hereby consent to the issuing and entering of this Order without further notice, and agree to be bound by the terms, conditions and provisions contained in this Order.

7/19/16
Date

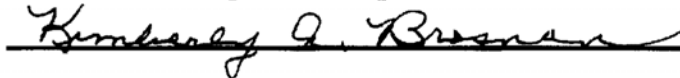

Company Name: Ashland Inc. (as alleged successor to Southern Oil of New York, Inc.)
Name: Peter Ganz, Esq.
Title: Senior Vice President, General Counsel and Secretary

ACKNOWLEDGMENT

STATE OF Kentucky
COUNTY OF Kenton) ss:

On the 19 day of July in the year 2016, before me personally came Peter J. Ganz to me known, who being by me duly sworn, did depose and say that he/she is Sr. VP, Gen Counsel + Secretary of Ashland Inc. and that he/she executed the above instrument; and that he/she signed his/her name thereto by authority of said company.

Notary Public, Signature and Office
of individual taking acknowledgment:



KIMBERLY A. BROSNAN
Notary Public, Kentucky State at Large
My Commission Expires Oct. 8, 2016
Notary ID# 476258

CONSENT BY RESPONDENTS

Respondents hereby consent to the issuing and entering of this Order without further notice, and agree to be bound by the terms, conditions and provisions contained in this Order.

August 3, 2016
Date

T.G. Capek

Company Name: Corning Incorporated
Name: Thomas G. Capek
Title: Vice President and Chief Engineer

ACKNOWLEDGMENT

STATE OF New York)
COUNTY OF Steuben)

On the 3rd day of August in the year 2016, before me personally came Thomas G. Capek to me known, who being by me duly sworn, did depose and say that he/she is Vice President + Chief Engineer of Corning Incorporated and that he/she executed the above instrument; and that he/she signed his/her name thereto by authority of said company.

Notary Public, Signature and Office
of individual taking acknowledgment:

Jamie L. Johnsrude

Jamie L. Johnsrude
Notary Public, State of New York
No. 01JO6209132
Qualified in Chemung County + Steuben Co.
Commission expires July 20, 2017

CONSENT BY RESPONDENTS

Respondents hereby consent to the issuing and entering of this Order without further notice, and agree to be bound by the terms, conditions and provisions contained in this Order.

7/13/16
Date

H. Michael Krimbill
Company Name: TRANSMONTAIGNE PRODUCTS SERVICES LLC
Name: H. MICHAEL KRIBILL
Title: CEO

ACKNOWLEDGMENT

STATE OF OKLAHOMA)

COUNTY OF TULSA) ss:

On the 13TH day of July in the year 2016, before me personally came H. MICHAEL KRIBILL to me known, who being by me duly sworn, did depose and say that he ~~she~~ is CEO of TRANSMONTAIGNE PRODUCTS SERVICES LLC and that he ~~she~~ executed the above instrument; and that he/she signed his/her name thereto by authority of said company.

Notary Public, Signature and Office
of individual taking acknowledgment:

Jana L. Robinson

JANA L. ROBINSON
NOTARY PUBLIC - OKLAHOMA
TULSA COUNTY
MY COMM. EXP. 08-22-2019
COMMISSION NO. 07008144

STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified check, cashier's check, or money order, payable to the Department of Environmental Conservation, to: New York State Department of Environmental Conservation, Office of General Counsel, Attn: Maria Mastroianni, 625 Broadway, 14th Floor, Albany, New York, 12233-1500. Unpaid penalties imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

Communications. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to: New York State Department of Environmental Conservation, Office of General Counsel, Attn: Ben Conlon 625 Broadway, 14th Floor, Albany, New York 12233-1500

Duration. This Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or his designee, and shall expire when Respondent has fully complied with the requirements of this Order.

Access. For the purposes of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by the Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure. If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition that was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

Indemnity. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting in the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

Modification. No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall bear the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, supra. Respondent's request for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Other Rights. Nothing contained in this Order shall be barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department and/or the State of New York may have against Respondent and/or anyone other than Respondent for any natural resource damage claim that the Department may have; (2) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than the Respondent; (3) any right of the Department to enforce administratively or at law or in equity, the terms, provisions, and conditions of this Order; (4) any right of the Department to bring any further action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (5) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Entire Agreement. This agreement shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect. The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service. If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

Multiple Respondents. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the order.

**FISHKIN LUCKS LLP
ATTORNEY TRUST ACCOUNT IOLTA**

THE LEGAL CENTER
ONE RIVERFRONT PLAZA, SUITE 350
NEWARK, NJ 07102

1079

55-33/212 NJ
2924

DATE 8/22/16

PAY TO THE
ORDER OF

NYS Department of Environmental Conservation \$ 250,000 ⁰⁰/₁₀₀


Two Hundred Fifty Thousand Dollars ⁰⁰/₁₀₀ DOLLARS

Bank of America

ACH R/T 021200339

R621

FOR Coll Springs - Southern Terminal Penalty



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