

FILED

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-17562

STATE OF NORTH CAROLINA, *ex. rel.*,)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)

Plaintiff,)

vs.)

COLONIAL PIPELINE COMPANY,)

Defendant.)

**JOINT NOTICE OF LODGING
AND JOINT MOTION FOR ENTRY
OF PROPOSED CONSENT ORDER**

NOW COME Plaintiff the State of North Carolina, upon the relation of the North Carolina Department of Environmental Quality (“Department”), and Defendant Colonial Pipeline Company (“Colonial”), and hereby jointly lodge with this Court the proposed Consent Order (“Consent Order”) attached hereto as Exhibit 1, and jointly move the Court for entry of this Consent Order. In support whereof, the Department and Colonial show the following:

1. The Consent Order has been consented to by the Department and Colonial, and has been executed by both parties to this case.
2. The Consent Order resolves all matters currently in controversy between the parties in this case. As set forth in paragraphs 9-10 of the Consent Order, this Court retains jurisdiction over this matter to enforce the terms of the Consent Order and to ensure full compliance with all applicable environmental laws of this State.

Wherefore, the Department and Colonial jointly request that the Court enter the proposed Consent Order attached hereto as Exhibit 1.

Respectfully submitted this the 30th day of June, 2022.

JOSHUA H. STEIN
Attorney General



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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing JOINT NOTICE OF LODGING AND JOINT MOTION FOR ENTRY OF PROPOSED CONSENT ORDER has been served via email, addressed as follows:

Nash Long, Esquire
nlong@hunton.com
Hunton Andrews Kurth LLP
Attorney for Defendant Colonial Pipeline Company

This the 30th day of June, 2022.



T. Hill Davis, III
Assistant Attorney General

Exhibit 1

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-17562

STATE OF NORTH CAROLINA, *ex. rel.*,)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)

Plaintiff,)

v.)

COLONIAL PIPELINE COMPANY,)

Defendant.)

CONSENT ORDER

WHEREAS, Defendant, Colonial Pipeline Company (“Colonial”), owns and operates a pipeline known as the Colonial Line 1 Pipeline (“the Pipeline”), which transects portions of North Carolina, including the Oehler Nature Preserve near Huntersville, Mecklenburg County;

WHEREAS, on November 2, 2021, Plaintiff, the North Carolina Department of Environmental Quality (“the Department”), filed a Complaint and Motion for Preliminary and Permanent Injunctive Relief (“Complaint”) in this Court against Colonial, seeking various forms of relief relating to alleged violations by Colonial of North Carolina oil pollution and water quality laws and regulations, arising out of the release of gasoline into the soil and groundwater from the Pipeline (the “Release”) near Huntersville, North Carolina;

WHEREAS, on December 6, 2021, Colonial filed an Answer to the Complaint denying the allegations that Colonial violated State laws or regulations and setting forth multiple affirmative defenses to the Department’s claims;

WHEREAS, the Department and Colonial (“the Parties”) have conducted good-faith

discussions to develop comprehensive and effective solutions to the environmental concerns that have been raised concerning the Release;

WHEREAS, the Parties have negotiated this Consent Order that the Parties believe will provide such solutions;

WHEREAS, this cause is now before the undersigned Superior Court Judge on the joint motion of the Parties for entry of this Consent Order;

NOW, THEREFORE, it is hereby ordered, adjudged and decreed by this Court, and agreed to by the Parties, as follows:

1. The Plaintiff is the sovereign State of North Carolina. This action is being brought on the relation of the Department, the State agency established pursuant to the provisions of N.C.G.S. § 143B-279.1, *et seq.*, and vested with the statutory authority to enforce the State's environmental protection laws, including laws enacted to address the discharge of oil or petroleum products into the environment.

2. Defendant Colonial Pipeline Company is incorporated in Delaware and Virginia, and is registered and doing business in North Carolina. Defendant is an interstate carrier of petroleum products, operating a system of petroleum pipelines which, generally, transports refined petroleum products from origins including Houston, Texas to destinations in the southern and eastern United States.

3. This Court has jurisdiction over this action for injunctive relief for alleged existing or threatened violations of various laws and rules governing the protection of water quality pursuant to N.C.G.S. § 143-215.6C. Furthermore, jurisdiction for injunctive relief sought to compel

enforcement of a statute or regulation rests in the Superior Court pursuant to N.C.G.S. § 7A-245(a)(2) and N.C.G.S. § 1-493.

4. Venue is proper in Mecklenburg County pursuant to N.C.G.S. § 143-215.6C, and N.C.G.S. §§ 1-77, 1-80, and 1-82, because the Release occurred in Mecklenburg County, and the areas impacted by the Release (“the Site”) are located within Mecklenburg County.

5. The Parties agree that Colonial will take corrective action in compliance with the State’s oil pollution and water quality laws and regulations, including the following:

- a. Within 30 days of entry of this Order, provide the Department an updated estimate of the volume of gasoline released from the Pipeline and a description of the methodology used in generating the estimate;
- b. Within 120 days of entry of this Order, provide the Department an addendum to the October 30, 2021 Revised Comprehensive Site Assessment (the “Revised CSA Addendum”). The Revised CSA Addendum shall consist of:
 - i. an estimate of the soil contaminant mass resulting from the Release, based upon the soil delineation presented in the October 30, 2021 Revised Comprehensive Site Assessment; and
 - ii. a revised conceptual site model based on sampling data collected at the Site through May 31, 2022, including the updated volume estimate and the estimate of soil contaminant mass. The conceptual site model shall thereafter be amended and updated as necessary to incorporate significant new data or significant changes to Site conditions.
- c. Conduct further assessment of free product in bedrock at the Site, as follows:
 - i. Within 60 days of entry of this Order, Colonial shall submit a plan for

further assessment of free product in bedrock at the Site. The bedrock assessment shall proceed in a phased approach and shall include proposed locations and construction for at least 5 and no more than 15 additional bedrock wells based upon existing data, including:

- I. logs from existing deep wells;
 - II. fracture analysis and trends observed from down-hole logging of existing deep wells;
 - III. analysis of available lidar data to evaluate surface lineations; and
 - IV. evaluation of electrical resistivity data relative to surface lineations.
- ii. Well locations shall be proposed by Colonial and approved by the Department. The additional wells referenced in paragraph 5(c)(i) above shall include at least 5 locations within the approximately 11-acre area at the Site where free product has been measured, but need not include locations where significant levels of free product are currently present and drilling would present unnecessary risks. The number and location of wells chosen shall be sufficient to fully delineate the vertical extent of free product at the Site. If more than 15 wells are needed to establish full vertical delineation of free product in bedrock at the Site, Colonial shall complete vertical delineation in the initial phase of the Corrective Action Plan.
- iii. Within 180 days of approval of the plan for assessment of free product in bedrock by the Department, including well locations and construction, Colonial shall implement the approved plan by completing construction and all necessary testing of bedrock wells consistent with work performed on

bedrock wells previously installed on Site. Any subsequent modifications of the plan shall also be implemented within 180 days of approval by the Department.

iv. Within 120 days of implementing the approved plan for assessment of free product in bedrock, Colonial shall submit to the Department a revised conceptual site model and a revised comprehensive site assessment incorporating the data from such assessment and any other new data collected at the Site. In the event that vertical delineation is completed as part of the Corrective Action Plan as set forth in Paragraph 5(c)(ii), it shall not be necessary for Colonial to submit an additional revised comprehensive site assessment after the completion of this work. Instead, Colonial will provide the additional information regarding vertical delineation and additional vertical delineation wells as part of the initial phase of the Corrective Action Plan.

d. Submit a Corrective Action Plan and proposed schedule for corrective action to the Department as required by 15A N.C.A.C. 2L .0106, and to abate alleged violations of N.C.G.S. § 143-215.1 and the applicable groundwater standards.

i. Colonial shall submit for approval by the Department a Corrective Action Plan that complies with the requirements of 15A N.C.A.C. Subchapter 2L (the “2L Rules”) within 90 days of approval by the Department of the revised conceptual site model and revised comprehensive site assessment required in paragraph 5(c)(iv).

ii. The Corrective Action Plan shall include, *inter alia*, a monitoring plan for

evaluating the effectiveness of the proposed corrective action and the movement of the contaminant plume, including within the bedrock at the Site. The Corrective Action Plan shall include as many bedrock wells as reasonably necessary to accomplish this purpose.

- iii. The Department shall approve the Corrective Action Plan if it meets the applicable requirements of the 2L Rules. Nothing in this Consent Order shall be interpreted as endorsing or precluding risk-based remediation or risk-based closure at the Site pursuant to any applicable provisions of the 2L Rules.
- iv. Colonial shall implement the Corrective Action Plan in accordance with a schedule proposed by Colonial and approved by the Department. Except as otherwise allowed in or provided under the 2L Rules, the Corrective Action Plan must provide, upon full implementation, for the remediation of groundwater to the standards set forth in 15A N.C.A.C. 2L .0202. The Corrective Action Plan shall be amended and updated to incorporate new data or changing Site conditions as necessary to ensure remediation to the applicable groundwater standards.
- e. Within 30 days of entry of this Consent Order, commence sampling for PFBA, 6:2FTS, PFOA, PFOS, and PFOSA at wells MW-19, MW-42, MW-27, MW-72R, MW-84, MW-44, and MW-41 to determine the presence of such constituents in groundwater. Colonial will notify the Department if these wells contain light, non-aqueous phase liquid to determine next steps. Colonial will conduct quarterly

sampling events over the course of 18 months, after which the obligations set forth under this paragraph 5(e) and its subparts shall end.

- i. For each quarterly sampling event, two split samples will be provided to the Department from each well.
 - ii. For each quarterly sampling event, an additional sample will be collected, and matrix spikes will be prepared and analyzed, for groundwater.
 - iii. Colonial will report to the Department the results of each quarterly sampling event in a separate report, due 60 days after Colonial's receipt of the final, validated Level 4 analytical packages for that sampling event. Nothing in this Consent Order shall be construed as requiring Colonial to include the results of any PFAS sampling in any Conceptual Site Model, in any Comprehensive Site Assessment (or addendum thereto), in any Corrective Action Plan, or in any other monitoring report. Colonial reserves its right to contest any liability for PFAS at the Site raised by the Department or any other person.
- f. As required by 15A N.C.A.C. 2L .0106, and to prevent or abate alleged violations of N.C.G.S. § 143-215.1:
- i. Conduct monthly sampling of surface waters at the 18 locations ("Surface Water Sampling Locations") shown on the Figure attached to the October 27, 2021 Notice of Regulatory Requirements from the Department's Division of Water Resources, attached as Exhibit A to this Consent Order. At each of the 18 Surface Water Sampling Locations, Colonial shall perform monthly sampling for pH, conductivity, dissolved oxygen, Volatile

Organic Compounds using EPA Method 8260D, and total lead using EPA Method 6010D. Inclusion of these constituents in the surface water sampling does not constitute an admission that Colonial is responsible for introducing such constituent into the environment. Colonial reserves its rights to contest any attempt to impose liability for these analytes by the Department or any other person, including its right to object to any requirement to address such analytes in any Corrective Action Plan or amendment thereto. The monthly sampling shall begin within 30 days of entry of this Order and shall occur in each calendar month thereafter. Sampling results shall be reported to the Department within 60 days following the sampling event. If a necessary property access agreement has not yet been secured for a Surface Water Sampling Location, Colonial shall use reasonable efforts to obtain such an agreement or find an alternate location acceptable to the Department; Colonial's obligation to conduct monthly sampling at that location shall not be due before the end of the month after such necessary agreement has been fully executed or an alternate location selected by Colonial and approved by the Department.

- ii. Immediately report the presence of any petroleum hydrocarbon sheen or free product observed in surface waters to the Department.
- iii. Submit an annual surface water sampling summary report to the Department by June 1 of each year. The report will summarize the surface water sampling results for the twelve month period running from April 1 of the prior year through March 31 of the reporting year. This report shall contain

recommendations for continued surface water sampling and analyses based on the surface water and groundwater quality data and will include surface water sampling locations, analytical parameters, and collection and reporting frequency. The Department will review the surface water sampling results and recommendations contained in the surface water sampling report, and may in good faith require revisions to the surface water sampling plan based on the results of the groundwater and surface water sampling results, including reducing or terminating sampling as warranted. In no event shall Colonial be required to sample surface water for PFAS analytes.

- iv. If sampling shows impacts to surface water caused by the Release, Colonial shall submit to the Department a proposed modification to the Corrective Action Plan required under paragraph 5(d) of this Order to address any such impacts. Colonial shall implement the modified Corrective Action Plan once approved by the Department.
- g. Use reasonable efforts to obtain any permits or approvals necessary for the completion of site assessment activities or required corrective action.
- h. Continue the following actions to respond to the Release until modification or cessation is approved by the Department:
 - i. Groundwater monitoring, vapor monitoring, and remedial action as described in the monthly monitoring reports currently submitted to the Department, provided that Colonial may submit these reports on a quarterly basis (to be due the 15th of the month following each calendar quarter end)

after entry of this Order;

- ii. Reasonable efforts to contain the contaminant plume within its current footprint; and
- iii. Maintaining booms on-site for deployment as needed to protect surface water.

The Department retains its right to make reasonable additional requests of Colonial concerning response to the Release.

6. Pursuant to N.C.G.S. § 143-215.85 and any other applicable laws or regulations, Colonial shall notify the Department of any future releases from the Pipeline in North Carolina, in the form and in the manner required by applicable laws and regulations. Colonial shall also provide to the Department all reports and other documents submitted to the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) pursuant to the Notice of Proposed Safety Order enforcement action(s) that concern the sections of the Pipeline located in North Carolina. For any report or other document that Colonial has submitted to PHMSA under a claim of confidentiality, the Department agrees to maintain the confidentiality of such item if it is confidential or otherwise not subject to disclosure under the North Carolina public records law, or upon an order of a court of competent jurisdiction that the document is confidential or otherwise not subject to disclosure under the North Carolina public records law. If the Department receives a public records request for any confidential document(s) submitted by Colonial to the Department pursuant to this paragraph, the Department will provide Colonial with reasonable notice before responding to the request.

7. Civil Penalties and Investigative Costs:

- a. Civil Penalty and Investigative Costs: By no later than thirty (30) days following entry of this Order, Colonial shall pay, by wire transfer or certified check payable to the Department, a civil penalty in the amount of four million five hundred thousand dollars (\$4,500,000) and investigative costs in the amount of two hundred and fifty thousand dollars (\$250,000). The Department will not seek to assess further civil penalties for releases of petroleum or alleged releases of PFAS that occurred at the Site prior to the lodging of this Consent Order.
- b. Stipulated Penalties: Unless excluded under paragraph 12, Colonial shall pay, by wire transfer or certified check payable to the Department, stipulated penalties, if any, according to the following schedule for failure to perform activities described in this Consent Order. Stipulated penalties shall apply only to violations that occur after entry of this Consent Order.

Failure to provide the updated volume estimate as required in paragraph 5(a)	\$5,000/day
Failure to provide the Revised CSA Addendum as required in paragraph 5(b)	\$2,500/day
Failure to submit a plan for assessment of free product in bedrock at the Site as required in paragraph 5(c)	\$2,500/day
Failure to submit the Corrective Action Plan as required in paragraph 5(d)	\$2,500/day
Failure to perform the quarterly sampling as required in paragraph 5(e)	\$10,000 per quarter
Failure to perform the surface water sampling as required in paragraph 5(f)(i)	\$10,000 per month
Failure to meet any other deadline in this Consent Order to which no other stipulated penalties are applicable.	\$1,000/day for first 10 days; \$2,500/day thereafter

8. This Order addresses and resolves all of Colonial's obligations under every Notice of Violation, Notice of Continuing Violation, and Notice of Regulatory Requirements the

Department has issued to Colonial to date regarding the Site (collectively, the “Notices”), and shall resolve all claims the Department has raised in the Complaint or could have raised based on information known to the Department prior to the date of the lodging of this Order regarding the Release or compliance with North Carolina law at the Site. The Department retains all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising as a result of activities at the Site whether related to the violations addressed in this Consent Order or otherwise. Nothing in this Consent Order shall restrict the right of the Department to inspect or take enforcement action against Colonial for any new or subsequent violations of North Carolina statutes and regulations, or the right of Colonial to contest any subsequent enforcement action based on allegations of new, subsequent, or repeated violations, to the extent provided by law. Notwithstanding the foregoing, the Department waives any right to seek fines or penalties from Colonial for any action or inaction governed by this Consent Order beyond the fines and penalties set forth in this Consent Order. The Department does not waive its right to seek specific performance of any obligation set forth in this Consent Order.

9. This Court’s Order shall be enforceable by and through the contempt powers of this Court pursuant to Chapter 5A of the North Carolina General Statutes.

10. This Court retains jurisdiction over this matter for such further orders as may be required to ensure full compliance with the State’s Oil Pollution and Hazardous Substances Control Act of 1978, the State’s water quality laws, and any other applicable environmental laws of the State.

11. Nothing in this Consent Order constitutes an admission of fault or liability by Colonial in connection with the Release.

12. Force Majeure: Colonial's failure to comply with any of the obligations set forth in this Order shall not be subject to penalties or enforcement, and shall not be considered a violation of this Order, if such failure to comply is due to any of the following:

- a. An act of God;
- b. An act of war;
- c. An intentional act or omissions of a third party, but this defense shall not be available if the act or omission is that of an employee, agent or contractor of Colonial;
- d. An extraordinary event beyond Colonial's control, specifically including any court order staying the effectiveness of any necessary permit or approval. Contractor delays or failure to obtain funding will not be considered as events beyond Colonial's control;
- e. Any act or omission by the Department, its employees or agents; or
- f. Any combination of the above causes.

13. This Consent Order may be signed out-of-court, out-of-term, and out-of-county.

This the _____ day of _____, 2022.


Superior Court Judge Presiding

CONSENTED TO BY:

NORTH CAROLINA DEPARTMENT
OF ENVIRONMENTAL QUALITY

By: 

Michael Scott
Director
Division of Waste Management



T. Hill Davis, III, as to form only
Assistant Attorney General

CONSENTED TO BY:

COLONIAL PIPELINE COMPANY

By: 

Samuel McEwen
Director, Environmental

By: 

Nash E. Long
Counsel for Colonial




Surface Water Sampling Location Map
 Colonial Pipeline
 Huntersville, NC

MAP SCALE: 1" = 650'
 DRAWN BY: TRB

DATE: February 22, 2021

Figure 1

EXHIBIT
A

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