INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live

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STATE OF INDIANA COUNTY OF MARION	)))	BEFORE THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, Complainant, v. Amoco Oil Company, Calumet Avenue Petroleum Facility and Amoco Pipeline Company Calumet Avenue Pumping Station Respondents.	))))))))))))))	Cause No. B-1545

AGREED ORDER

The parties to this cause now wish to settle and compromise this action without hearing or adjudication of any issue of fact or law, and the Indiana Department of Environmental Management finds and Respondents specifically deny the following Findings of Fact:

I. FINDINGS OF FACT

1. The Complainant is the Commissioner (hereinafter referred to as "Complainant") of the Indiana Department of Environmental Management, a department of the State of Indiana created by IC 13-7-2-11.

2. The Indiana Department of Environmental Management ("IDEM") has jurisdiction over the parties and the subject matter of this action.

3. Respondent, Amoco Oil Company owns a petroleum facility, as defined by IC 13-7-20.1-5, located in Whiting, Indiana.

4. Respondent, Amoco Pipeline Company operates a petroleum facility on the property of Respondent, Amoco Oil Company.

5. Respondent, Amoco Oil Company, owns the property on which the unpermitted outfall was located.

6. Pursuant to IC 13-7-11-2(b), a Notice of Violation was duly served via Certified Mail to:

Mr. Doug Ford, President Amoco Oil Company 200 East Randolph Drive Chicago, Illinois 60601-7125	Prentice-Hall Corporation Resident Agent for Amoco Oil Circle Tower Indianapolis, Indiana 46204

7. Respondent, Amoco Oil Company, has violated 327 IAC 5-2-2. This Rule states, in substance, that any discharge of pollutants into the waters of the state as a point source discharge is prohibited unless in conformity with a valid National Pollutant Discharge Elimination System (NPDES) permit.

8. On December 12, 1989, an employee of IDEM observed a discharge coming from an unpermitted outfall located adjacent to Respondent's petroleum facility located at 129th Street and Calumet Avenue. The same employee of IDEM also observed evidence of a substance with the consistency of oil or asphalt in the ditch below the outfall. The ditch below the outfall is tributary to the Indiana Harbor Ship Canal. Respondent in this instance is the Amoco Oil Company.

9. On September 14, 1992, an employee of IDEM observed a discharge coming from the same outfall. Respondent in this instance is the Amoco Oil Company.

10. On September 30, 1992, an employee of IDEM observed a discharge coming from the same outfall. Respondent in this instance is the Amoco Oil Company.

11. An employee of IDEM obtained samples of the discharge on September 14, 1992. The results of the analysis were as follows:

Parameter	Sample Results (ug/l)	
Benzene	9.3	8.9
Naphthalene	11	-
Xylene (total)	23	16

12. On September 6, 1992, Respondent spilled an estimated 12,180 gallons of Xylene at the 129th Street and Calumet Avenue petroleum facility. Respondent in this instance is the Amoco Pipeline Company.

13. Respondent, Amoco Pipeline Company, did not notify the Office of Environmental Response, IDEM, of this spill until approximately five hours after it occurred which IDEM alleges was not "immediate" as required by 327 IAC 2-6.

14. Respondent, Amoco Pipeline Company, has violated 327 IAC 2-6. This Rule requires, in substance, that in the event of a spill of oil which enters or threatens to enter the waters of the state, the responsible party must:

a. immediately communicate a spill report on said spill to the Office of Environmental Response, Department of Environmental Management, as soon

as said person or said person's agent knows or should have known of said spill; and

b. immediately, whenever possible notify the downstream user; and

c. immediately contain said spill or cause same to be done; and

d. either immediately after or during the containment, whichever is most practicable, clean-up said spill or cause the same to be done; and

e. submit to the Office of Environmental Response reports on said spill deemed necessary by the commissioner or her authorized agent to carry out the purposes and intent of this rule.

15. On September 29, 1993 Respondent, Amoco Oil Company, submitted to IDEM staff, materials produced as a result of efforts to investigate and remediate contamination caused by the Xylene spill on September 6, 1992; thus, satisfying some of the requirements of 327 IAC 2-6.

16. Respondents have violated IC 13-7-4-1. This Statute states, in substance, that no person shall discharge, emit, cause, allow or threaten to discharge, emit, cause or allow any contaminant or waste, including any noxious odor, either alone or in combination with contaminants from other sources, into the environment in any form which causes or would cause pollution which violates, or would violate Regulations, Standards or discharge or emission Requirements adopted by the board or appropriate agency pursuant to this article.

17. IC 13-7-20.1-8 states:

"The Commissioner may issue an Order to require an owner or operator or a responsible person to undertake removal or remedial action with respect to a release of petroleum at a petroleum facility."

18. IC 13-7-20.1-11 states:

"To allow the Commissioner to take or to assess the need for removal or remedial action under section 8 of this chapter or to enforce this chapter an owner, an operator, or a responsible party of a facility, upon the request of an officer, an employee, or a designated representative of the department shall conduct testing of soils, air, surface water, or ground water surrounding the facility."

19. Respondent, Amoco Pipeline Company, waives the right to issuance of a Notice of Violation.

In recognition of the settlement reached, Respondent waives any right to administrative review of the entry of this Agreed Order.

II. ORDER

WHEREFORE, it is hereby ORDERED that:

1. Respondents shall submit to Complainant, within sixty (60) days of the issuance of this Order, a proposal to conduct a Soil Characterization Work Plan for the areas both upstream and downstream which have been impacted by the alleged discharge at the outfall which will, upon completion, identify the location, volume, quality, and regulatory status of the contaminated soil, if any, in the immediate vicinity of the ditch near the outfall. This Soil Characterization Work Plan (SCWP) shall include, but not be limited to:

a. a clear statement of the objective of the SCWP.

b. parameters to be analyzed and their corresponding detection limits;

c. locations of samples (horizontal location and depth);

d. background samples (location and depth);

e. sampling methods, equipment, and decontamination procedures;

f. analytical methods;

g. evidence of a QA/QC plan for laboratory analyses;

h. a health and safety plan; and

i. a timetable for completion of the SCWP.

Upon receipt of Complainant's written approval, the SCWP shall be deemed incorporated into and made an enforceable part of this Order, and the Respondents shall implement it in accordance with the timetable therein.

2. Respondents shall submit, to Complainant, the results of the SCWP within sixty (60) days of the completion of the SCWP.

3. Based upon Complainant's review of the results of the SCWP, a determination shall be made, by Complainant, regarding the necessity of a Soil Remediation Project (SRP). Complainant shall notify the Respondents in writing of this determination. Upon receipt of Complainant's determination that an SRP is necessary, Respondents shall have sixty (60) days to submit a work plan which will include, but not be limited to:

a. a clear statement of the purpose of the SRP; including a recommendation for the "clean" level of soil;

b. location and method of remediation;

c. materials handling procedure;

d. method of disposal;

e. a health and safety plan; and

f. timetables for completion of the SRP.

The SRP shall be developed and evaluated with consideration to human health risk and significant environmental impact, ecological receptors, current and future land use, other potentially responsible parties, and remedial activities performed under other agreements with IDEM that could potentially effect the efficiency, effectiveness, or scope of the SRP. All activities required under this Order shall in no way duplicate any activities required under other agreements with IDEM.

If a risk assessment is utilized in the development of the SRP, it shall be consistent with the United States Environmental Protection Agency (US EPA) Risk Assessment Guidance for Superfund (RAGS) (USEPA, 1989A, 1989B), and the USEPA Guidance for Exposure Assessment (USEPA), 1992A) and subsequently published appropriate exposure and risk methods.

Upon receipt of Complainant's written approval, the SRP shall be deemed incorporated into and made an enforceable part of this Order, and the Respondents shall implement it in accordance with the timetable therein.

4. Respondents shall develop and submit a Groundwater Evaluation Study Plan (GESP) within sixty (60) days of the issuance of this Order. The GESP shall be designed to determine the extent of contamination, if any, caused by spills at the Amoco Pipeline Company petroleum facility located at 129th Street and Calumet Avenue. The GESP shall include, but not be limited to:

a. a clear statement of the purpose of the GESP;

b. parameters to be analyzed and their corresponding detection limits;

c. location and number of monitoring wells (include horizontal location and vertical depth);

d. Soil Boring and Sampling Program;

e. Ground Water Monitoring Well Installation Program;

f. well development procedures;

g. ground water level measurement procedures;

h. ground water monitoring well sampling procedures;

i. evidence of a QA/QC plan for laboratory analyses;

j. analytical methods;

k. a health and safety plan; and

l. a timetable for work to be done including start up and completion dates.

Upon receipt of Complainant's written approval, the GESP shall be deemed incorporated into and made an enforceable part of this Order, and the Respondents shall implement it in accordance with the timetable therein.

5. The Respondents shall submit, to Complainant, the results obtained from the GESP within sixty (60) days of the completion of the GESP.

6. Based upon the results of the GESP, Complainant shall make a determination regarding the necessity of a Ground Water Remediation Project (GWRP), and shall notify the Respondents in writing of this determination and of the need to proceed with the GWRP.

7. In the event that Complainant determines that contamination exists in levels sufficient to warrant a Ground Water Remediation Project, the Respondent shall submit a work plan. This work plan shall be submitted within sixty (60) days of receipt of notice to proceed and shall include, but not be limited to:

a. a clear statement of the objective of the GWRP, including a recommendation of a "clean" level for the groundwater;

b. location and method of remediation;

c. a timetable for obtaining the necessary permits;

d. a timetable for completion of any necessary construction;

e. a health and safety plan; and

f. a timetable for completion of the GWRP.

Upon receipt of Complainant's written approval, this work plan shall become the GWRP and shall be deemed incorporated into and made an enforceable part of this Order.

The GWRP shall be developed and evaluated with consideration to human health risk and significant environmental impact, ecological receptors, current and future land use, other potentially responsible parties, and remedial activities performed under other agreements with IDEM that could potentially effect the efficiency, effectiveness, or scope of the GWRP.

If a risk assessment is utilized in the development of the GWRP, it shall be consistent with the United States Environmental Protection Agency (US EPA) Risk Assessment Guidance for Superfund (RAGS) (USEPA, 1989A, 1989B), and the USEPA Guidance for Exposure Assessment (USEPA), 1992A).

A third party shall review risk assessment(s) submitted by Respondent. The Respondent shall pay for such review. The reviewer shall be chosen by IDEM after approval is given by Respondent. Approval by Respondent shall be based on the professional qualifications and experience in reviewing risk assessments, potential conflict of interest and other appropriate factors. The reviewer shall provide to IDEM and Respondent a written evaluation of the technical merits and validity of the risk assessment(s), as consistent with USEPA (1989A, 1989B, 1992A) guidance.

Respondent may implement Interim Measures prior to submittal to GWRP. The goal of Interim Measures is to prevent and abate contamination of surface waters in the ditch along the eastern side of Calumet Avenue, south of 129th Street and north of Cline Avenue. Interim Measures shall be consistent with the goals of remedial activities performed under

other agreements with IDEM and shall remain under the authority of these agreements.

Upon receipt of Complainant's written approval, the GWRP shall be deemed incorporated into and made an enforceable part of this Order, and the Respondents shall implement it in accordance with the timetable therein.

8. All study plans and work plans submitted pursuant to paragraphs 2,4,5, and 8, are subject to the review and approval of the Indiana Department of Environmental Management (IDEM). IDEM shall review the plans within a reasonable time after receipt and shall approve, modify and approve, or disapprove of the plans. In the event that IDEM disapproves of the plans, or any part thereof, Respondent will be notified in writing of any deficiencies in the plans. In such cases Respondent shall submit a revised plan to IDEM that corrects all of the noted deficiencies within sixty (60) days of receipt of the IDEM notice of disapproval.

9. This section (Dispute Resolution) shall apply to any dispute arising under any section of this Order.

The parties shall use their best efforts to, in good faith, resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Order which the parties are unable to resolve informally, the Respondents may present written notice of such dispute to IDEM and set forth specific points of dispute and the position of the Respondents. This written notice shall be submitted no later than ten (10) calendar days after the Respondents discover the parties are unable to resolve the dispute. The Respondents will notify IDEM immediately by phone or other appropriate methods of communication, prior to written notice, when he or she believes the parties are unable to resolve a dispute.

Within fourteen (14) calendar days of receipt of such a written notice, IDEM shall provide a written response to the Respondents setting forth its position and the basis therefor. During the five (5) calendar days following the receipt of the response, the parties shall attempt to negotiate in good faith a resolution of their differences.

Following the expiration of the time periods described in the immediately preceding paragraph, if IDEM concurs with the position of the Respondents, the Respondents shall be notified in writing and this Order shall be modified accordingly. If IDEM does not concur with the position of the Respondents, IDEM, through the Commissioner or her designate, shall resolve the dispute, based upon and consistent with the terms of this Order, and shall provide written notification of such resolution to the Respondents. The Respondents retain their right to appeal any final agency action and all rights under the Indiana Administrative Orders and Procedures Act and all other applicable statutes and rules.

The pendency of dispute resolution set forth in this section shall not affect the time period for completion of work and/or obligations to be performed pursuant to this Order, except that, upon mutual agreement of IDEM and the Respondents, any time period may be extended, not to exceed the actual time taken to resolve the dispute. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Work Plans.

Elements of work and any actions required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure, and into

this Order. The Respondents shall proceed with all remaining work according to the modified plan or procedure.

Any applicable stipulated penalties continue to accrue during dispute resolution. Respondents may seek waiver of stipulated penalties that accrue during dispute resolution, but IDEM is not obligated to waive them under any circumstances. If any matter is resolved favorably to Amoco, all stipulated penalties specific to the disputed work are waived.

10. The purpose of this Order is to resolve the alleged violations in the Findings of Fact without admission of liability, and to establish corrective or remedial actions that the Respondents will implement to address the impact on public health and the environment caused by the events described in the Findings of Fact.

11. This Order shall not constitute an admission or adjudication with respect to any allegations of violations, findings of fact or any allegation contained herein.

12. All submittals shall be sent to:

Chief, Water Enforcement Section
Office of Enforcement
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015

13. Respondents are assessed a Civil Penalty of Forty Two Thousand Five Hundred ($42,500) Dollars. Said penalty amount shall be due and payable to the Environmental Management Special Fund within thirty (30) days of receipt of notice of the adoption of this Order by the Commissioner.

14. Further, Respondents shall pay the following stipulated penalties within thirty (30) days of receipt of notice from Complainant of Respondent's failure to comply with each of the requirements of this Order in the following paragraphs:

Failure to comply with the time frames contained in Paragraphs 1,2,3,4,5,7 or 8:

Period of failure to comply	Penalty per day
1st through the 6th day	$ 250
7th day and beyond	$ 500

Said stipulated penalty shall be due and payable within thirty (30) days after the Respondents receive written notice that the Commissioner has determined a stipulated penalty is due. Assessment and payment of said stipulated penalty shall not preclude the Complainant from seeking any injunctive relief against the Respondents for violation of the Agreed Order or preclude Respondent from initiating dispute resolution.

In lieu of assessment of the stipulated penalty given above, the Complainant may seek any other remedies or sanctions available by virtue of Respondent's violation of this Agreed Order, including but not limited to civil penalties pursuant to IC 13-7-13.

Should the Respondents fail to comply with a time requirement of any tasks required by the Order, the period of noncompliance shall terminate upon Respondents performance of said requirement.

IDEM may exercise its discretion and not demand payment of stipulated penalties in any instance where they might otherwise be due hereunder. In determining whether or not to exercise such discretion, IDEM may consider Respondent's overall implementation of and adherence to this Order. The exercise of this discretion shall not be subject to dispute resolution.

15. All penalty payments shall be made payable to the "Environmental Management Special Fund" referencing Cause No. B-1545 and remitted to:

Cashier, Indiana Department of Environmental Management
P.O. Box 7060
Indianapolis, Indiana 46206-7060

16. If the Respondent or the Respondent's agent or contractor fails to comply with any requirement of this Order, such failure may constitute a "Force Majeure" event. "Force Majeure", for the purposes of this Order, is defined as any event arising from causes beyond the control of the Respondent that delays or prevents the performance of any obligation under this Agreed Order despite Respondent's best efforts to fulfill the obligation. The requirement that the Respondent exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the work required by this Order or increases in costs to perform the work.

The Respondent shall notify IDEM by calling within three (3) calendar days and by writing no later than seven (7) calendar days after any event which the Respondent contends is a force majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, and the timetable by which measures will be implemented. The Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. The Respondent shall have the burden of demonstrating that the event is a force majeure. The decision of whether an event is a force majeure shall be made by IDEM. Said decision shall be immediately communicated to the Respondent.

If a delay is attributable to a force majeure, IDEM shall extend, in writing, the time period for performance under this Agreed Order, by the amount of time that is attributable to the event constituting the force majeure and all future timetables directly impacted by the delay attributable to the force majeure event.

17. The Respondents shall comply with 327 IAC 2-6, 327 IAC 5-2, IC 13-7-4-1,

IC 13-7-20 and all other rules of the Indiana Water Pollution Control Board.

18. The provisions of this Agreed Order shall apply to the Respondents, its employees, successors, agents and assignees, and to all persons, firms and corporations acting through or for Respondents.

19. This Agreed Order in no way relieves the Respondents of their obligation to comply with all applicable environmental law -- Federal, State and local.

20. This Agreed Order shall not limit any authority of the State of Indiana under any applicable statute, including the authority to seek information from Respondents, or to seek access to the property of Respondents, nor shall anything in this Agreed Order be construed to limit the authority of the State of Indiana to undertake any action against any person, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

21. This Agreed Order shall not limit the State of Indiana from seeking Natural Resource Damages under any applicable statute including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. and the Federal Water Pollution Control Act 33 U.S.C. Section 1251 et seq.

22. This Order may be amended by mutual agreement of IDEM and the Respondents. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties, and shall be incorporated into this Order.

23. It is the intent of the parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

24. The effective date of this Order shall be the date this Order is adopted by the Complainant or her delegatee. This Agreed Order shall have no force or effect until the effective date. This Agreed Order shall remain in effect until the Respondents have fully satisfied the terms and conditions numbered one (1) through fifteen (15) of this Order.

25. The provision of this Agreed Order shall terminate upon the Respondents' receipt of written notice from IDEM that the Respondents have demonstrated that the terms of this Order have been satisfactorily completed. Respondent may seek such determination by Complainant after demonstrating compliance with conditions numbered one (1) through fifteen (15) of this Order.

TECHNICAL RECOMMENDATION:

By: Mark W. Stanifer
Mark W. Stanifer, Chief
Water Enforcement Section
Office of Enforcement

Date: 9-1-95

RESPONDENT AMOCO OIL COMPANY

By: K.C. Forsgren
~~Mr. Doug Ford, President~~ K.C. Forsgren

Date: 10/12/95

RESPONDENT AMOCO PIPELINE COMPANY

By:

Date: 9/27/95

COUNSEL FOR COMPLAINANT

By:

Office of Legal Counsel
Department of Environmental
Management

Date: 8/29/95

COUNSEL FOR RESPONDENT

By:

Date: 9/29/95

Approved and adopted by the Indiana Department of Environmental Management this 23rd day of October, 1995.

Kathy Prosser
Commissioner