

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS**

<b>THE STATE OF ILLINOIS, <i>ex rel.</i></b>	)	
<b>LISA MADIGAN, Attorney General of</b>	)	
<b>State of Illinois,</b>	)	
	)	<b>2:09-CV-02120-MPM-DGB</b>
<b>Plaintiff,</b>	)	
<b>v.</b>	)	
<b>SWIFT TRANSPORTATION</b>	)	
<b>COMPANY, INC.</b>	)	
	)	
<b>Defendant,</b>	)	

**CONSENT DECREE**

Plaintiff, THE STATE OF ILLINOIS, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency, the Illinois Department of Natural Resources, and Defendant, SWIFT TRANSPORTATION COMPANY, INC., have agreed to the making of this Consent Decree and submit it to this Court for approval. The parties stipulate that the statement of facts is offered by the Plaintiff for the purpose of Court evaluation of the adequacy of this settlement only and that neither the fact that a party has entered into this Consent Decree, nor any of the facts set forth herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If this Court approves and enters this Consent Decree, Plaintiff and Defendant agree to be bound by the Consent Decree and Defendant agrees not to contest its validity in any subsequent proceeding to implement or enforce its terms.

1. Lisa Madigan, Attorney General of the State of Illinois, on behalf of the State of Illinois, the Illinois Environmental Protection Agency, and the Illinois Department of Natural Resources (hereafter the "State"), filed a complaint in this action pursuant to Section 311(f) of the Clean Water Act, 33 U.S.C. 1321(f) (the "CWA"), Section 107 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9607 ("CERCLA"), the Oil Pollution Act of 1990, 33 U.S.C. 2701 ("OPA"), Section

10 of the Oil Spill Responders Liability Act, 740 ILCS 113/10 (2004) (“OSRLA”), and the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.* (the “State Act”).

2. The State's complaint alleges that the defendant, Swift Transportation, Inc. (“Swift”), is liable under the CWA, CERCLA, OPA, OSRLA, and the State Act, for removal costs and natural resource damages, and violations of the State Act relating to a spill incident of diesel fuel and laundry detergent, non-chlorine bleach, and fabric softener from the fuel tank and cargo, respectively, of a truck and trailer owned and operated by Swift on October 17, 2000, near Champaign, Champaign County, Illinois. Contaminants of concern in the spilled materials included, but were not limited to, dodecylbenzene, sulfonic acid, sodium hydroxide, and diesel fuel. The spilled materials entered into Copper Slough, traveled downstream to the confluence with the Kaskaskia Ditch and from there to a short distance past the confluence of the Kaskaskia Ditch and the Kaskaskia River, an overall distance of 15.9 miles as depicted on Appendix A attached hereto. The spill caused the death of fish and other aquatic life throughout that reach.

3. The Illinois Environmental Protection Agency (“IEPA”) and the Illinois Department of Natural Resources (“IDNR”) have been delegated authority to act as State Trustees for natural resources impacted by the release of hazardous substances. The IEPA is charged with the duty to enforce the State Act. The State of Illinois (the “State”) – by and through the Attorney General of Illinois, on behalf of the People of the State of Illinois, and at the request of IEPA and IDNR – is the plaintiff in this case and a party to this Consent Decree.

4. By entry into this Consent Decree, Swift does not admit any liability to the State for damages for injury to, destruction of, or loss of natural resources, or for the costs of any natural resource damages assessments or for violations of the State Act, CERCLA, CWA, OSRLA, and OPA.

5. The Parties to this Consent Decree recognize, and the Court by entering this Consent Decree finds, that this Consent Decree: (i) has been negotiated by the Parties in good faith; (ii) will avoid

prolonged and complicated litigation among the Parties; (iii) will expedite natural resource restoration actions to be performed by the Trustees; and (iv) is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered and Adjudged as follows:

### **I. JURISDICTION**

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331 and 1345, and Sections 309(b) and 311(b)(10) of the CWA, 33 U.S.C. 1319(b) and 1311(b)(10), Section 113 of CERCLA, 42 U.S.C. 9613, and Section 1017(c) of OPA, 33 U.S.C. § 2717(c), and pendent jurisdiction of the State law claims. The Court also has personal jurisdiction over Swift. Solely for the purposes of this Consent Decree and the underlying complaint, Swift waives all objections and defenses that it may have to the jurisdiction of or venue in this Court. Swift shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **II. PARTIES BOUND**

This Consent Decree applies to and is binding upon the State and upon Swift and its successors and assigns. Any change in ownership or corporate status of Swift including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Swift's responsibilities under this Consent Decree.

### **III. DEFINITIONS**

Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the CWA, CERCLA, the State Act, OSRLA or OPA shall have the meaning assigned to them in the State Act, CERCLA, OSRLA or OPA. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended, 42 U.S.C. 9601-9675.

“Consent Decree” means this Consent Decree and Appendix A attached hereto. In the event of conflict between this Consent Decree and Appendix A, this Consent Decree shall control.

“CWA” shall mean the Clean Water Act, 33 U.S.C. 1251, *et seq.*

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

“Effective Date” means the effective date of this Consent Decree as provided by Section XIV of this Consent Decree (Effective Date and Retention of Jurisdiction).

“IEPA” means the Illinois Environmental Protection Agency and any successor departments or agencies of the State of Illinois.

“Interest,” shall mean interest at the rate specified in Section 2-1303 of the Code of Civil Procedure, 735 ILCS 5/2-1303 (2004).

“IDNR” means the Illinois Department of Natural Resources and any successor departments or agencies of the State of Illinois.

“Swift” means Swift Transportation, Inc.

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

“Natural Resource Damages” means any damages recoverable by the State on behalf of the public, for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources at the Site as a result of the release of hazardous substances and diesel fuel including, but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv)

compensation for injury, destruction, loss, loss of use, or impairment of natural resources; and

(v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

“OPA” means the Oil Pollution Act of 1990, 33 U.S.C. 2701, *et seq.*.

“OSLRA” means the Oil Spill Responders Liability Act, 740 ILCS 113/1, *et seq.*

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

“Parties” means the State and Swift.

“Section” means a portion of this Consent Decree identified by a roman numeral.

“Site” means those portions of Copper Slough, the Kaskaskia Ditch, and the Kaskaskia River which received the releases of hazardous substances and diesel fuel from Swift’s tractor and trailer, including the stream bed, sediments, banks and water affected by the release, and depicted generally on the map attached as Appendix A.

“State” means the State of Illinois as represented by the Attorney General, IEPA and IDNR.

“State Act” means the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*

“Subparagraph” means a portion of this Consent Decree identified by a lower case letter or an arabic numeral in parentheses.

“Trustees” means IEPA and IDNR.

#### **IV. STATEMENT OF PURPOSE**

The mutual objectives of the Parties in entering into this Consent Decree are: (i) to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of the material release at the Site; (ii) to reimburse natural resource damage assessment costs incurred by IEPA, and IDNR; (iii) to resolve Swift's liability for Natural Resource Damages as provided herein; (iv) to resolve Swift's liability for past removal costs related to the material release; and (v) to avoid potentially costly and time-consuming litigation.

#### **V. PAYMENTS BY SWIFT**

1. Payment.

(a) Swift states that payment has been tendered to its attorney of record in this matter in a form acceptable to that attorney and that said attorney has been directed to make the payment costs in the amount of \$176,759.64 incurred by the State on behalf of Swift within ten (10) days after the Effective Date.

(b) That payment shall be made by certified check made payable to the "Natural Resource Restoration Trust Fund for the benefit of the Illinois Department of Natural Resources and Illinois Environmental Protection Agency as representatives of the State of Illinois" and sent to:

Illinois Department of Natural Resources  
Office of Fiscal Management,  
One Natural Resource Way,  
Springfield, IL 62702-1271

2. Of the total amount paid by Swift pursuant to this Section:

(a) \$26,759.64 shall be deposited in a segregated sub-account within the Natural Resource Restoration Trust Fund, to be managed by IDNR as reimbursement for past natural resource damage assessment costs incurred by IDNR.

(b) the balance shall be deposited in a segregated sub-account within the Natural Resource Restoration Trust Fund, to be applied solely and exclusively toward natural resource damage restoration project costs incurred by IDNR.

3. Notice of Payment. Upon making of any payment under Paragraph 2, the attorney for Swift shall send written notice to:

Stan Yonkauski  
Legal Counsel  
Illinois Department of Natural Resources  
One Natural Resource Way  
Springfield, IL 62702-1271

## **VI. NATURAL RESOURCE RESTORATION PROJECTS**

1. Management and Application of Funds.

a. Use of Funds in General. All funds deposited in the segregated sub-account within the Natural Resource Restoration Trust Fund for the use of IDNR to pay for Trustee-sponsored natural resource restoration projects for the Site.

b. Restoration Plan Addressing Use of Funds. The Trustees will prepare a Restoration Plan for the Site that identifies how the funds will be used for restoration, rehabilitation, replacement, or acquisition of equivalent resources. The plan may also identify how funds will be used to address services lost to the public until restoration, rehabilitation, replacement, or acquisition of equivalent resources is completed. Decisions regarding any use or expenditure of the funds under this Section shall be made by the Trustees. Swift shall not be entitled to dispute in any forum or proceeding any decision relating to the use of funds or restoration efforts under this Section.

### **VII. COVENANT NOT TO SUE BY THE STATE**

Covenant by the State. Except as specifically provided by Paragraph VIII.A (General Reservations) and Paragraph VIII.B (Special Reservations Regarding Natural Resource Damages), the State covenants not to sue Swift for past or future removal costs or Natural Resource Damages pursuant to the CWA, CERCLA, OSRLA OPA, or for the violations of the State Act alleged in the Complaint in this cause or for any common law or statutory causes of action, arising from the incident. This covenant not to sue shall take effect upon entry of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by Swift of its obligations under this Consent Decree.

### **VIII. RESERVATION OF RIGHTS BY THE STATE**

The State reserves, and this Consent Decree is without prejudice to, all rights against Swift and with respect to all matters not expressly included within Section VII (Covenant Not to Sue by the State). Notwithstanding any other provisions of this Consent Decree, the State reserves all rights against Swift with respect to:

- (1) claims based on a failure by Swift to meet a requirement of this Consent Decree;
- (2) liability for damages for injury to, destruction of, or loss of natural resources resulting from other releases or threatened releases of hazardous substances relating to a spill incident at a date and location not identified in the Complaint
- (3) liability arising from any release of oil or hazardous substances relating to a spill incident at or impacting the Site by Swift which occurs after the lodging of this Consent Decree; and
- (4) criminal liability.



**IX. COVENANT BY SWIFT**

1. Covenant by Swift. Swift covenants not to sue and agrees not to assert any claims or causes of action against the State, or their contractors or employees, with respect to Natural Resource Damages, the payments made under Paragraph 5, or this Consent Decree, including but not limited to:

- (a) any direct or indirect claim for reimbursement of any payment for Natural Resource Damages from the Oil Spill Response Fund; and
- (b) any claim against the State pursuant to OSRCLA or OPA relating to Natural Resource Damages.

2. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 1013 of OPA, 33 U.S.C. § 2713.

**X. EFFECT OF SETTLEMENT**

1. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

2. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief covered by the Reservation of Rights set forth in Section VIII, Swift 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 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 Covenant Not To Sue by the State set forth in Section VIII.

#### **XI. NOTICES**

Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the State and Swift, respectively.

As to the State:

James L. Morgan  
Senior Assistant Attorney General  
Environmental Bureau South  
500 South Second Street  
Springfield, IL 62706

Stanley Yonkausk, Jr.  
Legal Counsel  
Illinois Department of Natural Resources  
One Natural Resource Way  
Springfield, IL 62702-1271

Michelle Ryan  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 N. Grand Avenue East  
P.O. Box 19276

Springfield, IL 62794-9276

As to Swift:

Frederick S. Mueller  
Johnson & Bell, Ltd.  
33 West Monroe Street  
Suite 2700  
Chicago, IL 60603

## **XII. EFFECTIVE DATE AND RETENTION OF JURISDICTION**

This Consent Decree shall take effect upon entry by the Court. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

## **XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The State reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Swift consents to the entry of this Consent Decree without further notice. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between or against the Parties.

## **XIV. SIGNATORIES/SERVICE**

1. The undersigned representatives of Swift and the State each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

2. Swift hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the State has notified Swift in writing that it no longer supports entry of the Consent Decree.

3. Swift shall identify, on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Swift with respect to all matters arising under or relating to this Consent Decree. Swift hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Code of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.

#### **XV. FINAL JUDGMENT**

1. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

2. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the State and Swift. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

ENTERED this 16<sup>th</sup> day of October, 2009

s/ Michael P. McCuskey

MICHAEL P. McCUSKEY  
CHIEF U.S. DISTRICT JUDGE

The UNDERSIGNED PARTY enters into this Consent Decree in the matter of State of Illinois v. Swift Transportation, Inc.,

FOR THE STATE OF ILLINOIS  
LISA MADIGAN, Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos Litigation Division

Date: September 14, 2009

s/ Thomas E. Davis  
THOMAS E. DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General  
500 South Second Street  
Springfield, IL 62706

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

Date: September 4, 2009

s/ John J. Kim  
JOHN J. KIM  
Chief Legal Counsel

FOR THE ILLINOIS DEPARTMENT OF NATURAL  
RESOURCES

Date: September 29, 2009

s/ Mitchell Cohen  
MITCHELL COHEN  
Chief General Counsel

The UNDERSIGNED PARTY enters into this Consent Decree in the matter of State of Illinois v. Swift Transportation, Inc.,

FOR SWIFT TRANSPORTATION, INC.

Date: April 29, 2009

s/ James F. Mahoney  
Signature

Typed Name: James F. Mahoney

Title: VP

Address: 2200 S. 75<sup>th</sup> Ave.

Phoenix, AZ 85043

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Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: Frederick S. Mueller

Title: Attorney

Address: 33 West Monroe, Suite 2700

Chicago, Illinois 60603