

ENTERED
MAY 2,
2000

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

Frankel

U.S. DISTRICT COURT
DISTRICT OF MAINE
PORTLAND
MAINE

JAN 9 2000

WILLIAM S. BROWNELL, CLERK
BY:

ms
~~DEPUTY CLERK~~
cc-0182

UNITED STATES OF AMERICA,
Plaintiff,
v.
AMITY PRODUCTS CARRIERS, INC.
Defendant.

Civil Action No.

00-11-P-H

STATE OF MAINE,
Plaintiff,
v.
AMITY PRODUCTS CARRIERS, INC.
Defendant.

Civil Action No.

00-12-P-H

CONSENT DECREE

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Defendant.

Civil Action No.

CONSENT DECREE

I. INTRODUCTION

A. The United States of America ("United States") has filed a complaint in this action, pursuant to Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702(b)(2)(A), against Amity Products Carriers, Inc. ("Settling Defendant"), seeking damages for injury to natural resources, including the reasonable cost of assessing the damages, arising from an oil spill that occurred in the Fore River, located between Portland and South Portland, Maine, on September 27, 1996. The complaint alleges that the spill occurred when the Tank Vessel Julie N,

which is owned by Settling Defendant, struck the south side of the Million Dollar Bridge as it went through the draw span (the "Julie N Oil Spill"). The complaint further alleges that 93,189 gallons of IFO 380 Heavy Fuel oil and 86,438 gallons of #2 diesel fuel were spilled into the Fore River, that the spill caused injury to natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, and that the United States has incurred costs in assessing the nature and extent of these injuries.

B. The State of Maine ("State") has also filed a complaint in this action, pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), as well as Section 552(2) of the Maine Oil Discharge Prevention & Pollution Act, 38 MRSA § 552(2) (Supp. 1998), against Settling Defendant, seeking damages for injury to natural resources, arising from the Julie N Oil Spill. The allegations of the State's complaint are similar to the allegations of the United States's complaint.

C. The Parties agree and the Court finds that settlement of these civil matters without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

D. The Parties agree and this Court, by entering this Decree, finds that settlement of this matter will avoid further prolonged and complicated litigation and that this Consent Decree is fair, reasonable, and in the public interest.

E. Settling Defendant does not admit any liability arising out of the transactions or occurrences alleged in this action.

NOW, THEREFORE IT IS ADJUDGED, ORDERED AND DECREED THAT:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and also pursuant to 28 U.S.C. §§ 1331 and 1367. This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District.

III. PARTIES BOUND AND NOTICE OF TRANSFER

2. The provisions of this Consent Decree shall apply to and shall be binding upon the United States, the State of Maine, and upon Settling Defendant and its successors and assigns.

3. No change in ownership or corporate status of the Settling Defendant will in any way alter the responsibilities of the Settling Defendant under this Consent Decree.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in OPA or in the regulations promulgated by NOAA under OPA, 15 C.F.R. Part 990, shall have the meaning assigned to them in OPA or in such regulations. Whenever the following terms are used in this Consent Decree, the definition specified hereinafter shall apply:

"DEP" shall mean the Maine Department of Environmental Protection.

"DIFW" shall mean the Maine Department of Inland Fisheries and Wildlife.

"DMR" shall mean the Maine Department of Marine Resources.

"DOC" shall mean the Maine Department of Conservation.

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

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

"Interest," as that term is used in Section V ("PAYMENT OF NATURAL RESOURCE DAMAGES") of this Consent Decree, shall mean interest, accruing from December 14, 1999, until the date of payment, at the rate set forth at 28 U.S.C. § 1961. For the purpose of calculating the interest rate under 28 U.S.C. § 1961 for the payment required by Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree, the date of judgment shall be deemed to be December 14, 1999. However, if Plaintiffs do not execute this Consent Decree within 30 days after Settling Defendant executes this Consent Decree, interest shall begin to accrue on the date that is the number of days after December 14, 1999, equal to the number of days between the 30th day after the Settling Defendant executes the Consent Decree and the date that Plaintiffs execute the Consent Decree, and the date of judgment, for the purpose of calculating the interest rate under 28 U.S.C. § 1961 shall be deemed to be the same date as the date that the

interest begins to accrue. For the purpose of calculating interest due for the late payment of stipulated penalty payments required by Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree, Interest shall begin to accrue on, and the "date of judgment" for the purposes of calculating the applicable interest rate under 28 U.S.C. § 1961 shall be, the date that the stipulated penalties are due. Interest shall be simple interest calculated on a daily basis.

"Julie N Oil Spill" shall mean the oil spill that occurred, on September 27, 1996, as a result of the collision of the Tank Vessel Julie N with the Million Dollar Bridge spanning the Fore River from Portland to South Portland, Maine, which resulted in the discharge of oil into the Fore River.

"Julie N Oil Spill Restoration Account" shall mean a separate project numbered account established within DOI's Natural Resource Damage Assessment and Restoration Fund, to be used, in accordance with Section VII (IMPLEMENTATION OF RESTORATION PLAN; JULIE N OIL SPILL RESTORATION ACCOUNT) of this Consent Decree, to implement or oversee restoration of natural resources or resource services in accordance with the Restoration Plan.

"Memorandum of Agreement" shall mean the Memorandum of Agreement entered into by the Trustees Regarding Natural Resource Damage Assessment, Restoration and Other Natural Resource Trustee Activities Arising from the M/T Julie N Oil Spill, as well as any

amendments thereof. A copy of the Memorandum of Agreement is attached hereto as Appendix A.

"Natural Resource Damages" shall mean the damages described at Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), and as described at Section 552(2) of the Maine Oil Discharge Prevention & Pollution Act, 38 M.R.S.A. §552(2) (Supp. 1998).

"NOAA" shall mean the National Oceanic and Atmospheric Administration.

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

"Parties" shall mean the Plaintiffs and the Settling Defendant.

"Plaintiffs" shall mean the United States and the State of Maine.

"Restoration Plan" shall mean the Restoration Plan and Environmental Assessment for the September 27, 1996 Julie N Oil Spill, as well as any amendments thereof. A copy of the Restoration Plan is attached hereto as Appendix B.

"Settling Defendant" shall mean Amity Products Carriers, Inc. In addition, for the purposes of Paragraphs 18 and 19 (Plaintiffs' covenants not to sue), Paragraph 20 (Plaintiffs' reservation of rights), and Paragraph 21 (Settling Defendant's covenant not to sue), the term Settling Defendant shall also include Maritime Overseas Corporation, OSG Ship Management, Inc., as well as the officers, directors, and

employees of Amity Products Carriers, Inc., Maritime Overseas Corporation, and OSG Ship Management, Inc., to the extent that their liability arises from actions taken in their official capacities as officers, directors, or employees of these corporations.

"State" shall mean the State of Maine.

"Trustees" shall mean DEP, DIFW, DMR, DOC, NOAA and DOI.

"United States" shall mean the United States of America.

V. PAYMENT OF NATURAL RESOURCE DAMAGES

5. Within 30 days of entry of this Consent Decree, Settling Defendant shall Pay \$1,000,000, plus any Interest due on that amount, into the Julie N Oil Spill Restoration Account, a separate project numbered account established within DOI's Natural Resource Damage Assessment and Restoration Fund, Account No. 14X5198 (NRDAR) ("Julie N Oil Spill Restoration Account"). The funds in the Julie N Oil Spill Restoration Account shall be used in accordance with Section VII (IMPLEMENTATION OF RESTORATION PLAN; JULIE N OIL SPILL RESTORATION ACCOUNT) of this Consent Decree. Settling Defendant shall transfer these funds to the Julie N Oil Spill Restoration Account via an Electronic Funds Transfer ("EFT") through the Automated Clearing House in accordance with instructions to be provided by DOI within 15 days of the date of lodging of the Consent Decree. The addenda record shall be annotated "RE: Julie N Oil Spill Restoration Account"

and shall list Amity Products Carriers, Inc. as the responsible party. Payment shall be deemed to have been made upon receipt of these funds by EFT. A copy of the paperwork documenting the EFT and any accompanying correspondence shall be sent to the persons listed in Section XIII (NOTICES) of this Consent Decree for notices to the United States and the State, as well as to:

Bob White
DOI Restoration Fund
NBC Division of Financial Management Services
Branch of Accounting Operations
7301 W. Mansfield Avenue, D-2960
Denver, Colorado 80235-2230

Bruce Nessler
DOI Restoration Fund
NBC/Division of Financial Services
Branch of Accounting Operations
Mail Stop 1313
1849 C Street, N.W.
Washington, D.C. 20240

NOAA Finance Services Division
Bills and Collection Unit, Caller Service 7025
20020 Century Boulevard
Germantown, Maryland 20874

6. NOAA acknowledges its receipt of a payment in the amount of \$410,000 from Settling Defendant in reimbursement of the costs incurred by NOAA in assessing the natural resource damages alleged to have arisen from the Julie N Oil Spill.

7. DOI acknowledges its receipt of a payment in the amount of \$53,057.09 from Settling Defendant in reimbursement of the costs incurred by DOI in assessing the natural resource damages alleged to have arisen from the Julie N Oil Spill.

8. The State acknowledges its receipt of a payment in the amount of \$24,531.79 from Settling Defendant in reimbursement of

the costs incurred by the State in assessing the natural resource damages alleged to have arisen from the Julie N Oil Spill.

VI. INTEREST AND STIPULATED PENALTIES

9. In the event that the payment required by section v (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree is not paid in a timely manner, Interest shall continue to accrue on the overdue amount through the date of payment, and Settling Defendant shall, in addition to the Interest required by this Paragraph, pay as a stipulated penalty \$1,000 per day that the payment is late.

10. Stipulated penalties are in addition to, and not in lieu of, all other payments and Interest due under this Consent Decree. Stipulated penalties for failure to make the payment required by Section v (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree in a timely manner shall be paid 50% to the United States and 50% to the State.

11. Payments of stipulated penalties to the United States shall be paid by certified check made payable to "U.S. Department of Justice." The payments shall be mailed to Financial Litigation Unit, United States Attorney's Office, District of Maine, East Tower, Sixth Floor, One Hundred Middle Street Plaza, Portland, ME 04101, and shall reference United States v. Amity Products Carriers, Inc. (D. Me.) and the name and address of the party making payment. Payments to the State shall be paid by certified check or cashier's check made payable to "Treasurer, State of Maine". The payments shall be mailed to Mark Margerum,

Bureau of Land and Water Quality, Southern Maine Regional Office, Department of Environmental Protection, 312 Canco Road, Portland, ME 04103, and shall reference State of Maine v. Amity Products Carriers, Inc. (D. Me.) and the name and address of the party making payment. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent, as applicable, to the United States or the State, as provided in Section XII (NOTICES).

12. All penalties due under this Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree shall be due and payable within 30 days of the Settling Defendant's receipt from the United States or the State of a demand for payment. Penalties shall accrue as provided above regardless of whether the United States or the State has notified Settling Defendant of the violation or made a demand for payment

13. If Settling Defendant fails to pay stipulated penalties when due, the United States or the State, as applicable, may institute proceedings to collect the penalties, as well as Interest. If the United States or the State must bring an action to collect any payment required by this Consent Decree, Settling Defendant shall reimburse the United States and the State for all costs of such action, including, but not limited to, the cost of attorney time.

14. Stipulated penalties under this Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree shall be in addition to any other remedies or sanctions available to

Plaintiffs by virtue of Settling Defendant's failure to make timely payment under this Consent Decree.

15. Notwithstanding any other provision of this Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree, the United States and the State may, in their unreviewable discretion, waive payment of any portion of the stipulated penalties due to them that have accrued pursuant to this Consent Decree.

VII. IMPLEMENTATION OF RESTORATION PLAN; JULIE N
OIL SPILL RESTORATION ACCOUNT

16. The Trustees shall implement the Restoration Plan and approve expenditures from the Julie N Oil Spill Restoration Account pursuant to the terms of their Memorandum of Agreement. If the Funds in the Julie N Oil Spill Restoration Account are not sufficient to complete the Restoration Plan, the Trustees shall not be required to expend additional funds to complete the Restoration Plan.

17. All funds in the Julie N Oil Spill Restoration Account, including any interest or return on investment thereon, shall be held in the Julie N Oil Spill Restoration Account solely for use by the Trustees to plan, implement or oversee restoration of natural resources or resource services in accordance with the Restoration Plan. DOI shall, in accordance with law, manage and invest the funds in the Julie N Oil Spill Restoration Account. DOI shall assign the funds in the Julie N Oil Spill Restoration Account a special project number to allow the funds to be maintained as a segregated account within the DOI Natural

Resource Damage Assessment and Restoration Fund. DOI shall not make any charge against the Julie N Oil Spill Restoration Account for investment, management, or any other services provided with respect to operation of the account.

VIII. COVENANT NOT TO SUE BY PLAINTIFFS

18. In consideration of the payment that will be made by the Settling Defendant under Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree, the United States covenants not to sue or take administrative action against Settling Defendant pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), for Natural Resource Damages caused by the Julie N Oil Spill. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments required by Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) and Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree.

19. In consideration of the payment that will be made by the Settling Defendant under Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree, the State covenants not to sue Settling Defendant pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), and pursuant to Section 552(2) of the Maine Oil Discharge Prevention & Pollution Act, 38 MRSA § 552(2) (Supp. 1998), for Natural Resource Damages caused by the Julie N Oil Spill. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments required by Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) and

Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree.

20. Reservations of rights. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters other than those expressly specified in the covenant not to sue set forth in Paragraphs 18 and 19 of this Section, including, but not limited to:

- a. claims based upon a failure of the Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. subrogated claims under Section 1015 of OPA, 33 U.S.C. § 2715, for any amounts paid or to be paid by the Fund in connection with the Julie N Oil Spill, except for any payments made by the Fund to the Trustees with respect to Natural Resource Damages caused by the Julie N Oil Spill;
- d. claims under Section 1002(b)(1) of OPA, 33 U.S.C. § 2702(b)(1), for removal costs,
- e. claims under Section 1002(b)(2)(B) - (F) of OPA, 33 U.S.C. § 2702(b)(2)(B) - (F), for damages to real or personal property, subsistence use, revenues, profits and earning capacity, or public services.

IX. COVENANT BY SETTLING DEFENDANT

21. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the

Plaintiffs, their employees, agents, experts or contractors with respect to the Julie N Oil Spill, except for claims for removal costs or damages submitted to the Fund under Section 1013 of OPA, 33 U.S.C. § 2713, to the extent permitted by Section 1008 of OPA, 33 U.S.C. § 2708.

X. EFFECT OF SETTLEMENT

22. 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 of contribution), defenses, claims, demands, and causes of action which each Party may have with respect to the Julie N Oil Spill against any person not a Party hereto.

23. In any subsequent administrative or judicial proceeding initiated by a Party against any another Party with respect to the Julie N Oil Spill, neither Party shall assert or 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 other Party in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (COVENANT NOT TO SUE BY PLAINTIFFS) or Section IX (COVENANT BY SETTLING DEFENDANT).

XI. MODIFICATION

24. No material modifications of this Consent Decree shall be made without the agreement of the Parties and the approval of the court. Modifications of the Consent Decree that are not material may be made by written agreement of the parties. The Trustees may modify the Memorandum of Agreement pursuant to the terms of that agreement. The Trustees may also modify the Restoration Plan in accordance with the requirements of OPA and any other applicable laws.

XII. NOTICES

25. Whenever under the terms of this Consent Decree notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses and facsimile numbers specified below, unless it is otherwise specifically provided in this Consent Decree. Any change in the individuals designated by any Party must be made in writing to the other Parties. Any correspondence submitted to the Plaintiffs shall include a reference to the case caption and index number of this court action. All notices shall be sent by first-class mail and facsimile.

As to the United States:

Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Facsimile: 202-616-2427

Anton Giedt
National Oceanic and Atmospheric Administration
Office of General Counsel
One Blackburn Drive
Suite 205
Gloucester, MA 01930
Facsimile: 978-281-9389

Mark Barash
United States Department of the Interior
Office of the Solicitor
One Gateway Center
Suite 612
Newton, MA 02458
Facsimile: 617-527-6848

As to the State

Mark Margerum
Bureau of Land and Water Quality
Southern Maine Regional Office
Department of Environmental Protection
312 Canco Road
Portland, ME 04103
Facsimile: 207-822-6303

Dennis Harnish
Assistant Attorney General
Maine Attorney General's Office
State House Station #6
August, Maine 04333
Facsimile: 207-626-8828

As to the Settling Defendant

William Dougherty
Burke & Parsons
1114 Avenue of the Americas
New York, NY 10036-7743
Facsimile: 212-221-1432

John R. Bass II
Thompson, Bull, Furey, Bas & MacColl
120 Exchange Street
Portland, ME 04112
Facsimile: 207-772-1039

XIII. RETENTION OF JURISDICTION

26. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or material modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

27. This Consent Decree shall be lodged with the Court for a period of not less than forty-five (45) days for public notice and comment in accordance with Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5), and 28 C.F.R. § 50.7. Pursuant to 28 C.F.R. § 50.7, the United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

28. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if the United States withdraws or withholds its consent pursuant to Paragraph 27, 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 the Parties.

XV. FINAL JUDGMENT

29. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendant.

XVI. SIGNATORIES/SERVICE

30. The undersigned representatives of the Settling Defendant and the Trustees, as well as the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, 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.

31. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

32. Settling Defendant shall identify, on the attached signature page, the name, address, telephone number and facsimile number of an agent who is authorized to accept service of process, if served by both mail and facsimile, on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court,

including, but not limited to, service of a summons.

SO ORDERED THIS 2^d DAY OF May, 2000.

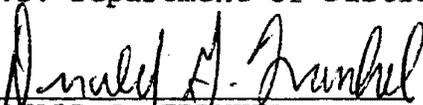

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this consent decree in the matters of United States v. Amity Products Carriers, Inc. and State of Maine v. Amity Products Carriers, Inc. relating to the Julie N Oil Spill.

FOR THE UNITED STATES:

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____



DONALD G. FRANKEL
Trial Attorney
Environmental Enforcement Section
Department of Justice
One Gateway Center
Suite 616
Newton, MA 02458

Date: 12/22/99

JAY P. McCLOSKEY
United States Attorney
District of Maine

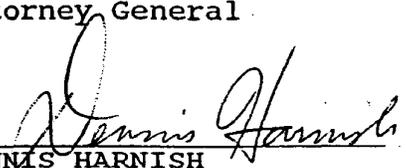
DAVID R. COLLINS
Assistant United States Attorney
United States Attorney's Office
East Tower
Sixth Floor
One Hundred Middle Street Plaza
Portland, ME 04101

THE UNDERSIGNED PARTY enters into this consent decree in the matters of United States v. Amity Products Carriers, Inc. and State of Maine v. Amity Products Carriers, Inc. relating to the Julie N Oil Spill.

FOR THE STATE OF MAINE

ANDREW KETTERER
Attorney General

By:

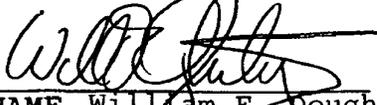

DENNIS HARNISH
Assistant Attorney General
State House Station #6
Augusta, ME 04333

Date:

December 17, 1999

THE UNDERSIGNED PARTY enters into this consent decree in the matters of United States v. Amity Products Carriers, Inc. and State of Maine v. Amity Products Carriers, Inc. relating to the Julie N Oil Spill.

FOR AMITY PRODUCTS CARRIERS, INC.



Date: December 2, 1999

NAME William F. Dougherty, Burke & Parsons
TITLE Attorneys For
Amity Products Carriers, Inc.

Agent authorized to accept service on behalf of Amity Products Carriers, Inc.:

William F. Dougherty
Burke & Parsons
114 Avenue of the Americas
New York, NY 10036-7743
(212) 354-3800