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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

BP Exploration (Alaska), Inc.

Prudhoe Bay, Alaska

Respondent.

)  
) DOCKET NO. CWA-10-2016-0068

)  
) **CONSENT AGREEMENT AND**  
) **FINAL ORDER**

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(6). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. Pursuant to Section 311(b)(6) of Act, 33 U.S.C. § 1321(b)(6), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and BP Exploration (Alaska), Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class I penalty is proposed to be assessed pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant").

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1. The Clean Water Act prohibits the discharge of any pollutant, including oil, by any person, except as authorized by and in compliance with other sections of the Act. 33 U.S.C. § 1311(a).

3.2. The Clean Water Act further prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or the environment of the United States. 33 U.S.C. § 1321(b)(3). The Act defines "discharge" to include "any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . ." 33 U.S.C. § 1321(a)(2). "Navigable

waters” are defined as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

3.3. Pursuant to 33 U.S.C. § 1321(b)(4), EPA has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that violate applicable water quality standards, or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3.

3.4. Respondent is a corporation organized under the laws of the State of Delaware and is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

3.5. Respondent operates the Prudhoe Bay Western Operating Area of the Prudhoe Bay Oil Field on Alaska’s North Slope (the “Facility”).

3.6. On April 28, 2014, a mixture of natural gas, crude oil, and produced water was released from the H Pad Well 8 three-phase flowline at the Facility, misting onto approximately 33 acres of snow-covered tundra and two acres of gravel pad. Responders at the time of the spill estimated the spill volume to be approximately 17 barrels. The spill constituted a “discharge” within the meaning of 33 U.S.C. § 1321(a)(2).

3.7. Crude oil is an “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

3.8. Respondent’s April 28, 2014 discharge of oil from the Facility violated water quality standards.

3.9. The tundra wetlands of the spill site are located approximately 740 feet west of an unnamed tundra pond, 2.5 miles east of the Kuparuk River, 3.5 miles northwest of the Putuligayuk River, and eight miles west of Prudhoe Bay of the Beaufort Sea. The Kuparuk River, Putuligayuk River, Beaufort Sea and the wetlands adjacent to those water bodies are “navigable waters” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. § 1321(b)(3) and 1362(7).

3.10. Respondent’s April 28, 2014 discharge of oil from the Facility upon the adjoining shoreline and navigable waters of the United States in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, violated Section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3).

#### IV. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations of this CAFO.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.
- 4.3. As required by Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent’s economic benefit of noncompliance; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$30,000. This penalty amount has been agreed upon in consideration of the statutory penalty

4.7.1. Interest. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

factors, including Respondent's agreement to pay a \$100,000 penalty to the State of Alaska for the same incident alleged above.

4.4. Respondent agrees to pay the civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Kate Spaulding  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

May, 16, 2016

Neil J. Loader

NEIL LOADER, Vice President of Operations  
BP Exploration (Alaska), Inc.

DATED:

FOR COMPLAINANT:

5/17/2016

Edward J. Kowalski

EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

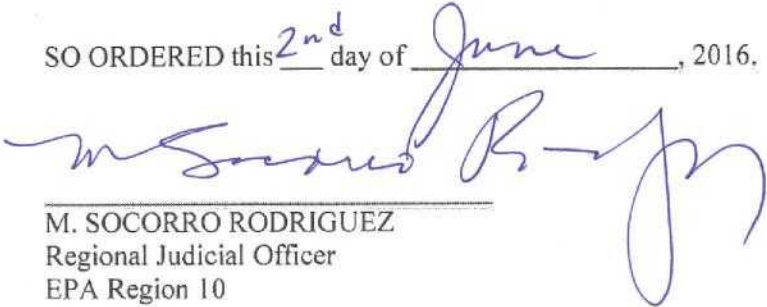
V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO resolves the civil claims of the EPA for the CWA violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 2<sup>nd</sup> day of June, 2016.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: BP Exploration (Alaska), Inc., DOCKET NO.: CWA-10-2016-0068**, was filed with the Regional Hearing Clerk on Date.

On Date, the undersigned certifies that a true and correct copy of the document was delivered to:

Stephanie Mairs  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on Date, to:

Amy MacKenzie  
BP Exploration (Alaska), Inc.  
900 E. Benson Boulevard  
Anchorage, AK 99508

DATED this 2 day of June 2016.



Teresa Luna  
Regional Hearing Clerk  
EPA Region 10

