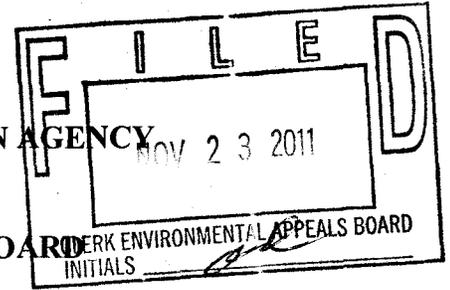


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



BEFORE THE ENVIRONMENTAL APEALS BOARD

IN THE MATTER OF: )  
)  
BP Exploration (Alaska) Inc. )  
BP Products North America Inc. )  
BP West Coast Products LLC )  
BP Corporation North America Inc. )  
)  
Respondents. )

Docket No. RCRA-HQ-2011-5054

ENVIR. APEALS BOARD

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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. Complainant, United States Environmental Protection Agency (“EPA”), and Respondents, BP Exploration (Alaska) Inc., BP Products North America Inc., BP West Coast Products LLC, and BP Corporation North America Inc., (collectively, the “Parties”) having agreed to settle this action, consent to the terms of this Consent Agreement (“Agreement”) and the attached proposed Final Order, hereby incorporated by reference, before the taking of any testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Agreement and the attached proposed Final Order.

2. This civil administrative action is instituted under Sections 3008(a) and (h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments (“HSWA”) of 1984 (collectively “RCRA”), 42 U.S.C. §§ 6928(a) and (h).

3. Adam M. Kushner, Director, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, and Elliott J. Gilberg, Director, Office of Site Remediation Enforcement, Office of Enforcement and Compliance Assurance, are authorized, by lawful

delegation, to institute and settle civil administrative actions brought pursuant to Sections 3008(a) and (h) of RCRA, 42 U.S.C. §§ 6928(a) and (h).

4. The Parties, having sought to informally settle the matter, have agreed to the terms of this Agreement and attached proposed Final Order in order to resolve this action without hearing or other litigation.

5. The terms of this Agreement and attached proposed Final Order constitute a full and final settlement between the Parties for all claims for civil penalties pursuant to Sections 3008(a) and (h) of RCRA, 42 U.S.C. §§ 6928(a) and (h), for the alleged violations of RCRA, as specified in Section VI (Conclusions of Law) of this Agreement. Compliance with this Agreement and attached proposed Final Order shall not be a defense to any other actions commenced pursuant to federal, state, and local environmental laws and it is the responsibility of Respondents to comply with all applicable provisions of RCRA, and any other federal, state, or local laws and regulations.

6. Respondents neither admit nor deny the specific factual allegations in Sections V (Findings of Fact) and VI (Conclusions of Law) of this Agreement. 40 C.F.R. § 22.18(b).

7. The civil penalty specified in Section VII (Terms of Agreement) shall be paid as full and final settlement for all claims specified in this Agreement. 40 C.F.R. § 22.18(b).

8. Each party to this Agreement shall bear its own costs and attorneys' fees in the action resolved by this Agreement and attached proposed Final Order.

## **II. JURISDICTION/WAIVER OF RIGHT TO HEARING**

9. This Agreement is entered into pursuant to Sections 3008(a) and (h) of RCRA, 42 U.S.C. §§ 6928(a) and (h), and the "Consolidated Rules of Practice Governing the

Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (hereinafter the “Consolidated Rules”).

10. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the EPA Administrator may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, or of any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA which may be subject to the assessment of civil penalties and issuance of compliance orders as provided by Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Failure to comply with any corrective action order issued under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), may constitute a violation of Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

11. Except for the State of Alaska,<sup>1</sup> the following Affected States have been authorized, pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to administer a state hazardous waste program in accordance with the notice provided in the Federal Register:

**California:** Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the EPA Administrator granted the State of California final authorization to administer a state hazardous waste program in lieu of the federal government’s base RCRA program, effective August 1, 1992 (57 Fed. Reg. 32,726 (July 23, 1992)). The EPA Administrator granted final authorization to administer additional RCRA and certain HSWA requirements effective September 26, 2001 (66 Fed. Reg. 49,118 (Sept. 26, 2001)). The EPA-authorized California regulations are codified at CAL. CODE REGS. tit. 22, § 66001 et seq.

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<sup>1</sup> Alaska has not been authorized to carry out a hazardous waste program under Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the federal hazardous waste regulations promulgated thereunder, 40 C.F.R. Parts 260-270, apply and are enforced in Alaska.

**Illinois:** Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the EPA Administrator granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program, effective January 31, 1986 (51 Fed. Reg. 3778 (Jan. 30, 1986)). The EPA Administrator granted final authorization to administer additional RCRA and certain HSWA requirements effective March 5, 1988 (53 Fed. Reg. 126 (Jan. 5, 1988)); April 30, 1990 (55 Fed. Reg. 7320 (Mar. 1, 1990)); August 15, 1994 (59 Fed. Reg. 30,525 (Jun. 14, 1994)); November 13, 1989 (54 Fed. Reg. 37,649 (Sep. 12, 1989)); March 31, 1992 (57 Fed. Reg. 3722 (Jan. 31, 1992)); May 14, 1996 (61 Fed. Reg. 10,684 (Mar. 15, 1996)); June 3, 1991 (56 Fed. Reg. 13,595 (Apr. 3, 1991)); and October 4, 1996 (61 Fed. Reg. 40,520 (Aug. 5, 1996)). The EPA-authorized Illinois regulations are codified at ILL. ADMIN. CODE tit. 35, Subtit. G, Part 703 et seq. *See also* 40 C.F.R. § 272.700 et seq.

**Indiana:** Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the EPA Administrator granted the State of Indiana final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program, effective January 31, 1986 (51 Fed. Reg. 3953 (Jan. 31, 1986)). The EPA Administrator granted final authorization to administer additional RCRA and certain HSWA requirements effective December 31, 1986 (51 Fed. Reg. 39,752 (Oct. 31, 1986)); January 19, 1988 (53 Fed. Reg. 128 (Jan. 5, 1988)); September 11, 1989 (54 Fed. Reg. 29,557 (July 13, 1989)); September 23, 1991 (56 Fed. Reg. 33,717 (July 23, 1991)); September 23, 1991 (56 Fed. Reg. 33,866 (July 24, 1991)); September 27, 1991 (56 Fed. Reg. 35,831 (July 29, 1991)); September 30, 1991 (56 Fed. Reg. 36,010 (July 30, 1991)); October 21, 1996 (61 Fed. Reg. 43,018 (Aug. 20, 1996)); November 30, 1999 (64 Fed.

Reg. 37,692 (Sept 1, 1999)); January 4, 2001 (66 Fed. Reg. 733 (Jan. 4, 2001)); December 6, 2001 (66 Fed. Reg. 63,331 (Dec. 6, 2001)); October 29, 2004 (69 Fed. Reg. 63,100 (Oct. 29, 2004)); and November 23, 2005 (70 Fed. Reg. 70,740 (Nov. 23, 2005)). The EPA-authorized Indiana regulations are codified at 329 IND. ADMIN. CODE 3.1-1-1 et seq. *See also* 40 C.F.R. § 272.751 et seq.

**Ohio:** Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the EPA Administrator granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program, effective June 30, 1989 (54 Fed. Reg. 27,170 (June 28, 1989)). The EPA Administrator granted final authorization to administer additional RCRA and certain HSWA requirements effective June 7, 1991 (56 Fed. Reg. 14,203 (Apr. 8, 1991)); August 19, 1991 (56 Fed. Reg. 28,088 (June 19, 1991)) (correcting 56 Fed. Reg. 14,203 (Apr. 8, 1991)); September 25, 1995 (60 Fed. Reg. 38,502 (July 27, 1995)); December 23, 1996 (61 Fed. Reg. 54,950 (Oct. 23, 1996)); January 24, 2003 (68 Fed. Reg. 3429 (Jan. 24, 2003)); January 20, 2006 (71 Fed. Reg. 3220 (Jan. 20, 2006)); and October 29, 2007 (72 Fed. Reg. 61,063 (Oct. 29, 2007)). The EPA-authorized Ohio regulations are codified at OHIO ADMIN. CODE 3745:50-01 et seq. *See also* 40 C.F.R. § 271.1800 et seq.

**Texas:** Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the EPA Administrator granted the State of Texas final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program, effective January 26, 1984 (49 Fed. Reg. 48,300 (Dec. 12, 1984)). The EPA Administrator granted final authorization to administer additional RCRA and certain HSWA requirements effective December 26, 1984 (50 Fed. Reg. 11,858 (Mar. 26, 1985))

(clarifying 49 Fed. Reg. 48,300 (Dec. 12, 1984)); October 4, 1985 (51 Fed. Reg. 3952 (Jan. 31, 1986)); February 17, 1987 (51 Fed. Reg. 45,320 (Dec. 18, 1986)); March 15, 1990 (55 Fed. Reg. 7318 (Mar. 1, 1990)); July 23, 1990 (55 Fed. Reg. 21,383 (May 24, 1990)); October 21, 1991 (56 Fed. Reg. 41,626 (Aug. 22, 1991)); December 4, 1992 (57 Fed. Reg. 45,719 (Oct. 5, 1992)); June 27, 1994 (59 Fed. Reg. 16,987 (Apr. 11, 1994)); June 27, 1994 (59 Fed. Reg. 17,273 (Apr. 12, 1994)); November 26, 1997 (62 Fed. Reg. 47,947 (Sept. 12, 1997)); October 18, 1999 (64 Fed. Reg. 44,836 (Aug. 18, 1999)); September 11, 2000 (65 Fed. Reg. 43,246 (July 13, 2000)); June 14, 2005 (70 Fed. Reg. 34,371 (June 14, 2005)); December 29, 2008 (73 Fed. Reg. 64,252 (Oct. 29, 2008)); and July 13, 2009 (74 Fed. Reg. 22,470 (May 13, 2009)). The EPA-authorized Texas regulations are codified at 30 TEX. ADMIN. CODE § 335.1 et seq. *See also* 40 C.F.R. § 272.2201 et seq.

**Utah:** Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the state of Utah final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program, effective October 24, 1984 (49 Fed. Reg. 39,683 (Oct. 10, 1984)). The EPA Administrator granted final authorization to administer additional RCRA and certain HSWA requirements effective March 7, 1989 (54 Fed. Reg. 7417 (Feb. 21, 1989)); July 22, 1991 (56 Fed. Reg. 37,291 (Aug. 6, 1991)); July 14, 1992 (57 Fed. Reg. 20,770 (May 15, 1992)); April 13, 1993 (58 Fed. Reg. 8232 (Feb. 12, 1993)); December 13, 1994 (59 Fed. Reg. 52,084 (Oct. 14, 1994)); July 21, 1997 (62 Fed. Reg. 27,501 (May 20, 1997)); March 15, 1999 (64 Fed. Reg. 2144 (Jan. 13, 1999)); January 16, 2001 (65 Fed. Reg. 61,109 (Oct. 16, 2000)); July 7, 2002 (67 Fed. Reg. 30,599 (May 7, 2002)); June 11, 2003 (68 Fed. Reg.

34,829 (June 11, 2003)); and May 23, 2008 (73 Fed. Reg. 29,987 (May 23, 2008)). The EPA-authorized Utah regulations are codified at UTAH ADMIN. CODE r. 315-1 et seq. *See also* 40 C.F.R. § 272.2251 et seq.

12. The Consolidated Rules provide that where the parties agree to the settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order. The Parties agree to the commencement and conclusion of this cause of action as prescribed by the Consolidated Rules, 40 C.F.R. Part 22, and more specifically 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

13. Respondents stipulate that EPA has the authority to bring an administrative action for these violations, to compel compliance, and to assess civil penalties pursuant to RCRA Sections 3008(a) and (h), 42 U.S.C. §§ 6928(a) and (h). For purposes of this Agreement and attached proposed Final Order and the enforcement thereof, Respondents stipulate that EPA's Environmental Appeals Board has jurisdiction over the subject matter which is the basis of this Agreement and attached proposed Final Order and personal jurisdiction over the Respondents pursuant to 40 C.F.R. § 22.18.

14. Solely for purposes of this Agreement and attached proposed Final Order and the enforcement thereof, Respondents hereby waive their right to request a judicial or administrative hearing on any issue of law or fact set forth in this Agreement pursuant to RCRA Section 3008(b), 42 U.S.C. § 6928(b). Respondents waive their right to appeal the proposed Final Order accompanying this Agreement pursuant to 40 C.F.R. § 22.18.

15. EPA has provided a notice of commencement of this action, as appropriate, to the relevant Affected States pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

### III. PARTIES BOUND

16. This Agreement shall take full effect upon signing and filing of the attached proposed Final Order by the Environmental Appeals Board and shall apply to and be binding upon the Parties, and their respective officers, directors, employees, successors, and assigns.

17. Each Party certifies that at least one of its undersigned representatives is fully authorized by the Party whom he or she represents to enter into the terms and conditions of the Agreement and to execute it on behalf of that Party.

### IV. DEFINITIONS

18. Unless otherwise expressly provided herein, terms used in the Agreement that are defined in RCRA, 42 U.S.C. §§ 6902-6991i, or in regulations promulgated under RCRA, 40 C.F.R. Parts 260-270, or in a state's authorized hazardous waste program, shall have the same meaning assigned to them in such.

19. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

- a. "Affected States" shall mean Alaska, California, Illinois, Indiana, Ohio, Texas, and Utah.
- b. "Carson Refinery" shall mean the facility located in Carson, California (EPA ID No. CAD077227049).
- c. "Complainant" shall mean the United States Environmental Protection Agency or EPA.
- d. "Compliant Financial Assurance" shall mean financial assurance that meets the standards set out in 40 C.F.R. Parts 264 and 265, Subpart H (or the authorized state requirements), as applicable.

e. "Consent Agreement" or "Agreement" shall mean this Consent Agreement and attached proposed Final Order and all Attachments hereto. In the event of conflict between this Agreement and any Attachment, this Agreement shall control.

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

g. "Financial Mechanism" shall mean a trust fund, payment or performance surety bond, insurance, letter of credit, written guarantee, or demonstration through the financial test.

h. "Lima Refinery" shall mean the facility located in Lima, Ohio (EPA ID No. OHD005051826).

i. "Notify" and "Submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the United States mail or dispatch by express courier.

j. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral and, in some cases, an associated lower case letter.

k. "Prudhoe Bay Unit" shall mean the facility located in the North Slope Borough on the North Slope of Alaska, adjacent to the town of Deadhorse, Alaska (EPA ID No. AKD000643239).

l. "Parties" shall mean Complainant and Respondents.

- m. "Respondents" shall mean BP Exploration (Alaska) Inc., BP Products North America Inc., BP West Coast Products LLC, and BP Corporation North America Inc.
- n. "Salt Lake City Refinery" shall mean the facility located in Salt Lake City, Utah (EPA ID No. UTD000826370).
- o. "Section" shall mean a portion of this Agreement identified by a roman numeral.
- p. "Texas City Refinery I" shall mean the facility located in Texas City, Texas (EPA ID No. TXD008080533).
- q. "Texas City Refinery II" shall mean the facility located in Texas City, Texas (EPA ID No. TXD072181381).
- r. "Toledo Refinery" shall mean the facility located in Oregon, Ohio (EPA ID No. OHD005057542).
- s. "Whiting Refinery (lakefront)" shall mean the facility located in Whiting, Indiana (EPA ID No. IND000810861).
- t. "Whiting Refinery (refinery)" shall mean the spent bender catalyst waste pile located in Whiting, Indiana (EPA ID No. IND074375585).
- u. "Wood River Refinery (main plant)" shall mean the facility located in Wood River, Illinois (EPA ID No. ILD980700967).
- v. "Wood River Refinery (riverfront)" shall mean the facility located in Wood River, Illinois (EPA ID No. ILD980503106).

## V. FINDINGS OF FACT

### A. Background on Respondents and Respondents' Corporate Family.

- 20. Respondents are companies that produce, refine, or market oil and gas.

21. Respondents are the owners and/or operators of facilities that treat, store, or dispose of hazardous waste (hereinafter "TSDs").

22. Respondent BP Exploration (Alaska) Inc.'s corporate office is located at 900 East Benson Boulevard, Anchorage, Alaska 99519-6612, and is incorporated in the State of Delaware. Respondent BP Products North America Inc.'s corporate office is located at 501 Westlake Park Boulevard, Houston, Texas 77079, and is incorporated in the State of Maryland. Respondent BP West Coast Products LLC's office is located at 6 Centerpointe Drive, La Palma, California 90623, and is a California limited liability company.

23. Respondent BP Corporation North America Inc. is an affiliate company of BP Exploration (Alaska) Inc., and a higher-tier parent corporation of BP Products North America Inc. and BP West Coast Products LLC. BP Corporation North America Inc.'s corporate office is located at 501 Westlake Park Boulevard, Houston, Texas 77079, and is incorporated in the State of Indiana.

24. BP Capital Markets America Inc. is a subsidiary of BP Corporation North America Inc., and an affiliate company of BP Exploration (Alaska) Inc., BP Products North America Inc., and BP West Coast Products LLC. BP Capital Markets America Inc.'s corporate office is located at 501 Westlake Park Boulevard, Houston, Texas 77079, and is incorporated in the State of Delaware.

**B. Respondent BP Exploration (Alaska) Inc.'s Financial Assurance Requirements.**

25. Respondent BP Exploration (Alaska) Inc. operates the Prudhoe Bay Unit, a TSD located on the North Slope of Alaska. The Prudhoe Bay Unit was formerly divided into two areas: (a) the Western Operating Area; and (b) the Eastern Operating Area. The Western Operating Area received interim status in 1982; the Eastern Operating Area received interim

status in 1986. The Prudhoe Bay Unit currently operates under a Standardized Permit issued by EPA Region 10 on October 15, 2009. EPA Region 10 issued a RCRA Section 3008(h), 42 U.S.C. § 42 U.S.C. § 6928(h), administrative order on consent for corrective action at the Prudhoe Bay Unit former Tuboscope site on August 6, 1999 (*see In re BP Exploration (Alaska) Inc. Prudhoe Bay Western Operations Area, Administrative Order on Consent, EPA Docket No. RCRA-10-99-0179*).

26. Respondent BP Exploration (Alaska) Inc. was required to provide financial assurance for closure obligations at the Prudhoe Bay Unit while subject to interim status, pursuant to 40 C.F.R. § 265.143.

27. Respondent BP Exploration (Alaska) Inc. is required to provide financial assurance for closure care at the Prudhoe Bay Unit pursuant to the Standardized Permit issued on October 15, 2009, Module VII.A., referencing the requirements under 40 C.F.R. Part 267 Subpart H.

28. Respondent BP Exploration (Alaska) Inc. was required to provide financial assurance for third-party liability obligations at the Prudhoe Bay Unit while subject to interim status, pursuant to 40 C.F.R. § 265.147.

29. Respondent BP Exploration (Alaska) Inc. is required to provide financial assurance for third-party liability at the Prudhoe Bay Unit pursuant to the Standardized Permit issued on October 15, 2009, Module VII.A., referencing the requirements under 40 C.F.R. Part 267 Subpart H.

30. Respondent BP Exploration (Alaska) Inc. is required to provide financial assurance for corrective action obligations at the Prudhoe Bay Unit pursuant to the RCRA

Section 3008(h) Administrative Order on Consent, EPA Docket Number RCRA-10-99-0179, dated August 6, 1999, Section XXVII, referencing the requirements under 40 C.F.R. § 265.143.

**C. Respondent BP Products North America Inc.'s Financial Assurance Requirements.**

31. Respondent BP Products North America Inc. owns and/or operates nine (9) TSDs in the States of Illinois, Indiana, Ohio, Texas, and Utah that are subject to this Agreement and attached proposed Final Order. Five (5) of these TSDs have been closed and are in various stages of corrective action and/or post-closure care. Each TSD has been issued a hazardous waste permit or is subject to a consent decree, as identified below:

a. The Wood River Refinery (main plant) operates under Permit No. B-147 issued by Illinois on September 30, 1993, as modified.

b. The Wood River Refinery (riverfront) operates under Permit No. B-145 issued by Illinois on September 30, 1993, as modified.

c. The Whiting Refinery (lakefront) operates under a Hazardous Waste Management Permit issued by Indiana on December 6, 1989 and renewed on September 26, 2006 and a Hazardous Waste Post-Closure Permit issued by Indiana on March 30, 2007.

d. The Whiting Refinery (refinery) is subject to *United States v. BP Exploration & Oil Co.*, Consent Decree, Civil No. 2:96 CV 095 RL, entered on August 29, 2001 in the United States District Court for the Northern District of Indiana Hammond Division. The Indiana Department of Environmental Management certified the Whiting Refinery (refinery) as closed on September 10, 2008.

e. The Lima Refinery operates under Permit No. OHD 03-02-0390 issued by Ohio on June 20, 2003. BP Products North America Inc. owns and/or operates the waste disposal

area at the Lima Refinery. The Lima Refinery is otherwise owned and operated by Husky Energy Inc.

f. The Toledo Refinery operates under Permit No. OHD 03-48-0411 issued by Ohio on May 23, 2002, as subsequently modified. The Toledo Refinery is owned by BP Husky Refining LLC.

g. The Texas City Refinery I operates under Permit No. HW-50255 issued by Texas on May 20, 1991.

h. The Texas City Refinery II operates under Permit No. HW-50183 issued by Texas on September 30, 1987.

i. The Salt Lake City Refinery operates under Closed Hazardous Waste Management Facility Post-Closure Permit issued by Utah in or around 1987 and reissued on October 28, 2007.

32. Respondent BP Products North America Inc. is required to provide financial assurance for closure obligations at the following facilities:

a. Wood River Refinery (riverfront) pursuant to Permit No. B-145, Section III.G., referencing the requirements under ILL. ADMIN. CODE Part 724;

b. Whiting Refinery (lakefront) pursuant to Hazardous Waste Management Permit, Sections II.N and II.G, referencing 329 IND. ADMIN. CODE 3.1-15-4 and 3.1-15-10;

c. Texas City Refinery I pursuant to Permit No. HW-50255, Section VII.B., referencing the requirements under 30 TEX. ADMIN. CODE Part 1, Ch. 37; and

d. Texas City Refinery II pursuant to Permit No. HW-50183, Section VII.B., referencing the requirements under 40 C.F.R. Part 264 Subpart H.

33. Respondent BP Products North America is required to provide financial assurance for post-closure obligations at the following facilities:

a. Wood River Refinery (riverfront) pursuant to Permit No. B-145, Section V.F., referencing the requirements under ILL. ADMIN. CODE tit. 35, Subtit. G, Chap. I(7), Subchap. C, Part 724, Subpart H;

b. Wood River Refinery (main plant) pursuant to Permit No. B-147, Section III.61, referencing the requirements under ILL. ADMIN. CODE tit. 35, § 724.245;

c. Whiting Refinery (lakefront) pursuant to Hazardous Waste Management Permit, Section II.G, referencing 329 IND. ADMIN. CODE 3.1-15-6 and 3.1-15-10;

d. Lima Refinery pursuant to Permit No. 03-02-0390, Module B.37, referencing the requirements under OHIO ADMIN. CODE r. 3745;

e. Toledo Refinery pursuant to Permit No. 03-48-0411, Module B.37, referencing the requirements under OHIO ADMIN. CODE r. 3745;

f. Texas City Refinery I pursuant to Permit No. HW-50255, Section VI.H., referencing the requirements under 30 TEX. ADMIN. CODE Part 1, Ch. 37 and 40 C.F.R. Part 264 Subpart H; and

g. Texas City Refinery II pursuant to Permit No. HW-50183, Section VII.E., referencing the requirements under 40 C.F.R. Part 264 Subpart H.

34. Respondent BP Products North America is required to provide financial assurance for third-party liability obligations at the following facilities:

a. Wood River Refinery (riverfront) pursuant to Permit No. B-145, Section III.G., referencing the requirements under ILL. ADMIN. CODE Part 724;

b. Whiting Refinery (lakefront) pursuant to Hazardous Waste Management Permit, Section II.N, referencing 329 IND. ADMIN. CODE 3.1-15-8 and 3.1-15-10;

c. Texas City Refinery I pursuant to Permit No. HW-50255, Section VIII.A, referencing the requirements under 30 TEX. ADMIN. CODE Part 1, Ch. 37;

d. Texas City Refinery II pursuant to Permit No. HW-50183, Section VIII.A., referencing the requirements under 40 C.F.R. § 264.147; and

e. Salt Lake City Refinery pursuant to the Closed Hazardous Waste Management Facility Post-Closure Permit, Module II.H., referencing the requirements under UTAH ADMIN. CODE r. 315-8-8.

35. Respondent BP Products North America is required to provide financial assurance for corrective action obligations at the following facilities:

a. Wood River Refinery (riverfront) pursuant to Permit No. B-145, Section VII.C., referencing ILL. ADMIN. CODE tit. 35, §§ 724.243 and 724.251;

b. Wood River Refinery (main plant) pursuant to Permit No. B-147, Section IV.D., referencing ILL. ADMIN. CODE tit. 35, §§ 724.243 and 724.251;

c. Lima Refinery pursuant to Permit No. 03-02-0390, Module E.9(h), referencing OHIO ADMIN. CODE § 3745-50-11; and

d. Toledo Refinery pursuant to Permit No. 03-48-0411, Module E.9(g), referencing OHIO ADMIN. CODE § 3745-50-11.

36. Respondent BP Products North America had been required to provide financial assurance for closure, post-closure, and third-party liability at the Whiting Refinery (refinery) pursuant to Consent Decree, Civil No. 2:96 CV 095 RL, Section V, paragraphs 23.H and 23.I,

referencing the requirements under 329 IND. ADMIN. CODE 3.1-9-1, 3.1-9-2(9), and 3.1-15. The Indiana Department of Environmental Management released the Whiting Refinery (refinery) from the requirement to provide financial assurance on September 5, 2008.

**D. BP West Coast Products LLC's Financial Assurance Requirements.**

37. Respondent BP West Coast Products LLC owns and/or operates the Carson Refinery, a TSD located in Carson, California. The Carson Refinery operates under Permit No. 02-SAC-06 issued by California on December 23, 2003.

38. Respondent BP West Coast Products LLC is required to provide financial assurance for post-closure obligations at the Carson Refinery pursuant to Permit No. 02-SAC-06, Part V.6., referencing the requirements under CAL. CODE REGS. tit. 22, § 66264.145.

39. Respondent BP West Coast Products LLC is required to provide financial assurance for third-party obligations at the Carson Refinery pursuant Permit No. 02-SAC-06, Part V.6., referencing the requirements under CAL. CODE REGS. tit. 22, § 66264.147.

**E. Financial Assurances Submitted by Respondents from 2006 to 2010.**

40. To meet their financial assurance obligations (i.e., closure, post-closure, third-party liability, and/or corrective action) from 2006 to 2010, BP Exploration (Alaska) Inc., BP Products North America Inc., and BP West Coast Products LLC obtained written guarantees from BP Corporation North America Inc.

41. BP Corporation North America Inc. included documentation for a financial test demonstration as part of the written guarantees provided on behalf of Respondents. The documentation included, in part, letters from the guarantor's Chief Financial Officer ("CFO").

42. From 2006 to 2010, as part of the bond rating and/or senior unsecured debt rating portion of the financial test, BP Corporation North America Inc. did not use a current bond rating

issued to it by Standard & Poor's ("S&P") or Moody's and/or senior unsecured debt rating issued to it by S&P or Moody's. In its CFO letters, BP Corporation North America instead listed a bond, which has the CUSIP number 10373QAA8, issued by another company, its wholly owned subsidiary, BP Capital Markets America Inc. The listed bond was issued by BP Capital Markets America Inc. on June 4, 2003 and matures on June 15, 2018. On the 2006, 2007, and 2008 CFO's letters, the listed bond was noted as having a rating of AA+ by S&P; and on the 2009 and 2010 CFO's letters, the listed bond was noted as having a rating of AA by S&P. BP Corporation North America Inc. did not have outstanding bond issuances or senior unsecured debt in its own name.

**F. Communications Regarding Respondents' Financial Assurance Submissions.**

43. On May 3, 2010, California Department of Toxic Substances Control sent a statement of violations to Respondent BP West Coast Products LLC, a subsidiary of BP Products North America Inc., describing the use of the BP Capital Markets America Inc. bond as a violation of the financial assurance requirements in California.

44. On May 21, 2010, BP contacted the Complainant, stating that it received notice from California that it was in violation of the financial assurance regulations and that it was working with the State to resolve the violations.

45. On July 7, 2010, Utah Department of Environmental Quality sent a Request for Information to Respondent BP Products North America Inc. requesting "documentation that BP Products North America Inc. currently satisfies all applicable requirements in [40 C.F.R. Part 264] as incorporated in the Rules for the financial test."

46. On July 14, 2010, EPA sent notices of violation to Respondents BP Exploration (Alaska) Inc. and BP Products North America Inc. alleging that the use of the BP Capital

Markets America Inc. bond violated the requirements to maintain financial assurance for their closure, post-closure, third-party liability, and corrective action obligations.

47. On July 14, 2010, Texas Commission on Environmental Quality sent a letter to Respondent BP Products North America Inc. stating that after monitoring BP's financial condition, Texas "cannot accept the corporate guarantee" provided by BP Products North America Inc. for Texas City Refinery I and Texas City Refinery II.

48. Respondents denied the alleged violations for a number of reasons, including that the subject financial assurances were (i) consistent with applicable legal requirements, (ii) consistent with assurances affirmatively accepted by a state governmental authority, and (iii) consistent with assurances that had been provided under a judicially entered consent decree settling alleged violations of the Comprehensive Environmental Response, Compensation, and Liability Act. Nonetheless, Respondents stated an interest in a consensual resolution of this matter.

49. On July 15, 2010, Respondents and EPA entered into negotiations to resolve Respondents' alleged financial assurance non-compliance.

**G. Respondents' Latest Financial Assurance Submissions.**

50. On or about August 6, 2010, Respondent BP Exploration (Alaska) Inc. provided an irrevocable standby letter of credit and standby trust fund for its RCRA financial assurance closure obligations at the Prudhoe Bay Unit. Amendments were subsequently provided on or about September 15, 2010.

51. On or about October 30, 2010 and January 1, 2011, Respondent BP Exploration (Alaska) Inc. provided a certificate of insurance for its RCRA financial assurance third-party liability obligations at Prudhoe Bay Unit.

52. On or about August 6, 2010, Respondent BP Exploration (Alaska) Inc. provided an irrevocable standby letter of credit and standby trust fund for its RCRA financial assurance corrective action obligations at the Prudhoe Bay Unit former Tuboscope site. Amendments were subsequently provided on or about September 15 and October 30, 2010.

53. On or about September 15, 2010, Respondent BP Products North America Inc. provided irrevocable standby letters of credit and standby trust funds for the following RCRA financial assurance obligations. Some amendments were subsequently provided on or about November 24 and December 1, 2010.

- a. Wood River Refinery (riverfront) – closure, post-closure, and corrective action;
- b. Wood River Refinery (main plant) – post-closure and corrective action;
- c. Whiting Refinery (lakefront) – closure and post-closure;
- d. Whiting Refinery (refinery) – closure and post-closure;
- e. Lima Refinery – post-closure and corrective action;
- f. Toledo Refinery – post-closure and corrective action;
- g. Texas City Refinery I – closure and post-closure;
- h. Texas City Refinery II – closure and post-closure; and
- i. Salt Lake City Refinery – post-closure.

54. On or about September 30, 2010 and January 1, 2011, Respondent BP Products North America Inc. provided certificates of insurance for its RCRA financial assurance third-party liability obligations at the Wood River Refinery (riverfront), Whiting Refinery (lakefront), Texas City Refinery I, Texas City Refinery II, and Salt Lake City Refinery.

55. On or about June 2, 2010, Respondent BP West Coast Products LLC provided an irrevocable standby letter of credit and standby trust fund for its RCRA financial assurance post-

closure obligations at the Carson City Refinery. Amendments were subsequently provided on or about May 26, 2011.

56. On or about June 2, 2010 and January 1, 2011, Respondent BP West Coast Products LLC provided a certificate of insurance for its RCRA financial assurance third-party liability obligations at the Carson Refinery.

## VI. CONCLUSIONS OF LAW

### A. Applicable Hazardous Waste Requirements.

57. Each Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and as defined in 40 C.F.R. § 260.10, CAL. HEALTH & SAFETY CODE § 25118 and as defined in CAL. CODE REGS. tit. 22, § 66260.10 (California), 415 ILL. COMP. STAT. ANN. 5/3.315 and as defined in ILL. ADMIN. CODE tit. 35, § 720.110 (Illinois), 329 IND. ADMIN. CODE 3.1-4-1 (incorporating 40 C.F.R. § 260.10 by reference, except as noted) and 3.1-4-120 (Indiana), OHIO REV. CODE ANN. § 3734.12 and as defined in OHIO ADMIN. CODE 3745:50-10(95) (Ohio), TEX. HEALTH & SAFETY CODE ANN. § 361.003(23) and as defined in 30 TEX. ADMIN. CODE § 3.2(25) (Texas), and UTAH ADMIN. CODE r. 315-1-1(b) (incorporating 40 C.F.R. § 260.10 by reference, except as noted) (Utah).

58. Respondent BP Exploration (Alaska) Inc., at all times relevant to this action is the “operator” of a facility that “treats,” “stores,” or “disposes” of “hazardous waste” as defined in Sections 1004(3), (5), (7), (33) & (34) of RCRA, 42 U.S.C. §§ 6903(3), (5), (7), (33) & (34), and 40 C.F.R. §§ 260.10 and 270.2.

59. Respondent BP Products North America Inc., at all times relevant to this action, is the “owner” and/or “operator” of facilities that “treat,” “store,” or “dispose” of “hazardous” waste as defined in ILL. ADMIN. CODE tit. 35, § 720.110 (Illinois), 329 IND. ADMIN. CODE 3.1-4-1

(incorporating 40 C.F.R. § 260.10 by reference, except as noted) (Indiana), OHIO ADMIN. CODE 3745:50-10 (95) (Ohio), TEX. HEALTH & SAFETY CODE ANN. §§ 361.003(7), (12), (13), & (38) (Texas), and UTAH ADMIN. CODE r. 315-1-1(b) (incorporating 40 C.F.R. § 260.10 by reference, except as noted) (Utah).

60. Respondent BP West Coast Products LLC, at all times relevant to this action, is the “owner” and/or “operator” of a facility that “treats,” “stores,” or “disposes” of “hazardous waste” as defined in CAL. CODE REGS. tit. 22, § 66260.10 (California).

61. Pursuant to Sections 2002 and 3004(a) & (t) of RCRA, 42 U.S.C. §§ 6912 and 6924(a) & (t), EPA promulgated rules pertaining to owners and/or operators of treatment, storage and disposal facilities for financial responsibility and these requirements are set forth in 40 C.F.R. Parts 264, 265, and 267, Subparts H; CAL. HEALTH & SAFETY CODE div. 20, chap. 6.5 as set forth in CAL. CODE REGS. tit. 22, div. 4.5, chap. 14, art. 8 (California); 415 ILL. COMP. STAT. ANN. 5/27 as set forth in ILL. ADMIN. CODE tit. 35, Subtit. G, Subchap. C, Chap. I(7), Part 724, Subpart H (Illinois); IND. CODE ANN. § 13-22-9-6 as set forth in 329 IND. ADMIN. CODE 3.1-14 and 3.1-15 (Indiana); OHIO REV. CODE ANN. § 3734.18 as set forth in OHIO ADMIN. CODE 3745:50-11(15) (Ohio); TEX. HEALTH & SAFETY CODE ANN. §§ 361.024 and 361.085, as set forth in 30 TEX. ADMIN. CODE Part 1, Ch. 37 (Texas); and UTAH CODE ANN. § 19-6-108, as set forth in UTAH ADMIN. CODE r. 315-8-8 (Utah).

62. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, an owner or operator of a TSD is prohibited from treating, storing or disposing of hazardous waste unless a permit has been issued or interim status has been bestowed. *See also* CAL. HEALTH & SAFETY CODE div. 20, chap. 6.5 as set forth in CAL. CODE REGS. tit. 22 § 66270.1(b) (California); 415 ILL. COMP. STAT. ANN. 5/21 as set forth in ILL. ADMIN. CODE tit. 35, Subtit. G, Subchap. B, Part 703 (Illinois); IND.

CODE ANN. § 13-22-3 (Indiana); OHIO REV. CODE ANN. §§ 3734.02, 3734.05 (Ohio); TEX. HEALTH & SAFETY CODE ANN. tit. 5, subtit. B, Chap. 361, subchap. C (Texas); and UTAH ADMIN. CODE r. 315-3-1.1 (Utah). Pursuant to 40 C.F.R. § 270.4, compliance with the permit, is compliance with RCRA. *See also* CAL. CODE REGS. tit 22, § 66270.4 (California); ILL. ADMIN. CODE tit. 35, § 702.181 (Illinois); 329 IND. ADMIN. CODE 3.1-13 (Indiana); OHIO ADMIN. CODE § 3745-50-11. (Ohio); 30 TEX. ADMIN. CODE § 305.122(a) (Texas); and UTAH ADMIN. CODE r. 315-3-1.4 (Utah).

63. Pursuant to Section 3004(u) of RCRA, 42 U.S.C. § 6924(u), permits issued under Section 3005 of RCRA, 42 U.S.C. § 6925, shall contain schedules for corrective action and assurances of financial responsibility for completing such corrective action. *See also* 40 C.F.R. § 264.101(b); ILL. ADMIN. CODE tit. 35, §§ 703.121, 724.201 (Illinois); OHIO ADMIN. CODE 3745:57-70-3745:57-75; 3745:54-101 (Ohio); and UTAH ADMIN. CODE r. 315-8-6.12 (Utah).

64. Pursuant to Section 3005 and 3008(h) of RCRA, 42 U.S.C. §§ 6925 and 6928(h), the EPA Administrator may issue an order requiring corrective action or such other response as he or she deems necessary to protect human health and the environment, including the requirement for financial assurance for such corrective action.

65. Owners and/or operators of permitted or interim status TSDs must choose a Financial Mechanism in order to establish financial assurance for closure of a facility. 40 C.F.R. §§ 264.143 and 265.143 (Alaska); ILL. ADMIN. CODE tit. 35, § 724.243 (Illinois); 329 IND. ADMIN. CODE 3.1-14-4 and 3.1-15-4 (Indiana); 30 TEX. ADMIN. CODE Part 1, Chap. 37, Subchaps. B & C (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. § 264.143 by reference with some substitutions) (Utah). One type of Financial Mechanism that an owner and/or operator may choose is the written guarantee, which may be obtained from a

person's direct or higher-tier parent corporation, a firm whose parent corporation is also the parent corporation of the owner and/or operator, or a firm with a "substantial business relationship" with the owner and/or operator. 40 C.F.R. §§ 264.143(f)(10) and 265.143(e)(10) (Alaska); ILL. ADMIN. CODE tit. 35, § 724.243(f)(10) (Illinois); 329 IND. ADMIN. CODE 3.1-14-9(i) and 3.1-15-4(g)(10) (Indiana); 30 TEX. ADMIN. CODE § 37.261 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. § 264.143(f)(10) by reference with some substitutions) (Utah). The guarantor must meet the requirements of the corporate financial test including, if using Alternative II of the financial test, "[a] current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's." 40 C.F.R. §§ 264.143(f)(1)(ii)(A) and 265.143(e)(1)(ii)(A) & (e)(10) (Alaska); ILL. ADMIN. CODE tit. 35, § 724.243(f)(1)(B)(i) & (f)(10) (Illinois); 329 IND. ADMIN. CODE 3.1-14-9(a)(2)(A) & (i) and 3.1-15-4(g)(1)(B)(i)(AA)-(BB) & (g)(10) (Indiana); 30 TEX. ADMIN. CODE §§ 37.251(b)(2)(A) and 37.261 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. § 264.143(f)(1)(ii)(A) & (f)(10) by reference with some substitutions) (Utah). The guarantor, in addition to providing the written guarantee, must also submit documentation that it meets the corporate financial test, including a letter signed by the guarantor's CFO. 40 C.F.R. §§ 264.143(f)(3)(i) and 265.143(e)(3)(i) & (e)(10) (Alaska); ILL. ADMIN. CODE tit. 35, § 724.243(f)(3)(A) & (f)(10) (Illinois); 329 IND. ADMIN. CODE 3.1-14-9(c)(1) & (i) and 3.1-15-4(g)(3)(A) & (g)(10) (Indiana); 30 TEX. ADMIN. CODE §§ 37.251(c)(1) and 37.261 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 264.143(f)(3)(i) & (f)(10) by reference with some substitutions) (Utah). The CFO's letter must, if the guarantor is using Alternative II of the corporate financial test, identify the current rating for the guarantor's most recent bond issuance from S&P or Moody's. *Id.*

66. Owners and/or operators of permitted or interim status TSDs must choose a Financial Mechanism in order to establish financial assurance for post-closure of a facility. CAL. CODE REGS. tit. 22, § 66264.145 (California); ILL. ADMIN. CODE tit. 35, § 724.245 (Illinois); 329 IND. ADMIN. CODE 3.1-14-14 and 3.1-15-6 (Indiana); OHIO ADMIN. CODE § 3745-55-45 (Ohio); 30 TEX. ADMIN. CODE Part 1, Chap. 37, Subchaps. B & C (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. § 264.145 by reference with some substitutions) (Utah). One type of Financial Mechanism that an owner and/or operator may choose is the written guarantee, which may be obtained from a person's direct or higher-tier parent corporation, a firm whose parent corporation is also the parent corporation of the owner and/or operator, or a firm with a "substantial business relationship" with the owner and/or operator. CAL. CODE REGS. tit. 22, § 66264.145(f)(11) (California); ILL. ADMIN. CODE tit. 35, § 724.245(f)(11) (Illinois); 329 IND. ADMIN. CODE 3.1-14-19(j) and 3.1-15-6(g)(11) (Indiana); OHIO ADMIN. CODE § 3745-55-45(F)(11) (Ohio); 30 TEX. ADMIN. CODE § 37.261 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. § 264.145(f)(11) by reference with some substitutions) (Utah). The guarantor must meet the requirements of the corporate financial test including, if using Alternative II of the corporate financial test, "[a] current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's." CAL. CODE REGS. tit. 22, § 66264.145(f)(1)(B)(1) & (f)(11) (California); ILL. ADMIN. CODE tit. 35, § 724.245(f)(1)(B)(i) & (f)(11) (Illinois); 329 IND. ADMIN. CODE 3.1-14-19(a)(2)(A) & (j) and 3.1-15-6(g)(1)(B)(i)(AA)-(BB) & (g)(11) (Indiana); OHIO ADMIN. CODE § 3745-55-45(F)(1)(b)(i) & (F)(11) (Ohio); 30 TEX. ADMIN. CODE §§ 37.251(b)(2)(A) and 37.261 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. § 264.145(f)(1)(ii)(A) & (f)(11) by reference with some substitutions) (Utah). The guarantor, in addition to providing the written

guarantee, must submit documentation that it meets the corporate financial test, including a letter signed by the guarantor's CFO. CAL. CODE REGS. tit. 22, § 66264.145(f)(3)(A) & (f)(11) (California); ILL. ADMIN. CODE tit. 35, § 724.245(f)(3)(A) & (f)(11) (Illinois); 329 IND. ADMIN. CODE 3.1-14-19(c)(1) & (j) and 3.1-15-6(g)(3)(A) & (g)(11) (Indiana); OHIO ADMIN. CODE § 3745-55-45(F)(3)(a) & (F)(11) (Ohio); 30 TEX. ADMIN. CODE §§ 37.251(c)(1) and 37.261 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. § 264.145(f)(3)(i) & (f)(11) by reference with some substitutions) (Utah). The CFO's letter must, if the guarantor is using Alternative II of the corporate financial test, identify the current rating for the guarantor's most recent bond issuance from S&P or Moody's. *Id.*

67. Owners and/or operators of permitted or interim status TSDs must choose a Financial Mechanism in order to demonstrate financial assurance for bodily injury and property damage to third parties caused by sudden and nonsudden accidental occurrences arising from operation of the facility. 40 C.F.R. § 265.147(a) (Alaska); CAL. CODE REGS. tit. 22, § 66264.147(a) & (b) (California); ILL. ADMIN. CODE tit. 35, § 724.247(a) & (b) (Illinois); 329 IND. ADMIN. CODE 3.1-24(a) & (b) and 3.1-15-8(a) & (b) (Indiana); 30 TEX. ADMIN. CODE § 37.404 and Part 1, Chap. 37, Subchap. F (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 264.147(a) & (b) by reference with some substitutions) (Utah). One type of Financial Mechanism that an owner and/or operator may choose is the written guarantee, which may be obtained from a person's direct or higher-tier parent corporation, a firm whose parent corporation is also the parent corporation of the owner and/or operator, or a firm with a "substantial business relationship" with the owner and/or operator. 40 C.F.R. § 265.147(a)(2), (b)(2), & (g) (Alaska); CAL. CODE REGS. tit. 22, § 66264.147(a)(2), (b)(2), & (g) (California); ILL. ADMIN. CODE tit. 35, § 724.247(a)(2), (b)(2), & (g) (Illinois); 329 IND. ADMIN. CODE 3.1-24(a)(2), (b)(2), & (g) and

3.1-15-8(a)(2), (b)(2), & (g) (Indiana); 30 TEX. ADMIN. CODE § 37.551 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 264.147(a)(2), (b)(2), & (g) by reference with some substitutions) (Utah). The guarantor must meet the requirements of the corporate financial test including, if using Alternative II of the corporate financial test, “[a] current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A, or Baa as issued by Moody’s.” 40 C.F.R. § 265.147(f)(1)(ii)(A) & (g) (Alaska); CAL. CODE REGS. tit. 22, § 66264.147(f)(1)(B)(1) & (g) (California); ILL. ADMIN. CODE tit. 35, § 724.247(f)(1)(B)(i) & (g) (Illinois); 329 IND. ADMIN. CODE 3.1-24(f)(1)(B)(i) & (g) and 3.1-15-8(e)(1)(B)(i)(AA)-(BB) & (f) (Indiana); 30 TEX. ADMIN. CODE §§ 37.541(b)(2)(A) and 37.551 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 264.147(f)(1)(ii)(A) & (g) by reference with some substitutions) (Utah). The guarantor, in addition to providing the written guarantee, must submit documentation that it meets the corporate financial test, including a letter signed by the guarantor’s CFO. 40 C.F.R. § 265.147(f)(3)(i) & (g) (Alaska); CAL. CODE REGS. tit. 22, § 66264.147(f)(3)(A) & (g) (California); ILL. ADMIN. CODE tit. 35, § 724.247(f)(3)(A) & (g) (Illinois); 329 IND. ADMIN. CODE .1-24(f)(3)(A) & (g) 3.1-15-8(e)(3)(A) & (f) (Indiana); 30 TEX. ADMIN. CODE §§ 37.541(d)(1) and 37.551 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 264.147(f)(3)(i) & (g) by reference with some substitutions) (Utah). The CFO’s letter must, if the guarantor is using Alternative II of the corporate financial test, identify the current rating for the guarantor’s most recent bond issuance from S&P or Moody’s. *Id.*

68. Owners and/or operators who treat and store hazardous waste under a Standardized Permit must choose a Financial Mechanism in order to demonstrate financial assurance for closure and for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operation of the facility. 40 C.F.R. § 267.140(b)(2)-

(3) (Alaska). One type of Financial Mechanism that an owner and/or operator may choose is the written guarantee, which may be obtained from a person's direct or higher-tier parent corporation, a firm whose parent corporation is also the parent corporation of the owner and/or operator, or a firm with a "substantial business relationship" with the owner and/or operator. 40 C.F.R. §§ 267.143(g)(1) and 267.147(g)(1) (Alaska). The guarantor must meet the requirements of the corporate financial test including, if selecting the first criterion as the demonstration criteria, "[a] current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's." 40 C.F.R. §§ 267.143(f)(1)(i)(A) & (g)(1) and 267.147(f)(1)(iii) & (g)(1) (Alaska).<sup>2</sup> The guarantor, in addition to providing the written guarantee must also submit a letter signed by the guarantor's CFO, which demonstrates, if selected as the demonstration criteria, the current rating for its senior unsecured debt issuance from S&P or Moody's. 40 C.F.R. §§ 267.143(f)(2)(A)(2) & (g)(1) and 267.147(f)(2)(A) & (g)(1).

69. Owners and/or operators who are required to establish a corrective action program for permitted TSDs must provide financial assurance for completing such corrective action. 40 C.F.R. §§ 264.101(b); ILL. ADMIN. CODE tit. 35, § 724.201 (Illinois), OHIO ADMIN. CODE 3745:54-101 (Ohio), UTAH ADMIN. CODE r. 315-8-6 (Utah).

**C. BP Exploration (Alaska) Inc.'s RCRA Violations.**<sup>3</sup>

70. Respondent BP Exploration (Alaska) Inc. owns and operates the Prudhoe Bay

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<sup>2</sup> For third-party liability obligations, 40 C.F.R. § 267.147(f)(1)(iii) provides that if an owner or operator is also demonstrating coverage for any other environmental obligations, including closure under 40 C.F.R. § 267.143(f), the owner or operator must meet the requirements of 40 C.F.R. § 267.143(f).

<sup>3</sup> References to the RCRA federal regulations in this Subsection are references to the requirements as contained in the Standardized Permit and/or RCRA Section 3008(h) Administrative Order on Consent listed in Section V, Paragraphs 25, 27, 29, and 30, or are references to the Federal interim status regulations.

Unit that was operating under interim status and that currently has a Standardized Permit. *See* Section V, Paragraph 25.

71. Respondent BP Exploration (Alaska) Inc. from 2006 through 2009 while operating under interim status for the Prudhoe Bay Unit and subject to the RCRA Section 3008(h) Administrative Order on Consent, EPA Docket Number RCRA-10-99-0179, dated August 6, 1999, for the Prudhoe Bay Unit, submitted written guarantees provided by BP Corporation North America Inc. to demonstrate that it had financial assurance for closure, third-party liability, and corrective action. *See* Section V, Paragraphs 26, 28, 30, and 40.

72. Respondent BP Exploration (Alaska) Inc. in 2010 submitted a written guarantee provided by BP Corporation North America Inc. to demonstrate, as required by its Standardized Permit for the Prudhoe Bay Unit and subject to the RCRA Section 3008(h) Administrative Order on Consent, EPA Docket Number RCRA-10-99-0179, dated August 6, 1999, for the Prudhoe Bay Unit, that it has financial assurance for closure, third-party liability, and corrective action. *See* Section V, Paragraphs 27, 29, 30, and 40.

73. BP Corporation North America Inc., the guarantor, as part of its corporate financial test demonstration specified the current rating of BP Capital Markets America Inc.'s most recent bond issuance from S&P. *See* Section V, Paragraphs 41 and 42.

74. A guarantor for an owner and/or operator with interim status must meet the requirements of the corporate financial test including, if using Alternative II of the corporate financial test, "[a] current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's." 40 C.F.R. §§ 265.143(e)(1)(ii) & (e)(10) and 265.147(f)(1)(ii)(A) & (g). A guarantor for an owner and/or operator with a Standardized Permit must meet the requirements of the corporate financial test

including, if selecting the first criterion as the demonstration criteria, “[a] current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A, or Baa as issued by Moody’s.” 40 C.F.R. §§ 267.143(f)(1)(ii)(A) & (g)(1), and 267.147(f)(1)(iii) & (g)(1).

75. BP Corporation North America Inc. did not provide, as required by 40 C.F.R. §§ 264.143(f)(1)(ii) & (f)(10), 265.143(e)(1)(ii) & (e)(10), 265.147(f)(1)(ii)(A) & (g), 267.143(f)(1)(i)(A) & (g)(1), and 267.147(f)(1)(iii) & (g)(1),<sup>4</sup> the guarantor’s current rating for its most recent bond issuance from S&P or Moody’s or the guarantor’s current rating for its senior unsecured debt, but instead used the current bond rating of its subsidiary BP Capital Markets America Inc. Therefore BP Corporation North America Inc. did not meet the criteria of the corporate financial test or the conditions to be a guarantor as required by 40 C.F.R. §§ 265.143(e), 265.147(f) & (g), 267.143(f) & (g), and 267.147(f) & (g).<sup>5</sup>

76. Because Respondent, BP Exploration (Alaska) Inc., from 2006 through 2010, relied on the guarantee described in Paragraph 40, Respondent did not have compliant financial assurance for closure, third-party liability, or corrective action for the Prudhoe Bay Unit, as that guarantee failed to meet the requirements of 40 C.F.R. §§ 265.143(e), 265.147(f) & (g), 267.143(f) & (g), and 267.147(f) & (g),<sup>6</sup> which constitutes continuous violations of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and continuous violation of the RCRA Section 3008(h) Administrative Order on Consent, EPA Docket Number RCRA-10-99-0179, dated August 6, 1999, and therefore subjects BP Exploration (Alaska) Inc. to penalties specified in, respectively, Sections 3008(g) and (h) of RCRA, 42 U.S.C. §§ 6928(g) and (h).

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<sup>4</sup> See n.1, *supra*.

<sup>5</sup> See n.1, *supra*.

<sup>6</sup> See n.1, *supra*.

**C. BP Products North America Inc.'s RCRA Violations.<sup>7</sup>**

77. Respondent BP Products North America Inc. owns and/or operates eight (8) permitted TSDs that are subject to this Agreement and attached proposed Final Order.

Respondent BP Products North America Inc. also owns and/or operates one (1) TSD, included in this Agreement and attached proposed Final Order, subject to a consent decree. *See* Section V, Paragraph 31.

78. Respondent BP Products North America Inc., pursuant to its hazardous waste permits, is required to provide financial assurance for closure, post-closure, third-party liability and/or corrective action for the eight (8) facilities with hazardous waste permits. *See* Section V, Paragraphs 32, 33, 34, and 35.

79. Respondent BP Products North America Inc. had been required to provide its Whiting Refinery (refinery) with financial assurance for closure, post-closure care, and third-party liability under a consent decree, but it was released from its financial assurance obligations. *See* Section V, Paragraph 36.

80. Respondent BP Products North America Inc., from 2006 through 2010, submitted written guarantees provided by BP Corporation North America to demonstrate, as required by its hazardous waste permits, that it has financial assurance for closure, post-closure, third-party liability, and/or corrective action at its facilities. *See* Section V, Paragraphs 32, 33, 35, 35, and 40.

81. Respondent BP Products North America Inc., from 2006 through 2008, submitted written guarantees provided by BP Corporation North America to demonstrate, as required by Consent Decree, Civil No. 2:96 CV 095 RL, that it had financial assurance for closure, post-

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<sup>7</sup> References to state and/or federal regulations in this Subsection are references to the requirements as contained in the hazardous waste permits or consent decree listed in Section V, Paragraphs 31, 32, 33, 34, 35, and 36.

closure, and third-party liability at the Whiting Refinery (refinery). *See* Section V, Paragraphs 36 and 40.

82. BP Corporation North America, the guarantor, as part of its demonstration that it meets the criteria of the corporate financial test, specified the current rating of BP Capital Markets America Inc.'s most recent bond issuance from S&P. *See* Section V, Paragraphs 41 and 42.

83. A guarantor for an owner and/or operator that has a hazardous waste permit or interim status must meet the requirements of the corporate financial test including, if using Alternative II of the corporate financial test, "his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's." 40 C.F.R. §§ 264.143(f)(1)(ii)(A) & (f)(10), 264.145(f)(1)(ii)(A) & (e)(11), and 264.147(f)(1)(ii) & (g); ILL. ADMIN. CODE tit. 35, §§ 724.243(f)(1)(B)(i) & (f)(10), 724.245(f)(1)(B)(i) & (f)(11), and 724.247(f)(1)(B)(i) & (g) (Illinois); 329 IND. ADMIN. CODE 3.1-14-9(a)(2)(A) & (i), 3.1-14-19(a)(2)(A) & (j), 3.1-24(f)(1)(B)(i) & (g), 3.1-15-4(g)(1)(B)(i)(AA)-(BB) & (g)(10), 3.1-15-6(g)(1)(B)(i)(AA)-(BB) & (g)(11), and 3.1-15-8(e)(1)(B)(i)(AA)-(BB) & (f) (Indiana); OHIO ADMIN. CODE § 3745-55-45(F)(1)(b)(i) & (F)(11) (Ohio); 30 TEX. ADMIN. CODE §§ 37.251(b)(2)(A), 37.261, 37.541(b)(2)(A), and 37.551 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. §§ 264.143(f)(1)(ii)(A) & (f)(10), 264.145(f)(1)(ii)(A) & (f)(11), and 264.147(f)(1)(ii)(A) & (g) by reference with some substitutions) (Utah).

84. BP Corporation North America did not provide, as required by 40 C.F.R. §§ 264.143(f)(1)(ii)(A) & (f)(10), 264.145(f)(1)(ii)(A) & (e)(11), and 264.147(f)(1)(ii) & (g); ILL. ADMIN. CODE tit. 35, §§ 724.243(f)(1)(B)(i) & (f)(10), 724.245(f)(1)(B)(i) & (f)(11), and 724.247(f)(1)(B)(i) & (g) (Illinois); 329 IND. ADMIN. CODE 3.1-14-9(a)(2)(A) & (i), 3.1-14-

19(a)(2)(A) & (j), 3.1-24(f)(1)(B)(i) & (g), 3.1-15-4(g)(1)(B)(i)(AA)-(BB) & (g)(10), 3.1-15-6(g)(1)(B)(i)(AA)-(BB) & (g)(11), and 3.1-15-8(e)(1)(B)(i)(AA)-(BB) & (f) (Indiana); OHIO ADMIN. CODE § 3745-55-45(F)(1)(b)(i) & (F)(11) (Ohio); 30 TEX. ADMIN. CODE §§ 37.251(b)(2)(A), 37.261, 37.541(b)(2)(A), and 37.551 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. §§ 264.143(f)(1)(ii)(A) & (f)(10), 264.145(f)(1)(ii)(A) & (f)(11), and 264.147(f)(1)(ii)(A) & (g) by reference with some substitutions) (Utah), the guarantor's current rating for its most recent bond issuance from S&P or Moody's, but instead provided the current ratings of its subsidiary BP Capital Markets America Inc. Therefore BP Corporation North America Inc. did not meet the criteria of the corporate financial test or the conditions to be a guarantor as required under 40 C.F.R. §§ 264.143(f), 264.145(f), and 264.147(f) & (g); ILL. ADMIN. CODE tit. 35, §§ 724.243(f)(10), 724.245(f)(11), and 724.247(f) & (g) (Illinois); 329 IND. ADMIN. CODE 3.1-14-9(a) & (i), 3.1-14-19(a) & (j), 3.1-24(f) & (g), 3.1-15-4(g), 3.1-15-6(g), and 3.1-15-8(f) & (g) (Indiana); OHIO ADMIN. CODE § 3745-55-45(F) (Ohio); 30 TEX. ADMIN. CODE §§ 37.251, 37.261, 37.541, and 37.551 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. §§ 264.143(f), 264.145(f), and 264.147(f) & (g) by reference with some substitutions) (Utah).

85. Because BP Products North America Inc., from 2006 through 2010, relied on the guarantees described in Paragraph 40, Respondent did not have compliant financial assurance for closure at five (5) of its facilities, for post-closure at nine (9) of its facilities, for third-party liability at six (6) of its facilities, and for corrective action at five (5) of its facilities, as that guarantee failed to meet the requirements of 40 C.F.R. §§ 264.143(f), 264.145(f), and 264.147(f) & (g); 329 ILL. ADMIN. CODE tit. 35, §§ 724.243(f)(10), 724.245(f)(11), and 724.247(f) & (g) (Illinois); 329 IND. ADMIN. CODE 3.1-14-9(a) & (i), 3.1-14-19(a) & (j), 3.1-24(f) & (g), 3.1-15-

4(g), 3.1-15-6(g), and 3.1-15-8(f) & (g) (Indiana); OHIO ADMIN. CODE § 3745-55-45(F) (Ohio); 30 TEX. ADMIN. CODE §§ 37.251, 37.261, 37.541, and 37.551 (Texas); and UTAH ADMIN. CODE r. 315-8-8 (incorporating 40 C.F.R. §§ 264.143(f), 264.145(f), and 264.147(f) & (g) by reference with some substitutions) (Utah), which constitutes continuous violations of Sections 3008(a) and (h) of RCRA, 42 U.S.C. §§ 6928(a) and (h), and therefore subjects BP Products North America Inc. to penalties specified in Sections 3008(g) and (h) of RCRA, 42 U.S.C. §§ 6928(g) and (h).

**D. BP West Coast Products LLC's RCRA Violations.**<sup>8</sup>

86. Respondent BP West Coast Products LLC owns and/or operates the Carson Refinery under a hazardous waste permit. *See* Section V, Paragraph 37.

87. BP West Coast Products LLC, pursuant to its hazardous waste permit, is required to provide financial assurance for post-closure and third-party liability for the Carson Refinery. *See* Section V, Paragraphs 37 and 38.

88. BP West Coast Products LLC, from 2006 through 2010, submitted written guarantees, as required by its hazardous waste permit, provided by BP Corporation North America to demonstrate that it has financial assurance for the post-closure and third-party liability at the Carson Refinery. *See* Section V, Paragraphs 37, 38, and 40.

89. BP Corporation North America, the guarantor, as part of its demonstration that it meets the criteria of the corporate financial test, specified the current rating of BP Capital Markets America Inc.'s most recent bond issuance from S&P. *See* Section V, Paragraphs 41 and 42.

90. A guarantor for an owner and/or operator that has a hazardous waste permit must meet the requirements of the corporate financial test including, if using Alternative II of the

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<sup>8</sup> References to state and/or federal regulations in this Subsection are references to the requirements as contained in the hazardous waste permit listed in Section V, Paragraph 36, 37, and 38.

corporate financial test, “[a] current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A, or Baa as issued by Moody’s.” CAL. CODE REGS. tit. 22, §§ 66264.145(f)(1)(B)(1) & (f)(11) and 66264.147(f)(1)(B)(1) & (g).

91. BP Corporation North America Inc. did not provide, as required by CAL. CODE REGS. tit. 22, §§ 66264.145(f)(1)(B)(1) & (f)(11) and 66264.147(f)(1)(B)(1) & (g), the guarantor’s current rating for its most recent bond issuance from S&P or Moody’s, but instead provided the current ratings of its subsidiary BP Capital Markets America Inc. Therefore BP Corporation North America Inc. did not meet the criteria of the corporate financial test or the conditions to be a guarantor as required CAL. CODE REGS. tit. 22, §§ 66264.145(f) and 66264.147(f) & (g).

92. Because BP West Coast Products LLC, from 2006 through 2010, relied on the guarantee described in Paragraph 40, Respondent did not have compliant financial assurance for post-closure and third-party liability at the Carson Refinery as it failed to meet the requirements of CAL. CODE REGS. tit. 22, §§ 66264.145(f) and 66264.147(f) & (g), which constitutes continuous violations of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and therefore subjects BP West Coast Products to penalties specified in Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

## VII. TERMS OF AGREEMENT

93. Based on the foregoing, the Parties agree to the entry of this Agreement on the following terms.

94. Respondents shall maintain compliance with the financial assurance requirements mandated by RCRA Subtitle C (or authorized state requirements) or by the hazardous waste permits and/or orders at all TSDs subject to this Agreement.

95. Until January 1, 2012, Respondents shall be precluded from using the financial test or corporate guarantee to satisfy their financial assurance requirements at the TSDs subject to this Agreement. Post January 1, 2012, Respondents shall continue to maintain compliance with the financial assurance requirements mandated by RCRA Subtitle C (or authorized state requirements) or by the hazardous waste permits and/or orders at all TSDs subject to this Agreement.

A. **Civil Penalty.**

96. The proposed penalty in this matter is consistent with the "RCRA Civil Penalty Policy" (revised June 23, 2003). The RCRA Civil Penalty Policy is based upon Section 3008 of RCRA, 42 U.S.C. § 6928.

97. Respondents BP Exploration (Alaska) Inc., BP Products North America Inc., and BP West Coast Products LLC agree that the alleged violations described in this agreement shall be resolved by paying a civil penalty in the sum of \$386,000 within thirty (30) calendar days of issuance of the Final Order. 40 C.F.R. § 22.31(c).

98. Respondent BP Corporation North America, Inc. has deposited the civil penalty into a non-interest bearing escrow account in a federally-chartered bank prior to the issuance of the attached proposed Final Order. Such monies shall remain in escrow until the civil penalty is paid pursuant to Paragraph 97. If the attached proposed Final Order is not issued by the Environmental Appeals Board, the monies placed in escrow shall be returned to Respondents. Within thirty (30) calendar days of issuance of the Final Order, Respondents shall cause the monies in the escrow account to be released and disbursed to the United States in payment of the civil penalty under this Agreement via wire transfer to the following account:

Federal Reserve Bank of New York  
ABA No.: 021030004  
Account No.: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency." Field Tag 6000 should include the notation "IN THE MATTER OF: BP Exploration (Alaska) Inc., BP Products North America Inc., BP West Coast Products LLC, and BP Corporation North America Inc., Docket No. RCRA-HQ-2011-5054."

99. Respondents shall forward evidence of the wire transfer to EPA, within five (5)

Working Days of payment, to:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
1200 Pennsylvania Avenue, NW (MC: 1103B)  
Washington, DC 20460

and

Cari Shiffman, Attorney-Adviser  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW (MC: 2249A)  
Washington, DC 20460

and

Chrisna Tan, Attorney-Adviser  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW (MC: 2272A)  
Ariel Rios South, Rm. 4232J  
Washington, DC 20460.

For deliveries by courier, UPS, or Fed Ex, Respondents shall use the following addresses:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board

Ronald Reagan Building, EPA Mail Room  
1300 Pennsylvania Avenue, NW  
Washington, D.C. 20004

and

Cari Shiffman, Attorney-Adviser  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW  
Ariel Rios South, Rm. 4146A  
Washington, DC 20004

and

Chrisna Tan, Attorney-Adviser  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW  
Ariel Rios South, Rm. 4232J  
Washington, DC 20004.

100. Failure to pay the full amount of the penalty assessed under this Agreement may subject Respondents to a civil action to collect any unpaid portion of the proposed civil penalty, as well as interest, administrative costs, and a late payment penalty. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, the civil penalty must be paid in accordance with the requirements of Paragraphs 97, 98, and 99.

101. EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim and Respondents agree to pay these amounts under this Agreement and attached proposed Final Order. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on any portion of the civil penalty agreed to herein that remains unpaid after thirty (30) calendar

Days from the date of the issuance of the Final Order. Pursuant to 31 U.S.C. § 3717,

Respondents must pay the following amounts on any amount overdue:

a. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. § 13.11(a).

b. Late Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar Days delinquent, Respondents must pay a late payment penalty of six (6) percent per annum, which will accrue from the date the penalty payment became delinquent. This late payment penalty is in addition to charges which accrue or may accrue under subparagraph (a).

102. For purposes of state and federal income taxes, Respondents shall not be entitled, and agree not to attempt, to claim a deduction for any civil penalty payment made pursuant to the Final Order. Any attempt by Respondents to deduct any such payment shall constitute a violation of this Agreement and the Internal Revenue Code. 26 U.S.C. § 162(f).

**B. Certification.**

103. Nothing in this Agreement shall relieve Respondents of the duty to comply with all applicable provisions of RCRA and other federal, state or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

104. By signing this Agreement, each Respondent certifies that the information it has supplied to EPA following the issuance of the Notices of Violation concerning this matter was at

the time of submission and is, to the best of Respondents' knowledge, information and belief, truthful, accurate, and complete for each such submission, response and statement. Respondents understand that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

**C. Reservation of Rights.**

105. This Agreement and the Final Order, when issued by the Environmental Appeals Board, and upon payment by Respondents of the civil penalty in accordance with Section VII (Terms of Agreement) resolve only those civil claims specified herein. Nothing herein shall be construed to limit the authority of EPA or the United States to bring an enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at any of the TSDs listed in Section V may present an imminent and substantial endangerment to health, or the environment, nor shall anything in this Agreement or attached proposed Final Order be construed to resolve any allegation of criminal liability, in the event there is evidence of such liability.

106. EPA reserves the right to revoke this Agreement if and to the extent that any information or certification provided by Respondents was materially false or inaccurate at the time such information or certification was provided to EPA, and EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondents oral notice of its intent to revoke, which shall not be effective until received by Respondents in writing.

107. If Respondents fail to comply with any provision contained in this Agreement and the Final Order issued by the Environmental Appeals Board, Respondents waive any rights they may possess in law or equity to challenge the authority of EPA to bring a civil action in the appropriate United States District Court to compel compliance with the Agreement and the Final Order or to seek an additional penalty for such noncompliance.

**D. Submittal to the Environmental Appeals Board.**

108. The Parties agree to submit this Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.

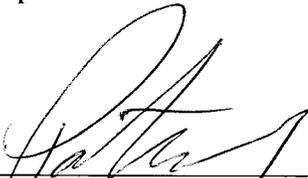
**E. Effective Date.**

109. This Agreement shall become effective upon issuance of the Final Order by the Environmental Appeals Board.

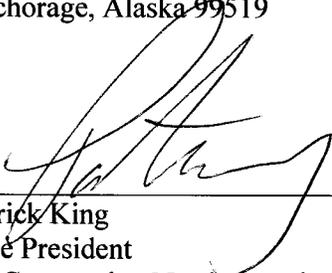
**F. Other Matters.**

110. All of the terms and conditions of this Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Agreement shall be null and void if any term or condition of this Agreement is held invalid or is not executed by all of the signatory parties in identical form, or is not approved in such identical form by the Environmental Appeals Board.

For Respondents:

  
\_\_\_\_\_  
Patrick King  
Vice President  
BP Exploration (Alaska) Inc.  
900 East Benson Boulevard  
Anchorage, Alaska 99519

8/30/2011  
Date

  
\_\_\_\_\_  
Patrick King  
Vice President  
BP Corporation North America Inc.  
501 Westlake Park Boulevard  
Houston, Texas 77079

8/30/2011  
Date

For Respondents:

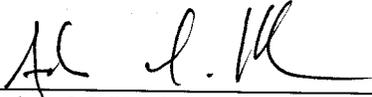
  
Steve Cornell  
President  
BP Products North America Inc.  
501 Westlake Park Boulevard  
Houston, Texas 77079

Aug 29, 2011  
Date

  
Steve Cornell  
Vice President  
BP West Coast Products LLC  
6 Centerpointe Drive  
La Palma, California 90623

Aug 29, 2011  
Date

For Complainant:



\_\_\_\_\_  
Adam M. Kushner  
Director  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (MC: 2249A)  
Washington, DC 20460

9/28/11  
\_\_\_\_\_  
Date



\_\_\_\_\_  
Elliott J. Gilberg  
Director  
Office of Site Remediation Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (MC: 2271A)  
Washington, DC 20460

9/23/11  
\_\_\_\_\_  
Date