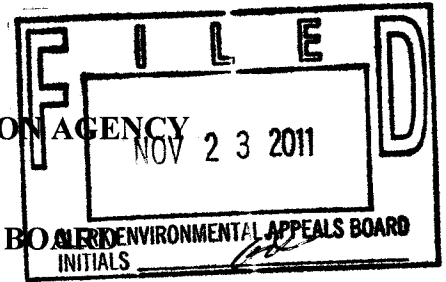


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



BEFORE THE ENVIRONMENTAL APPEALS BOARD

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

Docket No. SDWA-HQ-2011-5055

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. Complainant, United States Environmental Protection Agency ("EPA"), and Respondents, BP Exploration (Alaska) Inc. 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 1423(a) and (c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §§ 300h-2(a) and (c).

3. Adam M. Kushner, Director, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized, by lawful delegation, to institute and settle civil administrative actions brought pursuant to Sections 1423(a) and (c) of SDWA, 42 U.S.C. §§ 300h-2(a) and (c).

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 Section § 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), for the alleged violations of SDWA, 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 SDWA, 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 1423(a) and (c) of SDWA, 42 U.S.C. §§ 300h-2(a) and (c), 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 1422 of SDWA, 42 U.S.C. § 300h-1, the EPA Administrator may approve a state's Underground Injection Control ("UIC") program when the Administrator finds that the state program meets certain requirements. Section 1422(c) of SDWA, 42 U.S.C. § 300h-1(c), requires EPA to administer the UIC program in states that do not have approved state programs. Alaska has not acquired primacy of the UIC program for the regulation of Class I UIC wells. Therefore, the federal SDWA UIC program, 42 U.S.C. §§ 300h-300h-8, and the federal regulations promulgated thereunder, including 40 C.F.R. Part 144, apply for Class I UIC wells in Alaska.

11. Any violation of regulations promulgated pursuant to Part C of SDWA, 42 U.S.C. §§ 300h-300h-8, constitutes a violation of SDWA which may be subject to the assessment of civil penalties and issuance of compliance orders as provided by Sections 1423 (a) and (c) of SDWA, 42 U.S.C. §§ 300h-2(a) and (c).

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 SDWA Sections 1423(a) and (c), 42 U.S.C. §§ 300h-2(a) and (c). 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 Section 1423(c)(3)(A) of SDWA, 42 U.S.C. § 300h-2(c)(3)(A). Respondents waive their right to appeal the proposed Final Order accompanying this Agreement pursuant to 40 C.F.R. § 22.18.

15. EPA is providing public notice and an opportunity to comment on this Agreement prior to the issuance of the Final Order pursuant to Section 1423(c)(3)(B) of SDWA, 42 U.S.C. § 300h-2(c)(3)(B), and 40 C.F.R. § 22.45(b).

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 SDWA, 42 U.S.C. §§ 300f-300j-26, or in regulations promulgated under SDWA, 40 C.F.R. Parts 141-149, 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. "Badami Oil Field (North Slope Alaska)" shall mean the location of a Class I non-hazardous waste injection well twenty-seven (27) miles east of Prudhoe Bay Unit, on the North Slope of Alaska (EPA ID No. AK11I001-A).

b. "Complainant" shall mean the United States Environmental Protection Agency or EPA.

c. "Compliant Financial Assurance" shall mean financial assurance that meets the standards set out in 40 C.F.R. Part 144, as applicable.

d. "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.

e. "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.

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

g. "Milne Point Unit" shall mean the location of a Class I non-hazardous waste injection well northwest of Prudhoe Bay, on the North Slope of Alaska (EPA ID No. AK-11I005-A).

h. "Northstar Unit Oil Field" shall mean the location of two (2) Class I non-hazardous waste injection wells northwest of Prudhoe Bay, in the Beaufort Sea off the North Slope of Alaska (EPA ID No. AK-1I002-B).

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 – Grind and Inject Area" or "Prudhoe Bay Unit – G&I" shall mean the location of three (3) Class I non-hazardous waste injection wells on the North Slope of Alaska (EPA ID No. AK-1I008-A).

l. "Prudhoe Bay Unit – Pad 3" shall mean the location of three (3) Class I non-hazardous waste injection wells on the North Slope of Alaska (EPA ID No. IAK-1I004-B).

m. "Parties" shall mean Complainant and Respondents.

n. "Respondents" shall mean BP Exploration (Alaska) Inc. and BP Corporation North America Inc.

o. "Section" shall mean a portion of this Agreement identified by a roman numeral.

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 operators of UIC wells.

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.

23. Respondent BP Corporation North America Inc. is an affiliate company of BP Exploration (Alaska) Inc. 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 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 Class I non-hazardous waste UIC wells that are subject to this Agreement and attached proposed Final Order at Badami Oil Field, Milne Point Unit, Prudhoe Bay Unit – G&I, Prudhoe Bay Unit – Pad 3, and Northstar Unit Oil Field. Each UIC well has been issued a permit, as identified below:

a. The UIC well at Badami Oil Field operates under Permit No. AK-1I001-A, issued on August 23, 2007. Prior to August 23, 2007, the UIC well at Badami Oil Field operated under Permit No. AK-1I001-A, issued by EPA Region 10 on August 22, 1997.

b. The UIC well at Milne Point Unit operates under Permit No. AK-1I005-A, issued by EPA Region 10 on November 2, 2004.

c. The UIC wells at Prudhoe Bay Unit – G&I operate under Permit No. AK-1I008-A, issued by EPA Region 10 on September 1, 2007.

d. The UIC wells at Prudhoe Bay Unit – Pad 3 operate under Permit No. AK-1I004-B issued by EPA Region 10 on December 8, 2009. Prior to December 8, 2009, the UIC wells at Prudhoe Bay Unit – Pad 3 operated under Permit No. AK-1I004-A issued by EPA Region 10 in 1989 and again on December 7, 1999.

e. The UIC wells at Northstar Unit Oil Field operate under Permit No. AK-1I002-B issued by EPA Region 10 on August 5, 2010. Prior to August 5, 2010, the UIC wells at Northstar Unit Oil Field operated under Permit No. AK-1I002-A issued by EPA Region 10 on August 4, 2000.

26. Respondent BP Exploration (Alaska) Inc. is required to provide financial assurance to close the UIC wells, including plugging and abandonment costs, for the following Class I non-hazardous wells in Alaska:

a. The UIC well at Badami Oil Field pursuant to Permit No. AK-1I001-A, Section G, referencing the requirements under 40 C.F.R. § 144.63(f);

b. The UIC well at Milne Point Unit pursuant to Permit No. AK-1I005-A, Section G, referencing the requirements under 40 C.F.R. § 144.63(f);

c. The UIC wells at Prudhoe Bay Unit – G&I pursuant to Permit No. AK-1I008-A, Section G, referencing the requirements under 40 C.F.R. § 144.63(f);

d. The UIC wells at Prudhoe Bay Unit – Pad 3 pursuant to Permit No. AK-1I004-B (previously AK-1I0004-A), Section G, referencing the requirements under 40 C.F.R. § 144.63(f); and

e. The UIC wells at Northstar Unit Oil Field pursuant to Permit No. AK-1I002-B (previously AK-1I002-A), Section G, referencing the requirements under 40 C.F.R. § 144.63(f).

C. Financial Assurances Submitted by Respondents from 2006 to 2010.

27. To meet its financial assurance obligations (i.e., for closing, including plugging and abandonment) from 2006 to 2010, BP Exploration (Alaska) Inc. obtained written guarantees from BP Corporation North America Inc.

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

29. From 2006 to 2010, as part of the bond 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. 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 in its own name.

D. Communications Regarding Respondents' Financial Assurance Submissions.

30. 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.

31. 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.

32. On July 14, 2010, EPA sent notices of violation to Respondent 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 RCRA Subtitle C closure, post-closure, third-party liability, and corrective action obligations.

33. 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.

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

E. Respondents' Latest Financial Assurance Submissions.

35. On or about August 6, 2010, Respondent BP Exploration (Alaska) Inc. provided an irrevocable standby letter of credit and standby trust fund for its SDWA UIC financial assurance obligations at the wells located at Badami Oil Field, Milne Point Unit, Northstar Unit Oil Field, Prudhoe Bay Unit – G&I, and Prudhoe Bay Unit – Pad 3. Amendments were subsequently provided on or about September 15, 2010.

VI. CONCLUSIONS OF LAW

A. Underground Injection Control Well Requirements.

36. Respondent BP Exploration (Alaska) Inc. is a "person" within the meaning of Section 1401(12) of SDWA, 42 U.S.C. § 300f(12).

37. UIC wells are classified as Class I, II, III, IV, V, or VI under 40 C.F.R. § 144.6.

38. Section 1421 of SDWA, 42 U.S.C. § 300h, authorizes the operation of UIC wells either by authorization by rule or by issuance of a permit.

39. Pursuant to Section 1421(b) of SDWA, 42 U.S.C. § 300h(b), EPA promulgated rules pertaining to owners and/or operators of Class I non-hazardous waste UIC wells for financial assurance for closing, including plugging and abandonment, of the UIC wells, as set forth at 40 C.F.R. § 144.52(7).

40. Permits for Class I non-hazardous waste UIC wells may incorporate the specific requirements for financial assurance for Class I hazardous waste UIC wells found at 40 C.F.R. Part 144, Subpart F.

41. Owners and/or operators of permitted Class I non-hazardous waste UIC wells that incorporate the financial assurance requirements under 40 C.F.R. Part 144, Subpart F into the permit, must choose a Financial Mechanism in order to demonstrate financial assurance for the plugging and abandonment of the underground injection wells. One type of Financial Mechanism that an owner and/or operator may choose is the written guarantee, which may be obtained from the parent corporation of the owner or operator. 40 C.F.R. § 144.63(f)(10). 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. § 144.63(f)(1)(ii)(A) & (f)(10). 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. § 144.63(f)(3)(i) & (f)(10). 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.*

B. BP Exploration (Alaska) Inc.'s SDWA Violations.¹

42. Respondent BP Exploration (Alaska) Inc. owns and operates a number of Class I non-hazardous waste underground injection control wells in Alaska. *See* Section V, Paragraph 25.

43. Respondent BP Exploration (Alaska) Inc., pursuant to its UIC permits, is required to provide financial assurance for closure, plugging, and abandonment. *See* Section V, Paragraph 26.

44. Respondent BP Exploration (Alaska) Inc., from 2006 through 2010, submitted written guarantees provided by BP Corporation North America Inc. to demonstrate, as required by its UIC permits, that it had financial assurance. *See* Section V, Paragraphs 26 and 27.

45. BP Corporation North America Inc., 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 28 and 29.

46. A guarantor for an owner and/or operator that has a Class I non-hazardous waste UIC permit that references the Class I hazardous waste UIC financial assurance requirements under 40 C.F.R. Part 144, Subpart F 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. § 144.63(f)(1)(ii)(A) & (f)(10).

47. BP Corporation North America Inc. did not provide, as required by 40 C.F.R. § 144.63(f)(1)(ii)(A) & (f)(10), the guarantor's current rating for its most recent bond issuance

¹ References to the federal regulations in this subsection are references to the requirements as contained in the permits listed in Section V, Paragraphs 25 and 26.

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. § 144.63(f)(10).

48. Because BP Exploration (Alaska) Inc., from 2006 through 2010, relied on the guarantee described in Paragraph 28, Respondent did not have compliant financial assurance for closure, including plugging and abandonment, at its Class I non-hazardous waste UIC wells in Alaska, as the guarantor failed to meet the requirements of 40 C.F.R. § 144.63(f)(1), which constitutes continuous violations of Sections 1423(a) and (c) of SDWA, 42 U.S.C. §§ 300h-2(a) and (c), and therefore subjects BP Exploration (Alaska) Inc. to penalties specified in Section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c).

VII. TERMS OF AGREEMENT

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

50. Respondents shall maintain compliance with the financial assurance requirements mandated by Part C of SDWA or by the UIC permits at all UIC wells subject to this Agreement.

51. Until January 1, 2012, Respondents shall be precluded from using the financial test or corporate guarantee to satisfy their financial assurance requirements at the UIC wells subject to this Agreement. Post January 1, 2012, Respondents shall continue to maintain compliance with the financial assurance requirements mandated by Part C of SDWA or by the UIC permits at all UIC wells subject to this Agreement.

A. Civil Penalty.

52. The proposed penalty in this matter is consistent with the "UIC Program Judicial and Administrative Order Settlement Penalty Policy" (revised September 1993). The UIC Penalty Policy is based upon Section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c).

53. Respondent BP Exploration (Alaska) Inc. agrees that the alleged violations described in this agreement shall be resolved by paying a civil penalty in the sum of \$25,500 within thirty (30) calendar days of issuance of the Final Order. 40 C.F.R. § 22.31(c).

54. 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 53. 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. and BP Corporation North America Inc., Docket No. SDWA-HQ-2011-5055."

55. 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.

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.

56. 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 53, 54, and 55.

57. 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).

58. 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.

59. Nothing in this Agreement shall relieve Respondents of the duty to comply with all applicable provisions of SDWA, 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.

60. 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.

61. 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.

62. 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.

63. 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.

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

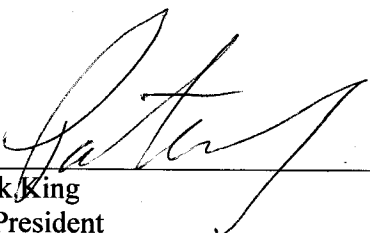
E. Effective Date.

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

F. Other Matters.

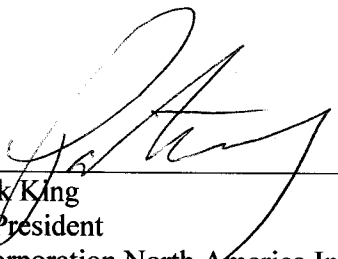
66. All of the terms and conditions of this Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Agreement shall be null and void if any term or condition of this Agreement is held invalid or is 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

8/30/11
Date



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

8/30/11
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

**Attachment B. Copy of the Information Provided in the Public Notice and Opportunity to
Comment on Proposed Order Under the SDWA**



Region 10: the Pacific Northwest

You are here: [EPA Home](#) [Region 10](#) [Water Page](#) [Public Notices](#) bp-9-29-2011

Notice of Consent Agreement and Proposed Order for BP Exploration (Alaska) Inc. and BP Corporation North America Inc.

About this Public Notice

Proposed Issuance of an Order under the Safe Drinking Water Act and Opportunity to Comment

Public Notice Issued:

September 29, 2011

Comments Due:

October 31, 2011

Docket ID Number: EPA-HQ-OECA-2011-0599

Background: EPA has entered into consent agreements with BP Exploration (Alaska) Inc., BP Products North America Inc., BP West Coast Products LLC, and BP Corporation North America Inc. (collectively "BP") to resolve BP's non-compliance with the Safe Drinking Water Act ("SDWA") financial assurance requirements at five locations with ten underground injection control ("UIC") wells in Alaska and the Resource Conservation and Recovery Act ("RCRA") financial assurance requirements at eleven RCRA facilities in Alaska, California, Illinois, Indiana, Ohio, Texas, and Utah.

How do I...?

- Comment on the proposed order
- Review documents
- Contact EPA for questions or more information

EPA is providing public notice and an opportunity to comment on the proposed order for the resolution of the SDWA violations pursuant to Section 1423(c)(3)(B) of SDWA, 42 U.S.C. § 300h-2(c)(3)(B), and 40 C.F.R. § 22.45(b) and (c). EPA is providing information regarding the consent agreement and proposed final order for resolution of the RCRA violations for additional context.

Name of Case: BP Exploration (Alaska) Inc., BP Products North America Inc, BP West Coast Products LLC, and BP Corporation North America Inc.

Docket Numbers of the Consent Agreements and Proposed Final Orders:

- SDWA-HQ-2011-5055
- RCRA-HQ-2011-5054

Name and address of Complainant:

Adam M. Kushner, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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

Names and addresses of Respondents:

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
Anchorage, AK 99519

BP Products North America Inc.
501 Westlake Park Boulevard
Houston, TX 77079

BP West Coast Products LLC
6 Centerpointe Drive
La Palma, CA 90623

BP Corporation North America Inc.
501 Westlake Park Boulevard
Houston, TX 77079

Location of the SDWA UIC Wells:

- One Class I non-hazardous waste injection well at Badami Oil Field (North Slope Alaska) located twenty-seven miles east of Prudhoe Bay Unit, on the North Slope of Alaska.
- One Class I non-hazardous waste injection well at Milne Point Unit located northwest of Prudhoe Bay, on the North Slope of Alaska.
- Two Class I non-hazardous waste injection wells at Northstar Unit Oil Field located northwest of Prudhoe Bay, in the Beaufort Sea off the North Slope of Alaska.
- Three Class I non-hazardous waste injection wells at Prudhoe Bay Unit – Grind and Inject Area located on the North Slope of Alaska.
- Three Class I non-hazardous waste injection wells at Prudhoe Bay Unit Pad 3 located on the North Slope of Alaska.

Applicable Permit Numbers:

- The UIC well at Badami Oil Field operates under Permit No. AK-1I001-A.
- The UIC well at Milne Point Unit operates under Permit No. AK-1I005-A.
- The UIC wells at Prudhoe Bay Unit – G&I operate under Permit No. AK-1I008-A.
- The UIC wells at Prudhoe Bay Unit – Pad 3 operate under Permit No. AK-1I004-B.
- The UIC wells at Northstar Unit Oil Field operate under Permit No. AK-1I002-B.

Business/activity of Respondents: Produce, refine, or market oil and gas.

Description of Violations Alleged and Relief Sought: BP Exploration (Alaska) Inc. is the operator of Class I non-hazardous waste injection wells subject to regulation under Part C of the SDWA. BP Exploration (Alaska) Inc., as well as BP Products North America Inc. and BP West Coast Products LLC, are also the owners and/or operators of hazardous waste management facilities subject to regulation under Subtitle C of RCRA.

Sections 1423(a) and (c) of the SDWA, 42 U.S.C. §§ 300h-2(a) and (c), authorizes EPA to issue compliance orders and assess penalties when EPA finds that a person is violating any requirement of a UIC program where a state does not have primary enforcement responsibility. BP Exploration (Alaska) Inc. operates ten Class I non-hazardous waste injection wells in Alaska (UIC Permit Numbers AK-1I001-A, AK-1I005-A, AK-1I008-A, AK-1I004-B, AK-1I002-B). Alaska does not have primacy over Class I non-hazardous waste injection wells. Therefore, the federal UIC program for Class I non-hazardous injection wells applies in the state of Alaska.

EPA determined that from 2006 to 2010, BP Exploration (Alaska) Inc. failed to satisfy its SDWA financial assurance requirements for closing, including plugging and abandonment, its SDWA UIC wells in Alaska, as required under the applicable permits, SDWA Section 1421, 42 U.S.C. § 300h(b), and 40 C.F.R. Part 144, Subparts E and F. To secure its financial assurance obligation under the SDWA between 2006 and 2010, BP Exploration (Alaska) Inc. obtained written guarantees from BP Corporation North America Inc. BP Corporation North America Inc. included documentation for financial test demonstrations as part of the written guarantees provided on behalf of Respondents. As part of the financial test demonstrations, BP Corporation North America Inc. should have provided its most recent bond rating issued to it by Standard & Poor's ("S&P") or Moody's. However, BP Corporation North America Inc. did not use a current bond rating issued to it by S&P or Moody's. BP Corporation North America Inc. instead listed a bond issued by another company, its wholly owned subsidiary, BP Capital Markets America Inc. BP Corporation North America Inc. did not have an outstanding bond issuance in its own name, as required by the financial assurance regulations.

EPA, as authorized by SDWA Section 1423(c), 42 U.S.C. § 300h-2(c), has assessed a civil penalty for these violations. For the SDWA settlement, Respondents have agreed to a civil penalty of \$25,500. Also, to ensure compliance with the financial assurance requirements, Respondents have provided approximately \$19.2 million in letters of credit for its SDWA UIC well closure, plugging, and abandonment obligations in Alaska.

During the same time period, from 2006 to 2010, EPA also determined that BP Exploration (Alaska) Inc., as well as BP Products North America Inc. and BP West Coast Products LLC, failed to satisfy the RCRA Subtitle C financial assurance requirements for closure, post, closure, corrective action, and third party liability at their RCRA facilities in Alaska, California, Illinois, Indiana, Ohio, Texas, and Utah, as required under the applicable permits and/or orders for the facilities, RCRA Section 3004, 42 U.S.C. § 6924, 40 C.F.R. Parts 264, 265, and 267, Subparts H, and the corresponding state equivalent requirements. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to issue compliance orders and assess penalties when EPA determines that a person is violating any requirement of RCRA. Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), authorizes EPA to issue orders requiring corrective action or such other measures as EPA may deem necessary to protect human health or the environment and to assess penalties for noncompliance with such orders. To settle the RCRA matter, the respondents agreed to a civil penalty of \$386,000. To meet their RCRA Subtitle C closure, post-closure, corrective action, and third party liability financial assurance obligations, Respondents also provided approximately \$129.8 million in letters of credit, standby trust agreements, and insurance for their RCRA Subtitle C facilities in Alaska, California, Illinois, Indiana, Ohio, Texas, and Utah.

Comments Accepted: EPA is providing public notice and an opportunity to comment on the proposed order for the resolution of the SDWA violations pursuant to Section 1423(c)(3)(B) of SDWA, 42 U.S.C. § 300h-2(c)(3)(B), and 40 C.F.R. § 22.45(b) and (c). In order to provide opportunity for public comment, EPA will not take final action prior to forty days after the date of notification of this action. In accordance with 40 C.F.R. § 22.45, persons wishing to comment on the SDWA portion of EPA's proposed action may do so by submitting their name, complete mailing address and telephone number, along with written comments, within thirty days of the date of this notice by the

following methods.

Instructions for how to comment: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2011-0599, by October 31, 2011, using one of the following methods:

- **Online at regulations.gov:** Follow the instructions on [regulations.gov](http://www.regulations.gov) for submitting comments
- **By email:** docket.oeca@epa.gov, Attention Docket ID No. EPA-HQ-OECA-2011-0599.
- **By fax:** (202) 566-9744, Attention Docket ID No. EPA-HQ-OECA-2011-0599.
- **By mail:** Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OECA-2011-0599.
- **Hand Delivery:** Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

For More Information Contact:

Cari Shiffman, Office of Civil Enforcement, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (MC: 2249A), Washington, DC 20460; phone: (202) 564-2898; fax: (202) 564-0022; e-mail: shiffman.cari@epa.gov.

Thor Cutler, U.S. EPA, Region 10, 1200 Sixth Avenue (MC: OCE-127) (12th Floor), Seattle, WA 98101; phone: (206) 553-1673; fax: (206) 553-8509; e-mail: cutler.thor@epa.gov.

Documents Available for Review:

A copy of the proposed order for the resolution of the SDWA violations is available for review and copying between the hours of 9:00 a.m.-12:00 p.m. and 1:00 p.m.-4:00 p.m., Monday through Friday, at EPA's Seattle Office Library (1200 Sixth Avenue, Suite 900, Seattle, Washington 98101) or upon request to Cari Shiffman (contact information listed above).