

NATURE OF THIS ACTION

1. This is a civil action seeking civil penalties against Defendant BP Exploration (Alaska) Inc. ("BPXA") pursuant to:

(a) Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928(a) & (g); (b) Sections 1423h-2(a)(1) and (b)(1) of the Public Health Service Act, as amended by the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §§ 300h-2(a)(2) & (b)(1); (c) Section 109(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9609(c)(1); and (d) Section 325(b)(3) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(b)(3).

2. The United States' claims herein arise from BPXA's treatment, storage and disposal of hazardous wastes at an unpermitted facility; its failure to notify the Environmental Protection Agency ("EPA") of this activity; its failure to comply with the standards applicable to generators of hazardous waste and to owners and operators managing facilities used for the treatment, storage and disposal of such wastes; its failure to comply with the restrictions on land disposal of hazardous wastes; its unauthorized underground injection of hazardous wastes; its failure to immediately notify the National Response Center and state and local emergency response and planning authorities of a release of hazardous substances into the environment; and its failure to file follow-up notifications

with those state and local authorities.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. Sections 1331, 1345 and 1355, Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Section 1423h-2(b) of the SDWA, 42 U.S.C. § 300h-2(b), Sections 109(c) and 113(b) of CERCLA, 42 U.S.C. §§ 9609(c) and 9613(b), and Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c), 28 U.S.C. § 1395(a), Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), Section 1423h-2(b) of the SWDA, 42 U.S.C. § 300h-2(b), Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), because the violations giving rise to this Complaint occurred in this district and because the Defendant resides, may be found, or has its principal office in this district.

DEFENDANT

5. Defendant BPXA is a corporation chartered under the laws of Delaware that conducts oil exploration, drilling and production in Alaska. It is the operator and majority owner of Endicott Island, which consists of two man-made islands in the Beaufort Sea offshore of Alaska's North Slope ("the Endicott Facility"). The Endicott Facility was constructed in the mid-

to-late 1980's to facilitate exploration and production of oil from the Endicott Oil Field.

STATUTORY AND REGULATORY BACKGROUND

Applicable RCRA Provisions and Regulations

6. Section 3001 of RCRA, 42 U.S.C. § 6921, required the Administrator of the Environmental Protection Agency ("the Administrator" or "EPA") to develop and promulgate criteria for identifying the characteristics of hazardous waste and for listing hazardous waste, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other factors such as flammability and corrosiveness. This Section also required the Administrator to promulgate regulations identifying the characteristics of hazardous waste ("characteristic hazardous waste") and listing particular hazardous wastes ("listed hazardous waste"). The regulations promulgated pursuant to this Section are set forth at 40 C.F.R. Part 261.

7. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), required the Administrator to promulgate regulations establishing standards applicable to generators of characteristic or listed hazardous waste, including requirements respecting record keeping; labeling and use of appropriate containers for the storage, transportation or disposal of hazardous waste; the furnishing of information regarding the chemical composition of hazardous waste to those transporting, treating, storing or disposing of such waste; use of a manifest system to ensure that

hazardous waste is designated for treatment, storage or disposal in, and arrives at, a permitted facility; and reporting to the Administrator. The regulations promulgated pursuant to this Section are set forth at 40 C.F.R. Part 262.

8. Section 3004(a) of RCRA, 42 U.S.C. § 6924(a), required the Administrator to promulgate regulations establishing performance standards applicable to owners and operators of facilities for the treatment, storage and disposal of listed or characteristic hazardous waste. The regulations promulgated pursuant to this Section are set forth at 40 C.F.R. Parts 264 and 265, *inter alia*.

9. Section 3004 of RCRA also prohibits the land disposal of certain hazardous wastes and requires the Administrator to promulgate regulations under subsections (f), (g), and (m) specifying the conditions under which certain hazardous wastes may be land disposed. 42 U.S.C. §§ 6924(f), (g) and (m). Those regulations are set forth at 40 C.F.R. Part 268. The term "land disposal", as used in Section 3004, when used with a specified hazardous waste, includes, but is not limited to, any placement of such hazardous waste in an injection well. 42 U.S.C. § 6924(k).

10. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), required the Administrator to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage and disposal of listed or characteristic hazardous waste to have a permit. It prohibits the treatment, storage or disposal of any such

hazardous waste except in accordance with a permit issued pursuant to this Section, unless the facility has achieved interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e). The regulations promulgated pursuant to this Section are set forth at 40 C.F.R. Part 270.

11. Section 3010 of RCRA, 42 U.S.C. § 6930, requires any person generating or transporting any listed or characteristic hazardous waste or owning or operating a facility for the treatment, storage, or disposal of such hazardous waste to file with the Administrator a notification stating the location and general description of that activity and the characteristic or listed hazardous wastes handled by such person.

12. Sections 3001, 3002, 3004, 3005, and 3010 of RCRA were enacted as part of Subchapter III of that statute.

13. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides in relevant part that whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of Subchapter III of RCRA, (s)he may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

14. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides that any person who violates a requirement of Subchapter III of RCRA shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation and that each day of such violation shall constitute a separate violation.

Applicable SDWA Provisions and Regulations

15. Section 1421 of the SDWA, 42 U.S.C. § 300h, directed the Administrator to publish proposed regulations for state underground injection control ("UIC") programs. These regulations were to contain minimum requirements for state UIC programs to be approved by the Administrator. Specifically, the regulations were to require that a state UIC program prohibit any underground injection not authorized by permit and require that a permit applicant show to the satisfaction of the state that the proposed underground injection will not endanger drinking water sources.

16. "Underground injection", as that term is used within Sections 1421, 1422 and 1423 of the SDWA, means "the subsurface emplacement of fluids by well injection." 42 U.S.C. § 1421(d). The term "well injection" has been defined in relevant part as "the subsurface emplacements of 'fluids' through a bored, drilled, or driven 'well'". 40 C.F.R. § 144.3. "Fluids", in turn has been defined to mean "any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state", and "well" has been defined to mean "a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension." 40 C.F.R. § 144.3.

17. Section 1422(c), 42 U.S.C. § 300h-1(c), mandates that the Administrator prescribe a program for states in which a state UIC program (or a portion thereof) has not been approved by the Administrator. The regulations governing EPA-administered programs are set forth at 40 C.F.R. Part 144.

18. The State-administered UIC program in Alaska is confined to Class II wells. 40 C.F.R. § 147.101. The EPA-

administered UIC program in Alaska requires that injection well owners and operators comply with the requirements of, *inter alia*, 40 C.F.R. Part 144.

19. 40 C.F.R. § 144.11 prohibits any underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program. 40 C.F.R. § 144.1 requires that the "owners or operators" of injection wells be so authorized. The term "owner or operator", as used in 40 C.F.R. Part 144, means "the owner or operator of any 'facility or activity' subject to regulation under the UIC program", and the term "facility or activity" is defined in pertinent part to mean "any UIC 'injection well'". An "injection well", as used in 40 C.F.R. Part 144, is "a 'well' into which 'fluids' are being injected." 40 C.F.R. § 144.3.

20. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), authorizes the Administrator to commence a civil action in the appropriate United States district court against any person violating applicable EPA-administered UIC program requirements.

21. Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), provides that any person who violates any requirement of an applicable UIC program shall be subject to a civil penalty of not more than \$25,000 for each day of such violation.

Applicable CERCLA Provisions

22. Section 102 of CERCLA, 42 U.S.C. § 9602, directed the Administrator of EPA to promulgate regulations designating as hazardous substances those elements, compounds, mixtures, solutions, and substances which, when released into the

environment may present substantial danger to the public health or welfare or the environment. In addition, this Section requires the Administrator to promulgate regulations establishing the quantity of any hazardous substance which is to be reported pursuant to Section 103 of CERCLA ("reportable quantity"). The regulations promulgated pursuant to this Section are set forth at 40 C.F.R. Part 302.

23. The term "hazardous substance", as used in CERCLA, is defined in relevant part to mean any element, compound, mixture, solution or substance designated pursuant to Section 102 of CERCLA and any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921. 42 U.S.C. § 9601(14).

24. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides in relevant part that any person in charge of an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such facility in quantities equal to or greater than its reportable quantity, immediately notify the National Response Center established pursuant to the Clean Water Act, 33 U.S.C. §§ 1252 *et seq.*, of such release.

25. The term "release", as used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), includes any "spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment". 42 U.S.C. § 9601(22).

26. The term "environment", as used within CERCLA, means, *inter alia*, any subsurface strata within or under the

jurisdiction of the United States. 42 U.S.C. § 9601(18).

27. Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), provides that the President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which a violation of the notice requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), continues. The President's authority under this Section has been delegated to the Administrator by Executive Order 12580 of January 23, 1987.

Applicable EPCRA Provisions

28. Section 304(a)(3) of EPCRA, 42 U.S.C. § 11004(a)(3), requires that if a release of a hazardous substance requiring notification under Section 103(a) of CERCLA occurs at a facility at which a "hazardous chemical", as that term is defined in Sections 329 and 311 of EPCRA, 42 U.S.C. §§ 11049 and 11021, respectively, is produced, used, or stored, the owner or operator of the facility shall provide notice immediately after the release to the community emergency coordinator for the local emergency planning committees established pursuant to Section 301 of EPCRA, 42 U.S.C. § 11001, for any area likely to be affected by the release and to the state emergency planning commission of any state likely to be affected by the release.

29. The term "facility", as used in EPCRA, is defined in relevant part to mean all buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person. 42 U.S.C. § 11049(4).

30. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c),

requires that as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, the owner or operator of the facility shall provide a written follow-up emergency notice setting forth and updating the information required under Section 304(a) of EPCRA. This follow-up notice is also to include additional information regarding: (a) actions taken to respond to and contain the release, (b) any known or anticipated acute or chronic health risks associated with the release, and (c) where appropriate, advice regarding medical attention necessary for exposed individuals.

31. Section 325(b)(3) of EPCRA, 42 U.S.C. 11045(b)(3), provides that the Administrator may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which a violation of Section 304 of EPCRA continues.

GENERAL ALLEGATIONS

32. During the 1990's BPXA employed a drilling rig (Rig 15) at the Endicott Facility. Rig 15 was provided and operated by Doyon Drilling, Inc. under contract to BPXA. Rig 15 had a rockwashing unit attached to it beginning in 1992. The rockwashing unit was designed to process fluids, *i.e.*, drilling muds, that were used to lubricate the drill bit and lift rock cuttings to the surface, separating out gravel and rocks from the lubricant. The larger rock cuttings brought to the surface were separated and cleaned with water for subsequent use as a substitute for gravel on roads and drilling pads. The remaining

(finer) cuttings were disposed of, along with spent drilling mud and the rinseate from the rockwashing process, by injection into the outer annuli of wells other than the one being drilled.

33. During the drilling process, Rig 15 drilled a hole to a certain depth, then lowered a steel pipe called a surface casing into the hole to a depth of between 2,700 and 4,500 feet and cemented that casing in place. Rig 15 then drilled a second, smaller hole to a depth below the surface casing. A second casing was then lowered and cemented into place. Rig 15 then drilled an even smaller hole to a depth below that of the second casing and lowered the production liner, a narrow steel pipe, into the well and cemented it into place. Finally, the steel production tubing was lowered into the well and secured inside the production liner. Oil and gas are brought to the surface of the well through perforated holes in the production liner and then via the production tubing.

34. The space between the outer surface casing and the second casing is called the outer annulus of the well. At most of the wells at the Endicott Facility, fluids pumped down the outer annulus reach a depth of between 2,700 and 4,500 feet below the surface and then flow into the surrounding formation and are released into the environment.

35. BPXA's operations at the Endicott Facility have, at all times relevant to this Complaint, generated waste paints, waste paint thinners, waste solvents, waste glycol and waste oil. These materials were "solid wastes" and some of them were "hazardous wastes" within the meaning of RCRA, 40 C.F.R. Part 144, and 40 C.F.R. Part 261, and "hazardous substances" within

the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

36. For a period of years, beginning in late 1992 or early 1993 and lasting until at least September 6, 1995, BPXA, through Doyon Drilling, Inc. and other contractors, disposed of waste oil and hazardous substances by injecting the contents of barrels of waste materials down the outer annuli of oil-producing wells at the Endicott Facility from the rockwashing unit.

37. The materials injected contained a variety of wastes, including waste paint thinner, waste paint, waste oil, waste glycol and waste solvents. Many of these waste materials were characteristic or listed hazardous wastes within the meaning of RCRA. They included ignitable wastes, lead-contaminated oil and solvents. Some of the wastes injected contained methylene chloride, toluene, xylene, benzene and ethyl benzene, which are chemical constituents found in specific halogenated and non-halogenated solvents identified by EPA as hazardous when spent and disposed of and otherwise known as F-listed wastes by virtue of their listing in 40 C.F.R. § 261.31.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Failure to Submit Notification under Section 3010 of RCRA)

38. The United States realleges and incorporates herein by reference the allegations of Paragraphs 1-37 of this Complaint for Civil Penalties ("Complaint").

39. BPXA is a "person" within the meaning of Sections 1004, 3008, and 3010 of RCRA, 42 U.S.C. §§ 6903, 6928 and 6930.

40. As used within RCRA, the term "treatment", when used in connection with hazardous waste, is defined in relevant part to mean "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous . . . or reduced in volume." 42 U.S.C. § 6903(34).

41. As used within RCRA, the term "storage", when used in connection with hazardous waste, is defined in relevant part to mean "the containment of hazardous waste . . . in such a manner as not to constitute disposal" thereof. 42 U.S.C. § 6903(33).

42. As used within RCRA, the term "disposal", as used within RCRA, means "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 42 U.S.C. § 6903(3).

43. From at least late 1992 or early 1993 through at least September 6, 1995, the Endicott Facility was utilized as a facility for the "treatment, storage or disposal of hazardous waste" ("TSD facility") within the meaning of Section 3010 of RCRA, 42 U.S.C. § 6930.

44. Prior to October 6, 1995, BPXA failed to submit any notification to EPA stating the location and general description of its activities at the Endicott Facility as an owner and operator of a TSD facility and identifying the characteristic or listed hazardous wastes handled there, in violation of Section

3010 of RCRA, 42 U.S.C. § 6930.

45. Defendant BPXA is therefore liable under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) & (g), for a civil penalty in an amount not to exceed \$25,000 per day for each violation identified in Paragraph 43 above.

SECOND CLAIM FOR RELIEF

(Hazardous Waste Treatment/Disposal and Ownership/Operation
of a TSD Facility Without a RCRA Section 3005 Permit)

46. The United States realleges and incorporates by reference herein the allegations of Paragraphs 1-45 of this Complaint.

47. BPXA is a "person" within the meaning of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

48. The Endicott Facility has never achieved interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

49. From at least late 1992 or early 1993 until at least September 6, 1995, BPXA was the owner or operator of the Endicott Facility and engaged in the "treatment, storage and disposal" of listed or characteristic hazardous waste there within the meaning of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a). BPXA did not have a permit issued pursuant to that Section for these activities, thereby violating Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

50. Defendant BPXA is therefore liable under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) & (g), for a civil penalty in an amount not to exceed \$25,000 per day for each violation identified in Paragraph 49 above.

THIRD CLAIM FOR RELIEF

(Failure to Comply with Standards Applicable to
Generators of Hazardous Waste)

51. The United States realleges and incorporates herein by reference the allegations of Paragraphs 1-50 of this Complaint.

52. The regulations promulgated pursuant to Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), establishing standards applicable to generators of characteristic or listed hazardous waste require that those who treat, store or dispose of such wastes on-site comply with, *inter alia*, the provisions of 40 C.F.R. § 262.11. That regulation requires that generators of solid waste, as that term is defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste by the means specified therein.

53. The term "generator", as used within 40 C.F.R. Part 262, is defined to mean "any person, by site, whose act or process produces hazardous waste identified or listed in [40 C.F.R.] Part 261 or whose act first causes a hazardous waste to become subject to regulation." 40 C.F.R. § 260.10.

54. The term "solid waste", as used in RCRA, means, *inter alia*, any discarded material, including liquid and semisolid material resulting from industrial and commercial activities. The term is further defined within EPA regulations to include discarded material that is abandoned by being disposed of. 40 C.F.R. § 261.2.

55. The materials referred to in Paragraphs 37-38 above were "solid wastes" within the meaning of 40 C.F.R. Part 262.

56. At all times relevant to this Complaint, BPXA was a "generator" of "solid waste" and "treated, stored or disposed

of" characteristic or listed hazardous waste on-site at the Endicott Facility within the meaning of Section 3002(a) of RCRA, 42 U.S.C. § 6922(a) and 40 C.F.R. § 262.11.

57. BPXA failed, from at least 1992 or early 1993 through at least September 6, 1995, to conduct the analyses required by 40 C.F.R. § 262.11 to determine whether some or all of the solid waste it generated at the Endicott Facility was hazardous waste, in violation of that regulation.

58. Defendant BPXA is therefore liable under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) & (g), for a civil penalty in an amount not to exceed \$25,000 per day for each violation identified in Paragraph 57 above.

FOURTH CLAIM FOR RELIEF

(Failure to Comply with Standards Applicable to Owners and Operators of TSD Facilities)

59. The United States realleges and incorporates herein by reference the allegations of Paragraphs 1-58 of this Complaint.

60. Among the regulations promulgated pursuant to Section 3004(a) of RCRA, 42 U.S.C. § 6924(a), are those appearing in 40 C.F.R. Parts 264 and 265. 40 C.F.R. Part 264 sets forth the minimum standards for management of hazardous waste by owners and operators of all TSD facilities, with certain exceptions inapplicable here. It specifically applies to persons disposing of hazardous waste by means of underground injection. For TSD facilities that have achieved interim status, Part 265 imposes similar standards as those referred to below in Paragraph 65.

61. As used within 40 C.F.R. Parts 260-266 and 268, the

term "facility" means "[a]ll contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste", the term "owner" means "the person who owns a facility or part of a facility", and the term "operator" means "the person responsible for the overall operation of a facility." 40 C.F.R. § 260.10.

62. The Endicott Facility is a "facility" within the meaning of 40 C.F.R. Parts 264 and 265.

63. At all times relevant to this Complaint, BPXA has been an "owner" and an "operator" of the Endicott Facility within the meaning of 40 C.F.R. Parts 264 and 265.

64. 40 C.F.R. Parts 264 and 265 require that owners and operators of TSD facilities comply with numerous facility-wide and unit-specific management standards. For example, 40 C.F.R. §§ 264.31 and 265.31 require, with certain exceptions inapplicable here, that all hazardous waste facilities be designed, constructed, maintained, and operated to minimize the possibility of, inter alia, unplanned releases of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

65. From at least late 1992 or early 1993, BPXA failed to design, construct, maintain and/or operate the Endicott Facility so as to minimize the possibility of unplanned releases of hazardous waste or hazardous waste constituents from its wells there, in violation of 40 C.F.R. § 264.31/265.31. During this period, BPXA also failed to comply with the applicable facility management standards appearing in 40 C.F.R. Parts 264 and 265, Subparts B (General Facility Standards), C (Preparedness and

Prevention Requirements), D (Contingency Plan and Emergency Procedures), E (Manifest System, Record Keeping and Reporting Requirements), F (Standards Regarding Releases), G (Closure and Post-Closure Requirements), H (Financial Requirements), J (Standards Regarding Tank Systems) and X (Standards for Miscellaneous Units) during this period.

66. Defendant BPXA is therefore liable under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) & (g), for a civil penalty in an amount not to exceed \$25,000 per day for each violation identified in Paragraphs 60 and 65 above that occurred on or before January 30, 1997 and, per the Federal Civil Penalties Inflation Adjustment Act, as amended, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, \$27,500 per day for each violation that occurred after January 30, 1997.

FIFTH CLAIM FOR RELIEF

(Violation of RCRA's Land Disposal Restrictions)

67. The United States realleges and incorporates herein by reference the allegations of Paragraphs 1-66 of this Complaint.

68. Among the regulations promulgated pursuant to Section 3004 of RCRA, 42 U.S.C. § 6924, are those appearing in 40 C.F.R. Part 268. These regulations identify hazardous wastes that are restricted from land disposal. They apply to persons who generate hazardous waste and to owners and operators of TSD facilities.

69. The term "land disposal", as used within 40 C.F.R. Part 268 means "placement in or on the land" and includes "placement in [*inter alia*] an injection well." 40 C.F.R. § 268.2.

70. The term "injection well", as used within 40 C.F.R.

Part 260-266 and 268 means "a well into which fluids are injected". 40 C.F.R. § 260.10.

71. BPXA's oil-producing wells at the Endicott Facility into which the materials described in Paragraphs 36-37 above were injected are "injection wells" within the meaning of 40 C.F.R. Part 268.

72. 40 C.F.R. § 268.40 prohibits the land disposal of certain hazardous waste unless specific conditions are met.

73. From late 1992 or early 1993 BPXA land disposed of hazardous waste without complying with the applicable conditions of 40 C.F.R. § 268.40. For example, on or about January 16, 1995, BPXA, through its contractor Doyon Drilling, Inc., disposed of D001 (ignitable) hazardous waste, *inter alia*, by placing it in an oil-producing well at the Endicott Facility.

74. Defendant BPXA is therefore liable under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) & (g), for a civil penalty in an amount not to exceed \$25,000 per day for each violation identified in Paragraph 73 above.

SIXTH CLAIM FOR RELIEF

(Underground Injection of Hazardous Wastes Without A Permit)

75. The United States realleges and incorporates herein by reference the allegations of Paragraphs 1-74 of this Complaint.

76. BPXA is a "person" within the meaning of Section 1423 of the SDWA, 42 U.S.C. § 300h-2.

77. The oil-producing wells at the Endicott Facility are "UIC [Class V] injection wells" and "facilities", and BPXA is an

"owner or operator" of these wells, within the meaning of 40 C.F.R. Part 144.

78. The wastes referred to in Paragraphs 35-37 above are "fluids" within the meaning of 40 C.F.R. Part 144.

79. On numerous occasions from late 1992 or early 1993 through at least September 6, 1995, BPXA conducted underground injection into Class V injection wells at the Endicott Facility. These underground injections were not authorized by rule or by permit, as required by 40 C.F.R. § 144.11, and therefore were in violation of Section 1421 of the SDWA, 42 U.S.C. § 300h.

80. Defendant BPXA is therefore liable under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), for a civil penalty of not more than \$25,000 for each day of violation of Section 1421 of the SDWA, 42 U.S.C. § 300h, and 40 C.F.R. Sections 144.11 identified in Paragraph 79 above.

SEVENTH CLAIM FOR RELIEF

(Failure to Provide Immediate Notification of Release of Hazardous Substance As Required By Section 103(a) of CERCLA)

81. The United States realleges and incorporates herein by reference the allegations of Paragraphs 1-80 of this Complaint.

82. BPXA is a "person" within the meaning of Sections 101(21) and 103(a) of CERCLA, 42 U.S.C. §§ 9601(21) and 9603(a).

83. The Endicott Facility is an "offshore or an onshore facility" within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

84. BPXA was, at all times relevant to this Complaint, in charge of the Endicott Facility within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

85. On or about January 16, 1995, there was a "release", by injection or other means, of the contents of approximately twenty-three barrels of waste materials down the outer annulus of an oil-producing well at the Endicott Facility. These materials were ignitable and contained chemical constituents found in specific halogenated and non-halogenated solvents identified in 40 C.F.R. § 261.31 as F-listed hazardous wastes. These constituents included methylene chloride, naphthalene, toluene, benzene, xylene, ethyl benzene, 1,2,4-trimethylbenzene and 1,3,5-trimethylbenzene.

86. The quantities of hazardous substances in this release were in excess of those established pursuant to Section 102 of CERCLA for reporting to the National Response Center.

87. This release was not a "federally permitted release" within the meaning of Sections 101(10) and 103(a) of CERCLA, 42 U.S.C. §§ 9601(10) and 9603(a).

88. BPXA failed to immediately notify the National Response Center of this release, in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

89. Defendant BPXA is therefore liable under Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), for a civil penalty of up to \$25,000 per day for each day of each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), identified in Paragraphs 85-89 above.

EIGHTH CLAIM FOR RELIEF

(Failure to Provide EPCRA Section 304(a) Notifications)

90. The United States realleges and incorporates herein by reference the allegations of Paragraphs 1-89 of this Complaint.

91. BPXA is a "person" within the meaning of Sections 304 and 325(7) of EPCRA, 42 U.S.C. §§ 11004 and 11049(7).

92. "Hazardous chemicals" within the meaning of Sections 304, 325 and 325 of EPCRA were, at all times relevant to this Complaint, produced, stored, or used at the Endicott Facility.

93. On or about January 16, 1995, there was a release, described in Paragraphs 85-89 above, at the Endicott Facility of one or more hazardous substances in quantities requiring notification under Section 103(a) of CERCLA and, consequently, requiring BPXA, as owner and operator of the Endicott Facility, to immediately notify the state emergency planning commission for the State of Alaska and the community emergency coordinator for the local emergency planning committee for the North Slope Borough.

94. BPXA failed to immediately notify the emergency planning commission for the State of Alaska and the community emergency coordinator for the emergency planning committee for the North Slope Borough, in violation of subsections (a) and (b) of Section 304 of EPCRA, 42 U.S.C. 11004(a) and (b).

95. BPXA failed to provide the entities identified in Paragraph 93 above the follow-up notice required by subsection (c) of Section 304 of EPCRA, 42 U.S.C. § 11004(c).

96. BPXA is liable under Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), for a civil penalty of not more than \$25,000 per day for each day during which the violations of subsections (a), (b), and (c) of Section 304 of EPCRA identified

in Paragraphs 94 and 95 above continued through January 30, 1997 and, per the Federal Civil Penalties Inflation Adjustment Act, as amended, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, \$27,500 per day for each day after January 30, 1997 that each such violation has continued.

PRAYER FOR RELIEF

Wherefore, Plaintiff, the United States of America, requests that the Court:

A. Order BP Exploration (Alaska) Inc. to pay to the United States:

a. a civil penalty in an amount not to exceed \$25,000 for each violation of the Subchapter III of the Resource Conservation and Recovery Act that occurred on or before January 30, 1997 and \$27,500 for each such violation that occurred after January 30, 1997;

b. a civil penalty of not more than \$25,000 for each day of violation of the applicable underground injection control program under the Safe Drinking Water Act;

c. a civil penalty of not more than \$25,000 per day for each day during which a violation of Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9603(a), continues; and

d. a civil penalty of not more than \$25,000 per day for each day on or before January 30, 1997 and \$27,500

per day for each day after January 30, 1997 during which a violation of the requirements of Section 304 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11004, continued.

B. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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