

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BP PRODUCTS NORTH AMERICA INC.,

Defendant.

Civ. No. 1:12-cv-2886

CONSENT DECREE

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A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint in this action concurrently with this Consent Decree alleging that Defendant BP Products North America Inc. violated Section 311(b)(7)(C) of the Clean Water Act, 33 U.S.C. § 1321(b)(7)(C) (the “Act” or “CWA”).

B. The Complaint against Defendant alleges that Defendant failed to prepare and implement an adequate Facility Response Plan (“FRP”) for its terminal in Curtis Bay, Maryland in violation of 40 C.F.R. § 112.20, and failed to develop and implement an adequate program of oil spill response drills/exercises in violation of 40 C.F.R. § 112.21.

C. Defendant does not admit any fact, fault, or liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

D. Defendant is preparing a Group Defined Practice for Oil Spill Response and Preparedness (“GDP”) as described in greater detail in Appendix C. Defendant intends that the GDP will be utilized as an internal planning document for the identification and implementation of oil spill response practices and procedures at Defendant’s petroleum products terminals, refineries, and chemical plants. Defendant intends that the GDP generally will measure and evaluate response planning practices in order to make response planning more effective, including application of emergency scenarios related to worst case events and adverse weather conditions, the application of Incident Command System (ICS) concepts and strategies, and the consideration of impacts on human populations likely to be encountered at specific facilities.

E. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or

admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The United States and, solely for the purpose of this Consent Decree or any action to enforce this consent decree, Defendant, agree that this Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and 33 U.S.C. § 1321(n), over the Parties. Venue lies in this District pursuant to 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1391(b), 1391(c) and 1395(a), because Defendant does business, and because the claims arose, and the alleged violations occurred, within this district. Solely for the purposes of this Consent Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

II. APPLICABILITY

2. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

3. Except as provided in Appendix C, absent the written agreement of the United States, no transfer of ownership or operation of the Curtis Bay Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer of the Curtis Bay Facility, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 3, the United States Attorney for

the District of Maryland, and the United States Department of Justice, in accordance with Section XII of this Decree (Notices). Any attempt to transfer ownership or operation of the Curtis Bay Facility without complying with this Paragraph constitutes a violation of this Decree.

4. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree.

Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

6. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

a. "Complaint" means the complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" means this Decree, including the Appendices;

c. "Curtis Bay Facility" means Defendant's Curtis Bay Terminal located in Curtis Bay, Maryland;

d. "Day" means a calendar day unless expressly stated to be a business day.

In computing any period of time under this Consent Decree, where the last day would fall on a

Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day;

e. “Defendant” means BP Products North America Inc.;

f. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies;

g. “Effective Date” is defined in Section XIII;

h. “Month,” when computing any period of time under this Consent Decree, means the period between and including a date in the starting month (e.g., Jan. 2) and the day before that date in the next calendar month (e.g., Feb. 1);

i. “OSRO” means an Oil Spill Removal Organization, as defined in 40 C.F.R. § 112.2, that is licensed by the United States Coast Guard;

j. “Paragraph” means a portion of this Decree identified by an Arabic numeral;

k. “Parties” means the United States and Defendant;

l. “PREP Guidelines” means the National Preparedness for Response Exercise Program Guidelines prepared by the Department of Transportation, Environmental Protection Agency and Department of the Interior, as amended from time to time;

m. “Section” means a portion of this Decree identified by a Roman numeral;

n. “United States” means the United States of America, acting on behalf of EPA; and

o. “Year,” when computing any period of time under this Consent Decree, means the period between and including a date in the starting month (e.g., Jan. 2, 2000) and the day before that date in the next calendar year (e.g., Feb. 1, 2001);

IV. CIVIL PENALTY

7. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$210,000 as a civil penalty.

8. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Maryland, 36 S. Charles Street, 4th Floor, Baltimore, Maryland, 410-209-4800. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. BP Products North America Inc. and shall reference the civil action number and DOJ case number 90-5-1-1-08982 to the United States in accordance with Section XII of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

9. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VI (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

A. *Compliance with Facility Response Plan Requirements at Curtis Bay Facility*

10. Defendant shall comply with 40 C.F.R. § 112.20 and § 112.21, as amended, with respect to the Curtis Bay Facility.

11. With respect to the Curtis Bay Facility, Defendant shall:

a. conduct training, drills, and exercises according to the schedules and requirements applicable to “EPA-Regulated Onshore Non Transportation-Related Facilities” in the PREP Guidelines, or according to the schedules and requirements of an alternative program that has been approved by the Regional Administrator in accordance with 40 C.F.R. § 112.21(c);

b. document all training, drills, and exercises in a manner consistent with the provisions of the PREP Guidelines applicable to “EPA-Regulated Onshore Non Transportation-Related Facilities,” or consistent with provisions of an alternative program that has been approved by the Regional Administrator in accordance with 40 C.F.R. § 112.21(c), and using forms or reports that capture, at a minimum, the information captured by the sample forms provided as appendices to the PREP Guidelines; and

c. for a period of three years following the Effective Date of this Consent Decree, have any OSRO identified in Defendant’s FRP participate in equipment deployment drills in the role it would fulfill in response to an actual emergency at the Curtis Bay Facility, according to the following schedule:

i. conduct one non-government initiated exercise involving the OSRO within six months of the Effective Date of this Consent Decree;

ii. complete one exercise involving the OSRO within three months of any amendment to the FRP in which Defendant selects a new OSRO or changes the role of the OSRO; and

iii. allow no more than 24 months between exercises involving the OSRO.

12. For a period of three years following the Effective Date of this Consent Decree, all documentation required by Paragraph 11(b) shall be submitted to the persons designated in

Section XII of this Consent Decree (Notices) within 30 days of the training, drill, or exercise being documented. EPA may reject the documentation as inadequate if it does not include the information captured by the sample forms provided as appendices to the PREP Guidelines by sending written notice of such rejection to the person designated in Section XII of this Consent Decree to receive notices on behalf of Defendant. Within 20 days of receiving written notice that EPA has rejected the documentation submitted to it as inadequate, Defendant shall submit corrected or supplemental documentation, or invoke dispute resolution in accordance with Section VIII of this Consent Decree (Dispute Resolution).

13. Each document submitted by Defendant under this Section, or under an Appendix referenced in this Section, shall be signed by an official of Defendant and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical pursuant to the provisions in Section VII (Force Majeure).

14. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

15. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

B. Facility Response Plan Audit and Correction Action Program.

16. Defendant shall comply with the requirements contained in Appendix A for a third-party compliance audit (FRP Audit) at each of the facilities identified in Appendix B. Defendant's obligation to comply with the requirements of Appendix A as to any Appendix B facility shall terminate upon Defendant's notice to the United States that the facility is no longer owned or operated by Defendant.

C. Implementation of Enhanced FRP Elements.

17. Defendant shall implement Appendix C. Defendant's obligation to comply with the requirements of Appendix C as to any particular facility shall terminate upon Defendant's notice to the United States that the facility is no longer owned or operated by Defendant.

VI. STIPULATED PENALTIES

18. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

19. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late.

20. Compliance Milestones.

a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Paragraph 11.a or 11.c:

Period of noncompliance	Penalty per violation per day
1 st through 14 th day	\$ 500
15 th through 30 th day	\$ 750
31 st day and beyond	\$ 1000

b. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Paragraph 11.b:

Period of noncompliance	Penalty per violation per day
1 st through 14 th day	\$ 250
15 th through 30 th day	\$ 500
31 st day and beyond	\$ 750

21. FRP Audit and Corrective Action Requirements.

a. For each failure to conduct any of the FRP Audits as required by Paragraph 16: \$500 per week, per facility.

b. For each failure to disclose any non-compliance identified in an FRP Audit as required by Paragraph 16 and Appendix A: \$750 per week, per facility.

c. For each failure to correct any non-compliance identified in an FRP Audit by the deadline required pursuant to Appendix A:

Period of non-compliance	Penalty per day
1 st through 30 th day after deadline	\$500
31 st through 60 th day after deadline	\$750

Beyond 60 th day	\$1,000, or an amount equal to 1.2 times the economic benefit of non-compliance, whichever is greater
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22. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due and shall continue to accrue until performance is satisfactorily completed, except that stipulated penalties for failing to submit adequate documentation as required by subparagraph 11.b shall not accrue during the time between the Day on which Defendant submits such documentation and the Day on which corrected or supplemental documentation is due pursuant to Paragraph 12. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties for violations of subparagraph 11.b shall not exceed \$ 45,000.

23. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States= written demand unless Defendant invokes the procedures under Dispute Resolution as provided in Section VIII.

24. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

25. Stipulated penalties shall continue to accrue as provided in Paragraphs 20 and 21 during any Dispute Resolution as provided in Section VIII, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA=s decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below. If Defendant prevails, no accrued penalties associated with the dispute shall be due.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

26. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 8, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

27. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

28. Subject to the provisions of Section X of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Act and/or the regulations implementing the Act,

Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VII. FORCE MAJEURE

29. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

30. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice by facsimile transmission to the attention of the EPA Region 3 FRP Coordinator at (215) 814-3254 within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any

notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

31. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

32. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

33. If Defendant elects to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 29 and 30, above. If Defendant

meets this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

VIII. DISPUTE RESOLUTION

34. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. In an action by the United States to enforce any obligation of Defendant arising under this Decree, Defendant may not raise any issue or defense that could have been, but was not, raised in Dispute Resolution under this Section.

35. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

36. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

37. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

38. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

39. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

40. Standard of Review. In any dispute arising under this Consent Decree, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and applicable law, and that Defendant is entitled to relief according to a standard of review based on applicable law.

41. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent

Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, subject to the provisions of Paragraph 22, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 25. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Stipulated Penalties).

IX. INFORMATION COLLECTION AND RETENTION

42. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data;
- d. assess Defendant's compliance with this Consent Decree; and
- e. conduct a government initiated unannounced exercise.

43. Until three years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United

States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

44. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records or other information required to be generated or submitted pursuant to the requirements of this Consent Decree shall be withheld on the grounds of privilege.

45. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

46. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain

documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

47. Any information provided pursuant to this Consent Decree may be used by the United States in a proceeding to enforce this Consent Decree, or as otherwise permitted by law.

X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

48. Entry of this Consent Decree and Defendant's performance of its payment obligations in Section IV (Civil Penalty) and Section VI (Stipulated Penalties), and its full and satisfactory completion of its obligations under Section V (Compliance Requirements), resolves the civil claims of the United States for the violations alleged in the Complaint through the date of lodging.

49. Effect of Completion of FRP Audit Program. Except as specifically provided by this Section X (Effect of Settlement/Reservation of Rights), satisfactory completion by Defendant of its obligations under Appendix A of this Consent Decree shall fully satisfy and resolve all civil liability of Defendant for civil penalties for those facilities covered by the FRP Audit Report through the date of submission of the FRP Audit Report required by Appendix A for any violation of 40 C.F.R. §§ 112.20-112.21 and the PREP guidelines, provided that: (i) the violation was identified, disclosed, and corrected pursuant to Appendix A, and (ii) a civil penalty required for the violation by Appendix A was paid by Defendant.

50. Except as otherwise provided in this Consent Decree, the United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. Except as otherwise provided in this Consent Decree, this Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions.

51. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Curtis Bay Facility or the violations alleged in the Complaint, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this Consent Decree. Except as provided in this Consent Decree, Defendant does not waive any right or defense it may have in connection with any other action brought by the United States.

52. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act or with any other provisions of federal, state, or local laws, regulations, or permits.

53. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

54. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XI. COSTS

55. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant provided that the United States prevails in whole or in part in such action.

XII. NOTICES

56. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08982

Kelly Brantner
Office of Enforcement and Compliance Assurance
Mail Code 2243-A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington DC 20460

J. Troy Swackhammer
Office of Emergency Management, Regulation and Policy Development Division
Mail Code 5104A
U.S. Environmental Protection Agency
1200 Pennsylvania Ave.
Washington, DC 20460

To Defendant:

Albert W. Wicks, Jr.
Entity Director, Safety and Operational Risk
BP Pipelines, N.A.
150 W. Warrenville Road
Naperville, IL 60563

Rebecca Raftery, Esq.
BP America Inc.
150 W. Warrenville Road
Mail Code 200-1W
Naperville, IL 60563

57. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

58. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIII. EFFECTIVE DATE

59. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIV. RETENTION OF JURISDICTION

60. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections VIII (Dispute Resolution) and XV (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XV. MODIFICATION

61. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

62. Any disputes concerning modification of this Decree shall be resolved pursuant to Section VIII of this Decree (Dispute Resolution).

XVI. TERMINATION

63. After Defendant has: (i) completed the requirements of Section V (Compliance Requirements) of this Decree as evidenced by the documentation required by Paragraph 11(b) and submitted in accordance with the process provided in Paragraph 12; (ii) complied with the requirements contained in Appendix A for a third-party compliance audit (FRP Audit) at each of the facilities identified in Appendix B which it owns or operates, as well as the Curtis Bay facility (regardless of whether it is owned or operated by Defendant) as evidenced by the Final Report and Certification of Completion; (iii) developed and submitted the GDP, the Enhanced FRP Elements Implementation Status Report, and the Certification as provided by Appendix C; and (iv) paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree; Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation. The United States may, upon notice to the Defendant, move to terminate this Consent Decree after Defendant has satisfied such requirements.

64. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for

termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section VIII of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 60 days after service of its Request for Termination.

XVII. PUBLIC PARTICIPATION

65. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XVIII. SIGNATORIES/SERVICE

66. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

67. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XIX. INTEGRATION

68. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XX. APPENDICES

69. The following Appendices are attached to, and a part of, this Consent Decree:

“Appendix A” details the terms for the Facility Response Plan Audit and Corrective Action Program.

“Appendix B” is a list of facilities at which the FRP Audits will be performed.

“Appendix C” sets forth additional requirements related to Enhanced FRP Elements.

“Appendix D” is a list of facilities at which the Enhanced FRP Elements will be implemented.

XXI. FINAL JUDGMENT

70. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this _____ day of _____, _____.

UNITED STATES DISTRICT JUDGE
District of Maryland

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

/s/

Dated

DANIEL S. SMITH
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
601 D Street NW
Washington, D.C. 20004
(202) 305-0371 (voice)
(202) 616-6583 (fax)
dan.smith2@usdoj.gov

(A signed copy of the document bearing the original signature of Ignacia S. Moreno is being maintained in the office of Daniel S. Smith)



PAMELA J. MAZAKAS
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FOR DEFENDANT BP PRODUCTS NORTH AMERICA INC.

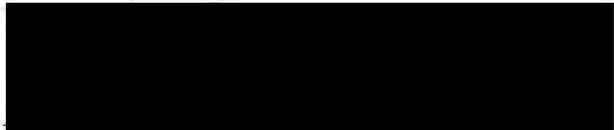
August 13, 2012
Date

[REDACTED]

STEVE R. CORNELL, President
BP Products North America Inc.

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APPENDIX A

Facility Response Plan Audit and Corrective Action Program

1. Facility Response Plan Audit. In accordance with procedures set forth in Paragraph 2 of this Appendix A, Defendant shall hire an independent FRP Auditor to conduct Facility Response Plan (“FRP”) audits at each of the Facilities listed in Appendix B pursuant to Paragraph 3 of this Appendix A (“Approval of the FRP Auditor”). Defendant shall bear all costs associated with the FRP Auditor, cooperate fully with the FRP Auditor, and provide the FRP Auditor with access to all non-privileged records, employees, contractors, and Facilities that the FRP Auditor deems reasonably necessary to effectively perform the FRP Audits. Defendant’s obligation to conduct an FRP Audit at a Facility listed in Appendix B, or to perform any other obligation with regard to a Facility listed in Appendix B imposed on Defendant by this Appendix A, shall terminate upon Defendant’s notice to EPA as provided by Paragraph 56 of this Consent Decree that the Facility is no longer owned and/or operated by Defendant. Defendant’s notice to EPA under this Paragraph shall include the name and address of the new owner or operator.

2. Selection of the FRP Auditor. Within 90 Days of entry of this Consent Decree, Defendant shall propose to EPA for approval the selection of two or more proposed FRP Auditors who have expertise and competence in the applicable regulatory programs under federal and state environmental laws. EPA will evaluate proposed FRP Auditors based on:

- a. Five years of spill response-related experience and demonstrated competence in spill response planning;
 - b. Expertise and demonstrated competence in spill prevention and response;
- and

c. Technical capability, including knowledge of engineering practices applicable to spill prevention and response, experience as a federal on-scene coordinator and experience within the incident command system (“ICS”).

3. Approval of the FRP Auditor. Defendant shall not have any ownership interest in the proposed FRP Auditors, and the auditor must have no direct or otherwise substantial financial stake in the outcome of the FRP Audit conducted. Defendant shall disclose to EPA, when the proposed FRP Auditors are identified, any past or existing contractual or financial relationship between Defendant and any proposed FRP Auditor that is identified by Defendant after reasonable inquiry.

a. EPA, after review of Defendant’s proposed FRP Auditors, shall notify Defendant whether EPA approves the selection of any proposed auditor(s). If EPA approves more than one of the proposed auditors, then Defendant shall be permitted to choose among the proposed auditors. If EPA does not approve any of Defendant’s proposed FRP Auditors, then Defendant shall propose to EPA for approval the selection of two or more additional FRP Auditors to EPA within 60 Days of receipt of EPA’s written notice of disapproval. EPA shall review and notify Defendant of the Agency’s approval or disapproval as provided in this Paragraph. If EPA does not approve the selection of any proposed FRP Auditor(s) proposed by Defendant, the parties agree to resolve the selection of the FRP Auditor as provided in Section VIII (Dispute Resolution) of this Consent Decree.

b. Within 30 Days of the date that EPA notifies Defendant of the approval of the selection of the proposed FRP Auditor, Defendant shall retain the proposed FRP Auditor(s), thereafter designated the “FRP Auditor” to perform the FRP Audits as further described in Paragraph 4 below.

4. Duties of the FRP Auditor. Defendant shall enter into a contract with the FRP Auditor which requires the FRP Auditor to perform the FRP Audits as provided below:

a. The FRP Auditor, for each of the Facilities as listed in Appendix B, shall evaluate the adequacy of each Facility's existing FRP to determine whether the Plan accurately reflects the geographic circumstances of the facility's location and the surrounding area as required by 112.20(h)(2) *Facility Information* and 40 C.F.R. Part 112 Appendix F (hereafter "Appendix F") §§ 1.2 and 1.4.2. as well as a description of the implementation of the Plan as required by 112.20(h)(7).

b. The FRP Auditor, for each of the Facilities as listed in Appendix B, shall conduct a review of each Facility's FRP to determine whether there are sufficient resources both identified in the FRP, and available by contract or otherwise, for all identified spill scenarios in the FRP (small, medium and worst case discharge scenarios) as required by 40 CFR § 112.20(h)(5).

c. The evaluation and review in subparagraphs a. and b., above, shall include, but not be limited to, an inspection of the facility.

d. The FRP Auditor, for each Facility as listed in Appendix B, shall determine whether the facility owner or operator has complied with the provisions of 40 C.F.R. §§ 112.20 and 112.21 and the PREP guidelines applicable to "EPA-Regulated Onshore Non Transportation-Related Facilities" or an alternative program that has been approved by the appropriate Regional Administrator in accordance with 40 C.F.R. § 112.21(c) (collectively the "FRP Requirements"). In assessing compliance with the FRP Requirements, the FRP Auditor shall include the following evaluations:

i. Whether the facility owner or operator has reviewed and updated the FRP to reflect significant changes at the Facility pursuant to 40 C.F.R. § 112.20(d)(1);

ii. Whether the FRP contains an Emergency Response Action Plan (“ERAP”) that is consistent with the elements contained in 40 C.F.R. § 112.20(h)(1) and Appendix F § 1.1.

iii. Whether the FRP contains accurate and current information regarding:

1. The identity and phone number of a qualified individual (“QI”) with the full authority, including contracting authority, to conduct removal actions pursuant to 40 C.F.R. § 112.20(h)(1)(i) and a description of the QI’s duties pursuant to 40 C.F.R. § 112.20(h)(3)(ix) and Appendix F § 1.3.6;

2. The identity of individuals and organizations to be contacted by the QI in the event of a discharge pursuant to 40 C.F.R. §§ 112.20(h)(1)(ii) and (h)(3)(iii) and Appendix F § 1.3.1;

3. A description of the information to provide to response personnel in the event of a reportable discharge pursuant to 40 C.F.R. § 112.20(h)(1)(iii) and Appendix F §1.3.1.

4. A description of the Facility’s response equipment, the location of the equipment, and equipment testing pursuant to 40 C.F.R. §§ 112.20(h)(1)(iv) and (h)(3)(vi) and Appendix F §§ 1.3.2 and 1.3.3;

5. A description of response personnel capabilities, including response times and qualifications pursuant to 40 C.F.R. §§ 112.20(h)(1)(v) and (h)(3)(v) and Appendix F § 1.3.4;

6. Evacuation plans pursuant to 40 C.F.R. §§ 112.20(h)(1)(vi) and (h)(3)(vii) and Appendix F § 1.3.5;

7. A description of immediate measures to secure the source of the discharge, and to provide adequate containment and drainage of discharged oil pursuant to 40 C.F.R. § 112.20(h)(1)(vii) and Appendix F § 1.7.3;

8. A diagram of each Facility pursuant to 40 C.F.R. §§ 112.20(h)(1)(viii) and Appendix F § 1.9.

iv. Whether the FRP contains a completed hazard evaluation for the Facility that includes an accurate vulnerability analysis and identifies a history of discharges for each specific facility in accordance with 40 C.F.R. § 112.20(h)(4) and Appendix F §§ 1.4.2 and 1.4.4;

v. Whether the FRP includes accurate and current Facility information. 40 C.F.R. § 112.20(h)(2) and Appendix F § 1.2;

vi. Whether the FRP discusses and accurately calculates specific planning scenarios, including the small, medium and worst case discharges for the geographic area for that particular Facility as set forth in 40 C.F.R. § 112.20(h)(5), 40 C.F.R. Part 112 Appendix D, and Appendix F § 1.5.

vii. Whether the FRP identifies private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge and other discharges of oil for the geographic area for that particular facility pursuant to 40 C.F.R. § 112.20(h)(3) and Appendix F § 1.7.1;

viii. Whether the FRP adequately describes actions to be carried out by facility personnel or contractors under the response plan to mitigate or prevent small, medium or

worst case discharges for the geographic area of that particular Facility as set forth in 40 C.F.R. § 112.20(h)(7) and Appendix F §§ 1.7.1 through 1.7.3;

ix. Whether, pursuant to 40 C.F.R. § 112.20(h)(6) and Appendix F § 1.6, there are measures in place as identified in the FRP Plans to provide adequate procedures and equipment to detect discharges at the Facility;

x. Whether the FRP includes a checklist and record of inspections for tanks, secondary containment, and response equipment as required by 40 C.F.R. § 112.20(h)(8)(i) and Appendix F §§ 1.8.1.1 to 1.8.1.3, and whether the Facility owner or operator is diligently completing these checklists and records of inspection;

xi. Whether the FRP includes a description of the drills and exercise and training program for each Facility to be carried out under 40 C.F.R. § 112.21 as required by 40 C.F.R. §§ 112.20(h)(8)(ii) and (iii) and Appendix F §§ 1.8.2 and 1.8.3 ;

xii. Whether the Facility owner or operator is keeping as part of its FRP, or otherwise, logs of discharge prevention meetings, training sessions, and drills/exercises as required by 40 C.F.R. § 112.20(h)(8)(iv) and Appendix F §§ 1.8.3.1 and 1.8.3.2;

xiii. Whether the FRP includes site plan and drainage plan diagrams that reflect the topographic characteristics for that particular Facility pursuant to 40 C.F.R. § 112.20(h)(9) and Appendix F § 1.9;

xiv. Whether the FRP includes a description of Facility security systems pursuant to 40 C.F.R. § 112.20(h)(10) and Appendix F § 1.10; and

xv. Whether the FRP includes an accurately completed response plan cover sheet pursuant to 40 C.F.R. § 112.20(h)(11) and Appendix F § 2.0.

e. Within 60 Days of the date of the contract with Defendant becoming effective, the FRP Auditor shall commence FRP Audits of the Facilities as listed in Appendix B. The FRP Auditor shall complete FRP Audits of all Facilities in Appendix B within 540 Days of the date the FRP Audits commenced unless an extension of time is granted by EPA after Defendant has requested an extension by notice to EPA as provided by Paragraph 56 of this Consent Decree.

f. The FRP Auditor shall provide EPA with written notice no less than 15 Days prior to the initiation of each FRP Audit. EPA retains its right to enter the facility, pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318, during the FRP Audit.

g. The FRP Auditor shall provide a draft of each FRP Audit Report to Defendant. Defendant may discuss and review the draft with the Auditor, and may suggest edits to the FRP Auditor. Within 90 Days following the completion of each FRP Audit, the FRP Auditor shall develop and concurrently submit a final written FRP Audit Report to the Defendant and EPA documenting all instances of non-conformance with the FRP Requirements identified in the FRP Audit. The FRP Audit Report must include, at a minimum, the following:

- i. The name and location of each Facility;
- ii. A contact for each Facility identified by name, telephone number and electronic mail address;
- iii. Whether the Facility has in place a Spill Prevention, Control, and Countermeasure (SPCC) Plan that:
 1. Describes secondary containment;
 2. Is certified by a licensed professional engineer; and,

3. Was updated as of November 10, 2010, if an update was required by 40 CFR § 112.3(a)(2) and no extension was granted by EPA pursuant to 40 CFR § 112.3(f).

iv. A summary of each FRP Audit, including any obstacles encountered in conducting each FRP Audit;

v. A list that includes each instance of non-conformance with the FRP Requirements identified in the FRP Audit, the statutory, regulatory, or as applicable, PREP Guidelines provision relevant to the FRP Requirement, the circumstances of the instance of non-conformance, the date upon which each instance of non-conformance was detected, and the actual, or to the extent the actual is not known, estimated past duration of such instance of non-conformance, and the date that the instance of non-conformance was corrected. In the event of a disagreement between Defendant and the Auditor regarding whether or not an instance of non-conformance with the FRP Requirements has occurred, the disagreement shall be identified in the Audit Report for review and decision by EPA. If EPA does not provide written notice of its decision on whether an instance of non-conformance has occurred within 45 Days of EPA's receipt of the Audit Report, the instance of non-conformance shall be deemed to have occurred and Defendant shall have the right to invoke Dispute Resolution as provided in Section VIII of this Consent Decree;

vi. Recommendations for resolving outstanding instances of non-conformance with the FRP Requirements as provided in Paragraph 5(a) below or otherwise achieving full compliance with the FRP Requirements; and

vii. Certification by the FRP Auditor that the FRP Audit was conducted in accordance with the provisions of this Consent Decree.

5. Corrective Measures.

a. Within 90 Days after receiving the FRP Audit Report, Defendant shall submit, in writing, to EPA for review and approval a Corrective Measures Plan (“CMP”) for expeditiously correcting any instances of non-conformance with the FRP Requirements identified in the Audit Report for the Facilities that have not been corrected as of the date of the Audit Report. The CMP shall be submitted to:

Kelly Brantner
Office of Enforcement and Compliance Assurance
Mail Code 2243-A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington DC 20460

J. Troy Swackhammer
Office of Emergency Management, Regulation and Policy Development
Division
Mail Code 5104A
U.S. Environmental Protection Agency
1200 Pennsylvania Ave.
Washington, DC 20460

The CMP shall include:

i. Proposed Corrective Measures (“CMs”), the corresponding Facility and the corresponding instance of non-conformance each proposed CM is intended to address; and

ii. A detailed implementation schedule for EPA approval for the identified CMs, including those that may have already been completed (*e.g.*, the date and a description of the CMs taken, or which are scheduled to take place, to correct or address deficiencies identified in the FRP Audit Report).

iii. Within 90 Days of receipt by Defendant of EPA's written decision confirming a contested instance of non-conformance identified in an Audit Report as provided by Paragraph 4(f)(v.) above, Defendant shall propose to EPA a detailed implementation schedule for correction of the non-conformance unless Dispute Resolution is invoked by Defendant under Part XIII of this Consent Decree.

b. In the event EPA determines that any proposed CM does not meet minimum regulatory requirements, EPA will provide the Defendant, as part of its written notice that EPA disapproves the CMP, the basis for such disapproval. If a CM that EPA disapproves has already commenced, then Defendant is not obligated to implement a new CM for correction of that instance of non-conformance provided that Defendant completes the CM that it has commenced. Defendant understands and agrees that such CM is not acceptable for remedying any subsequent, similar instance of non-conformance identified in a CMP.

c. In the event that EPA determines that the proposed schedule for implementation of the CMs is not adequate, it will provide the Defendant, as part of its written notice that EPA disapproves the CMP, the basis for such disapproval, and an alternative schedule for CM implementation. For purposes of this Paragraph, adequacy of the CM implementation schedule shall be determined based on the risk to human health or the environment against the cost, complexity of engineering design, and construction time associated with that CM, and any other factor relevant under the circumstances. EPA's disapproval of a CMP, the basis of the disapproval, and its alternative schedule for CMP implementation, shall be subject to Dispute Resolution as provided in Section VIII. of this Consent Decree.

d. If EPA does not provide written notice of approval, or written notice of disapproval in whole or in part, of the CMP within 45 Days of a submission of the CMP, the

CMP shall be deemed disapproved and Defendant shall have the right to invoke Dispute Resolution under Section XIII of this Consent Decree. If EPA provides written notice of disapproval of a CMP within 45 Days of receiving the submission of a CMP, Defendant shall, within 45 Days of receiving such notice, either: (a) alter the CMP consistent with EPA's basis for such disapproval and resubmit to EPA for review and approval, or (b) submit the matter for Dispute Resolution under Section XIII of this Consent Decree

e. Upon receipt of written notice of approval from EPA of a CMP, Defendant shall implement the CMs in accordance with the schedule(s) either (1) approved by EPA in accordance with 5(a)(ii) above, or (2) determined by EPA in accordance in accordance with 5(c) above unless Defendant shall have submitted the matter for Dispute Resolution under Section VIII. of this Consent Decree.

6. Final Report and Certification of Completion. No later than 120 Days after completion of all CMs according to the schedules set forth in the CMP, Defendant shall submit a Final Report and Certification of Completion ("Final Report"). The Final Report shall contain a complete list of all facilities audited; a listing of all instances of non-conformance with the FRP Requirements identified in the FRP Audit, by facility; and a description of the actions taken to correct the instances of non-conformance. Defendant shall submit the Final Report in accordance with Paragraph 13 of Section V of the Consent Decree, and shall retain the Final Report in accordance with Section IX of the Consent Decree.

7. Civil Penalties for Identified, Disclosed and Corrected Violations. For violations of 40 C.F.R. §§ 112.20 and 21 that are discovered pursuant to the FRP audits required by this Appendix A, and disclosed and corrected by Defendant in accordance with Paragraphs 5 and 6, Defendant shall pay a total of one single penalty per facility selected from below:

Regulatory requirement	Penalty per facility
a. If the facility failed to develop and implement a facility response training and drills/exercise program, as required by 40 C.F.R. § 112.21(a).	\$50,000
b. If the facility developed and implemented a facility response training and drill/exercise program as required by 40 C.F.R. § 112.21(a), but such training program did not: <ol style="list-style-type: none"> 1. include any or all of the following elements: (i) instruction in the procedures for facility personnel to respond to discharges; (ii) job tasks for both supervisory and non-supervisory facility personnel; or (iii) specific lesson plans on subject areas relevant to facility personnel, as required by 40 C.F.R. § 112.21(b); and/or 2. include evaluation procedures, as required by 40 C.F.R. § 112.21(c); and/or 3. substantially follow the PREP guidelines or an alternative program approved by the Regional Administrator, as required by 40 C.F.R. § 112.21(c). 	\$20,000
c. If the facility developed and implemented an adequate facility response training and drills/exercise program as required by 40 C.F.R. §§ 112.21(a)-(c), but the facility: <ol style="list-style-type: none"> 1. failed to make an adequate “substantial harm” determination, 40 C.F.R. § 112.20(f); and/or 2. made a substantial harm determination pursuant to 40 CFR § 112.20(f), but failed to submit an FRP as required by 40 C.F.R. § 112.20(a); and/or 3. submitted an FRP, as required by 40 C.F.R. 112.20(a), but failed to address some or all of the specified elements for FRPs, as required by 40 C.F.R. § 112.20(h) and Appendix F. 	\$15,000
d. If the facility developed and implemented an adequate facility response training and drills/exercise program as required by 40 C.F.R. §§ 112.21(a)-(c), and submitted an FRP as required by 40 C.F.R. 112.20(a) (f) & (h) and Appendix F, but failed to: <ol style="list-style-type: none"> 1. revise and resubmit the FRP as required by 40 C.F.R. § 112.20(d)(1); and/or 2. make the FRP consistent with the NCP or applicable Area Contingency Plans, 40 C.F.R. § 112.20(g)(1), or to review or update the FRP, as required by 40 C.F.R. § 112.20(g)(2), (3). 	\$5,000
e. If the facility correctly determined pursuant to 40 CFR § 112.20(e) that it is not required to submit an FRP, but the facility failed to provide adequate documentation.	\$350 (per document)

Appendix B

EPA						
Region	MTR	Facility Name	City	State	Address	Owner/Operator
Region 2						
	Yes	Port Newark Terminal	Port Newark	NJ	Coastal Street	BP Products North America
	Yes	Carteret Terminal	Carteret	NJ	760 Roosevelt Ave.	BP Products North America
	Yes	Brooklyn Terminal	Brooklyn	NY	125 Apollo Street	BP Products North America
Region 3						
	Yes	BP Curtis Bay Terminal	Baltimore	MD	801 East Ordnance Rd	BP Products North America, INC.
Region 4						
	No	Nashville Terminal	Nashville	TN	1409 51 st Avenue, North	BP Products North America
	Yes	Jacksonville Terminal	Jacksonville	FL	2054 Hecksher Drive	BP Amoco
	Yes	Jacksonville Terminal	Jacksonville	FL	2101 Heckscher Drive	BP Products North America
	Yes	Port Everglades Terminal	Lauderdale	FL	1180 Spangler Blvd.	BP Products North America
Region 5						
	No	Chicago Terminal	Berwyn	IL	4811 South Harlem Avenue	BP Products North America
Region 9						
	Yes	Richmond Terminal BP	Point Richmond	CA	1306 Canal Blvd	Bp West Coast Products LLC
Region 10						
	Yes	BP West Coast Products LLC - Portland Terminal	Portland	OR	9930 NW St. Helens Road	BP West Coast Logistics LLC
	Yes	BP West Coast Products LLC- Seattle Terminal	Seattle	WA	1652 SW Lander St	BP West Coast Products LLC

APPENDIX C

Enhanced FRP Elements

1. Facility Response Plan Requirements.

a. For all facilities listed in Appendix D and any additional petroleum products terminals that Defendant subsequently owns and/or operates (collectively “FRP Facilities”), Defendant shall implement the “Enhanced FRP Elements” as set out in Paragraph 1(c) herein through the “FRP Revision” process as described in Paragraph 1(c).

b. The parties acknowledge that Defendant has prepared a “GDP” as that term is defined in introductory Paragraph D of the Consent Decree. The United States agrees that any measures developed and implemented pursuant to the GDP may be used to meet the requirements of this Appendix C.

c. Defendant shall modify the facility response plans (“FRPs”) at the FRP Facilities (“FRP Revisions”), to the extent necessary to: (1) comply with the GDP; and (2) meet the following requirements (“Enhanced FRP Elements”):

(1) All FRPs must be facility-specific.

i. For any FRP covering a FRP Facility listed in Appendix D, if the FRP does not include facility-specific details about the facility’s physical configuration, geographic features, and response preparedness, Defendant shall amend the FRP so that it is tailored to the physical conditions at that specific facility.

ii. For all FRP Facilities that Defendant begins to own or operate after the Effective Date of this Consent Decree, Defendant shall, within 180 “Days” (as defined in the Consent Decree) of beginning to own or operate such facility, prepare an FRP that

is tailored to the physical conditions at that specific facility to include facility-specific details about the facility's physical configuration, geographic features, and response preparedness.

(2) For any FRP that was prepared or revised without the preparer inspecting the FRP Facility at or around the time of preparation or revision of the FRP, the facility shall be inspected to determine whether there is a need for a revision to the FRP as required by Paragraph 1(c)(1).

(3) For any FRP Revision made pursuant to Paragraph 1(c), Defendant shall evaluate whether the following data and/or information tools would improve spill prevention and preparedness at the corresponding facility and, if so, implement any such additional information into its FRP:

i. Additional facility-specific data on water body flow speeds, tidal flow, geography, and habitat of any sensitive species within the planning distance of the facility;

ii. Geographic Reference Point Maps which locate resources for defining protection point boom and skimmer packages within the planning distance of the facility; and

iii. Digital Elevation Models to supplement existing information on the trajectory and direction of potential and/or actual spills.

2. FRP Revisions. The FRP Revision process shall evaluate the FRPs for FRP Facilities to:

a. ensure that each FRP is consistent with the response planning requirements set forth in 40 C.F.R. Part 112, Subpart D and the National Preparedness for Response Exercise Guidelines ("PREP Guidelines");

b. assess whether there are any gaps in FRPs and facility response training, drills and exercises at each FRP Facility, including:

i. Whether the Oil Spill Removal Organization(s) (“OSRO(s)”) or other responders for each facility are aware of the facility’s layout, oils stored, and on-site spill response equipment and other resources.

ii. For facilities that rely on terminal personnel to deploy boom, whether the operations personnel at each facility are sufficient in number and sufficiently trained to deploy booms during the initial phase of spill response.

iii. Whether to utilize additional OSRO support for boom deployment or other response activities during secondary emergency response (cleanup) activities.

iv. Whether to establish contingency plans in the event that the primary OSRO is unavailable during a spill event.

v. Whether to utilize one or more additional OSROs to develop additional spill response capabilities in addition to the primary OSRO at each facility. In the event multiple OSROs are tasked to respond to the same spill incident at the same facility, develop a document which establishes defined roles and responsibilities in order to provide timely and efficient spill response.

vi. In the event that multiple OSROs are utilized at a single facility, whether additional measures to foster communication between the facility and the OSROs, such as conferences or participation in relevant consortia to discuss topics relevant to increased spill response preparedness, should be employed.

3. Training and Drill/Exercise and Requirements. For all FRP Facilities, Defendant shall conduct drills and exercises according to the following:

a. Defendant shall conduct QI Notification Exercises as described in the PREP Guidelines and according to the following schedule:

i. For all FRP Facilities, during two of the four annual QI Notification Exercises, make notifications to all contacts listed in the plan as required 40 C.F.R. Part 112, App. F § 1.3.1 and update contact information in the event that it is inaccurate, noting such update(s) in the call log for the QI Notification Exercises.

ii. For FRP Facilities that operate 24-hours (hereinafter “Night Facilities”), at least one (1) QI Notification Exercises per year shall be conducted at night; and

iii. For all FRP Facilities, at least one (1) QI Notification Exercises per year shall be conducted during non-business hours.

b. Defendant shall conduct Emergency Procedures Exercises as set forth in the PREP Guidelines every three (3) years.

c. Defendant shall conduct Equipment Deployment Exercises as set forth in the PREP Guidelines according to the following schedule:

i. For all FRP Facilities at which the facility’s personnel serve as Defendant’s oil spill responders for small oil discharges, conduct at least one Equipment Deployment Exercise within three (3) years of the effective date of the Consent Decree (“Effective Date”) based on the medium or large-scale discharge scenario.

ii. For all FRP Facilities that rely on an OSRO in whole or in part for spill response, Defendant shall conduct at least one Equipment Deployment Exercise *at each of those facilities* ratably over three (3) years after the Effective Date.

iii. Defendant shall designate one coastal FRP Facility and one inland FRP Facility to conduct elements of an Equipment Deployment Drill for a worst case discharge scenario within three (3) years of the Effective Date.

iv. Defendant shall conduct one (1) Equipment Deployment Exercise within six (6) months of an amendment to any FRP in which Defendant selects a new OSRO or changes the responder from an OSRO to the facility's personnel.

d. Defendant shall develop and implement as a Tabletop Exercise at each FRP Facility that includes a night scenario or a scenario that includes significant adverse weather events that may occur.

e. If requested by EPA, Defendant shall lead one (1) Area Exercise at one FRP Facility subject to EPA's sole jurisdiction, but only if EPA requests the Defendant to lead the exercise within three (3) years of the Effective Date. This Area Exercise may be used to meet Defendant's obligations under 40 CFR § 112.21(c) or the PREP Guidelines.

f. Failed Drills and Exercises. If Defendant identifies, during or after any drill or exercise, any failed implementation of emergency procedures for spill response, Defendant shall repeat the drill or exercise within 90 Days.

g. Notice and EPA Observation. Defendant shall provide written notice to EPA at least 14 Days prior to conducting any Equipment Deployment Exercise. Defendant shall allow EPA to observe any such exercise; EPA shall use best efforts to provide advance notice to Defendant of EPA's intent to observe, but such notice shall not be required.

h. Defendant shall document all training, drills, and exercises in accordance with the provisions of the PREP Guidelines applicable to "EPA-Regulated Onshore Non

Transportation-Related Facilities” using forms or reports that include, at a minimum, the information captured by the sample forms provided as appendices to the PREP Guidelines.

i. For FRP Facilities served by a Regional Qualified Individual (“QI”), Defendant shall provide QI training for each facility operating area.

4. Enhanced Engineering and Operational Controls. Defendant, at its sole discretion, may implement additional measures above and beyond the requirements of 40 C.F.R. Part 112 at one or more of its facilities, including but not limited to the utilization of more effective types of:

- a. shutdown valves;
- b. mitigation release volume valves;
- c. remote spill detection and monitoring;
- d. overfill protection devices;
- e. switch controls such as tank flow and level alarm;
- f. operating procedure controls, such as additional inspections of oil storage areas and equipment; or
- g. the use of fuel and gasoline spill response tactics, such as the use of foam to control vapors and lower the explosive limit in the area.

5. Implementation of Enhanced FRP Elements. Defendant shall provide a copy of its GDP to EPA. For any additional petroleum products terminals that Defendant subsequently owns or operates, Defendant shall submit proposed revisions to the terminal’s FRP to include the Enhanced FRP Elements to the applicable EPA Region within 180 Days of obtaining ownership or control of the petroleum products terminal.

6. Enhanced FRP Elements Implementation Status Report. By March 1, 2014,

Defendant shall prepare and submit to EPA an Enhanced FRP Elements Implementation Status Report which shall contain a summary and description of the status of Defendant's implementation of the FRP Revisions as of December 31, 2013.

7. Certification.

a. As a condition of the termination of the Consent Decree as provided in Section XVI, Defendant shall certify that it has (1) completed its review pursuant to its GDP of the FRP for each FRP Facility listed in Appendix D and any petroleum products terminals that Defendant begins to own or operate after the Effective Date; (2) submitted all FRP Revisions pursuant to Paragraph 1(c) of this Appendix C; and (3) completed the training and drill/exercises required by Paragraph 3 of this Appendix C.

b. Except as otherwise provided herein, submissions under this Appendix C are not exempt from the requirements of the Consent Decree with respect to submissions, including Paragraph 13 in Section V (requiring certification) and Section IX ("Information Collection and Retention").

8. Effect of Enhanced FRP Elements. To the extent that any Enhanced FRP Element established under or pursuant to this Appendix C exceeds the minimum requirements to comply with 40 C.F.R. Part 112, Subpart D or any other applicable law or regulation, such Enhanced FRP Element shall not be employed by EPA as an additional compliance requirement, standard, or obligation pursuant to 40 C.F.R. Part 112 or any other law or regulation, or in calculating penalties for violations thereof.

8. Regulatory Amendments. Nothing herein shall limit Defendant's obligation to comply with the amended 40 C.F.R. Part 112 or PREP Guidelines as required by law and as they may be amended from time to time.

9. Defendant's Reservation of Rights. Defendant reserves the right to use any and all actions taken pursuant to this Appendix C to demonstrate compliance with any regulation or law.

10. FRP Auditor Pursuant to Appendix A. The parties acknowledge and agree (1) that none of the actions to be performed by Defendant pursuant to this Appendix C shall be subject to the review of the FRP Auditor described in Appendix A of the Consent Decree; (2) that the actions to be undertaken by Defendant in the performance of Defendant's obligations under this Appendix C are beyond the scope of the duties and activities of the FRP Auditor described in Appendix A of the Consent Decree; and (3) that the duties and activities of the FRP Auditor are limited to the duties and activities as described solely in Appendix A.

11. Termination. Defendant's obligations under this Appendix C as to any FRP Facility shall terminate upon Defendant's notice to EPA as provided by Paragraph 56 of the Consent Decree that the FRP Facility is no longer owned and/or operated by Defendant. Defendant's notice to EPA under this Paragraph shall include the name and address of the new owner or operator.

Appendix D

EPA Region	MTR	Facility Name	City	State	Address	Owner/Operator
Region 2	Yes	Port Newark Terminal	Port Newark	NJ	Coastal Street	BP Products North America
	Yes	Carteret Terminal	Carteret	NJ	760 Roosevelt Ave.	BP Products North America
	Yes	Brooklyn Terminal	Brooklyn	NY	125 Apollo Street	BP Products North America
Region 3	Yes	BP CURTIS BAY TERMINAL	Baltimore	MD	801 EAST ORDNANCE ROAD	BP Products North America
Region 4	Yes	Jacksonville Terminal	Jacksonville	FL	2054 Hecksher Drive	BP Amoco
	Yes	Jacksonville Terminal	Jacksonville Ft.	FL	2101 Heckscher Drive	BP Products North America
	Yes	Port Everglades Terminal	Lauderdale	FL	1180 Spangler Blvd.	BP Products North America
	No	Atlanta Southeast Terminal	Atlanta	GA	3132 Parrott Avenue, NW	BP Products North America
	No	Doraville Bulk Storage Facility	Doraville	GA	6430 New Peachtree Road	BP Products North America
	No	Charlotte Terminal	Charlotte	NC	7401 Old Mt. Holly Road	BP Products North America
	No	Selma Terminal	Selma	NC	3707 Buffalo Road	BP Products North America
	No	Knoxville Terminal	Knoxville	TN	1801 Third Creek Road	BP Products North America
	No	Nashville Terminal	Nashville	TN	1409 51 st Avenue, North	BP Products North America
Region 5	No	BP Products North America, Inc. - Wood River Terminal	Harford	IL	1000 BP Lane	BP Products North America

EPA Region	MTR	Facility Name	City	State	Address	Owner/Operator
	No	BP Products North America, Inc. - O'Hare Terminal	Des Plaines	IL	2201 South Elmhurst Road	BP Products North America
	Yes	BP Products North America - Chicago Terminal	Berwyn	IL	4811 South Harlem Avenue	BP Products North America
	No	BP Products North America, Inc. - Rochelle Terminal	Rochelle	IL	100 East Standard Oil Road	BP Products North America
	No	BP Products North America Inc. - South Bend Terminal	Granger	IN	12694 Adams Road	BP Products North America
	No	BP Products North America, Inc. - Indianapolis Terminal	Indianapolis	IN	2500 North Tibbs Avenue	BP Products North America
	No	BP Products North America, Inc. - Spring Valley Terminal	Spring Valley	MN	14514 State Highway 16	BP Products North America
	No	BP Products North America, Inc. - Dayton Terminal	Dayton	OH	621 Brandt Pike	BP Products North America
	No	BP Products North America, Inc. - Cincinnati Terminal	Cincinnati	OH	930 Tennessee Avenue	BP Products North America
Region 7	No	BP Products - Dubuque Terminal	Dubuque	IA	15393 Old Highway Rd	BP Products North America Inc./ U.S. Logistics

EPA Region	MTR	Facility Name	City	State	Address	Owner/Operator
Region 9	No	BP Pipelines North America, Freeman Station	Freeman	MO		BP Products North America Inc./ U.S. Logistics
	No	BP [ARCO East Hynes Facility]	Long Beach	CA	5905 Paramount	BP [ARCO Pipeline Company]
	No	BP [ARCO West Hynes Terminal]	Long Beach	CA	5900 Cherry Ave	BP [ARCO Pipeline Company]
	Yes	Richmond Terminal BP	Richmond	CA	1306 Canal Blvd	Bp West Coast Products LLC
	No	Arco Carson Crude Terminal	Carson	CA	24696 S Wilmington Ave	
Region 10	Yes	Marine Terminals 2 and 3	Long Beach	CA	1350 Pier B St	
	Yes	BP West Coast Products LLC - Portland Terminal	Portland	OR	9930 NW St. Helens Road	BP West Coast Logistics LLC
	No	BP Olympic Pipe Line Co., Sea-Tac Delivery Facility & Terminal	Renton	WA	Seattle-Tacoma Int'l Airport	BP/Olympic Pipe Line Company
	Yes	BP West Coast Products LLC-Seattle Terminal	Seattle	WA	1652 SW Lander St	BP West Coast Products LLC