

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil Action No.
 v.)
)
 BP PRODUCTS NORTH AMERICA INC.,)
)
 Defendant.)
 _____)

CONSENT DECREE

Concurrently with the lodging of this Consent Decree, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action seeking civil penalties and injunctive relief from the Defendant, BP Products North America Inc. (“BP Products”). The United States’ Complaint alleges that BP Products violated Section 112(r) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7412(r), as well as regulations promulgated pursuant to the CAA at 40 C.F.R. Part 68 (the “Risk Management Program Regulations”), at its refinery located in Texas City, Texas (the “Texas City Facility”).

WHEREAS, on August 10, 2005, a leak of oil and high-pressure gas occurred from a pressure let-down valve within the Cat Feed Hydrotreater Unit (“CFHU”) at the Texas City Facility. The leak, which was caused by corrosion and high-temperature sulfidation, resulted in the release and threatened release of air pollutants, toxic and flammable regulated substances,

and/or other extremely hazardous substances, including, but not limited to, carbon monoxide (CO), hydrocarbons, hydrogen sulfide (H₂S), sulfur dioxide (SO₂), and nitrogen oxides (NO_x);

WHEREAS, on July 28, 2005, an explosion and fire occurred within the Resid Hydrotreater Unit (“RHU”) at the Texas City Facility after a piping-elbow ruptured under high-temperature/high-pressure process conditions. The explosion and fire resulted in the release and threatened release of air pollutants, toxic and flammable regulated substances, and/or other extremely hazardous substances, including, but not limited to, SO₂, hydrocarbons, H₂S, and CO;

WHEREAS, on March 30, 2004, an explosion and fire occurred within the Ultraformer No. 4 (“UU4”) process unit at the Texas City Facility after outlet piping leading from the B-406 furnace in the UU4’s desulfurizer section ruptured. The rupture, which was caused by corrosion and erosion of the piping, as well as the resulting explosion and fire, resulted in the release and threatened release of air pollutants, toxic and flammable regulated substances, and/or other extremely hazardous substances, including, but not limited to, hydrocarbons, benzene, and xylene;

WHEREAS, Risk Management Plans submitted by BP Products for the Texas City Facility did not contain information required pursuant to 40 C.F.R. § 68.150 regarding regulated substances handled within covered process units at the Texas City Facility, including ethylene, propylene, and 1,3-Butadiene;

WHEREAS, in 2005, the EPA conducted an inspection of BP Products’ Texas City Facility that identified, *inter alia*, violations of the requirements of CAA Section 112(r), 42 U.S.C. §7412(r), and the Risk Management Program Regulations;

WHEREAS, BP Products has commenced implementation of corrective measures at its Texas City Facility in order to resolve the violations described above and in order to protect public health, welfare, and the environment, and BP Products represents that it shall continue these actions;

WHEREAS, BP Products does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint; and

WHEREAS, 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. This Court has jurisdiction over the subject matter of this action and the Parties, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b). Venue is proper in this District pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because BP Products resides and is located in this judicial district, the violations described in the Complaint are alleged to have occurred in this judicial district, and BP Products conducts business in this judicial district. For purposes of this Decree or any action to enforce this Decree, BP Products consents to both venue in this judicial district and this Court's jurisdiction over this Consent Decree, any such action to enforce the Consent Decree, and over BP Products.

2. For purposes of this Consent Decree, BP Products agrees that the Complaint states claims upon which relief may be granted pursuant to the Clean Air Act.

II. APPLICABILITY

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

4. No transfer of ownership or operation of the Texas City Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve BP Products of its obligation to ensure that the terms of the Consent Decree are implemented. At least 30 Days prior to any transfer of the Texas City Facility, BP Products 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 6, the United States Attorney for the Southern District of Texas, and the United States Department of Justice, in accordance with Section XI of this Decree (Notices). Any attempt to transfer ownership or operation of the Texas City Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

5. BP Products 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 Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. BP Products shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, BP Products 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

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

- a. “BP Products” shall mean the Defendant, BP Products North America Inc.;
- b. “Complaint” shall mean the complaint filed by the United States in this action;
- c. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XX);
- d. “Day” shall mean 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 shall run until the close of business of the next business day;
- e. “Defendant” shall mean BP Products;
- f. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- g. “Effective Date” shall have the definition provided in Section XII.

h. “Texas City Facility” shall mean the petroleum refining facility and associated operations located at 2401 5th Avenue South in Texas City, Texas that is owned and operated by BP Products as of the Effective Date.

i. “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral;

j. “Parties” shall mean the United States and BP Products;

k. “Section” shall mean a portion of this Consent Decree identified by a roman numeral; and

l. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date of this Consent Decree, BP Products shall pay the sum of fifteen million dollars (\$15,000,000.00) as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. BP Products 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 BP Products, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Southern District of Texas. At the time of payment, BP Products shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, to the United States in accordance with Section XI 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

The transmittal letter 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.* (S.D. Tex.), and shall reference the civil action number and DOJ case number: 90-5-2-1-08741.

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

V. COMPLIANCE REQUIREMENTS

11. Semi-annual reports. On each February 1 and August 1 after the Effective Date of the Consent Decree until termination pursuant to Section XV, BP Products shall submit to EPA a written report that shall include the information identified in sub-paragraphs 11.a - 11.c (a “Semi-annual report”). Each Semi-annual report shall contain a glossary of terms, abbreviations, and symbols used in the Semi-annual report.

a. Incident investigations. As part of each Semi-annual report, BP Products shall submit to EPA complete copies of all incident investigation reports required under 40 C.F.R. § 68.81 (*i.e.*, all reports for each incident which resulted in, or could have resulted in, a catastrophic release of a regulated substance (as defined under 40 C.F.R. § 68.3) at the Texas City Facility) that were completed during the six-month period ending 30 Days before the Semi-annual report’s required submission date (*i.e.*, July through December for the Semi-annual report due on February 1 and January through June for the Semi-annual report due on August 1). Each Semi-annual report shall also include complete copies of all incident investigation reports of accidental releases that must be included as part of the Texas City Facility’s five-year accident

history under 40 C.F.R. § 68.42 and that were completed during the six-month period ending 30 Days before the Semi-annual report's required submission date (*i.e.*, July through December for the Semi-annual report due on February 1 and January through June for the Semi-annual report due on August 1). BP Products shall also submit all findings, recommendations, and action items based on or responding to each of the incident investigation reports required to be submitted under this sub-paragraph 11.a.

b. Monthly overdue mechanical integrity inspection reports. As part of each Semi-annual report, BP Products shall submit to EPA monthly listings (in the format provided in Appendix A) for each of the months included in the six-month period ending 30 Days before the Semi-annual report's required submission date (*i.e.*, July through December for the Semi-annual report due on February 1 and January through June for the Semi-annual report due on August 1) identifying any mechanical integrity inspections required under 40 C.F.R. § 68.73 that are overdue for the following process equipment at each covered process unit located at the Texas City Facility:

- i. Pressure vessels;
- ii. Storage tanks;
- iii. Piping systems (including, but not limited to, piping components such as valves);
- iv. Relief and vent systems and devices;
- v. Emergency shutdown systems;
- vi. Controls (including, but not limited to, monitoring devices, sensors, alarms, and interlocks); and
- vii. Pumps.

c. Process unit personnel training reports. As part of each Semi-annual report, BP Products shall submit to EPA (in both of the formats provided in Appendix B) a listing identifying whether each employee involved in operating any process at each covered process unit located at the Texas City Facility has completed the training required under 40 C.F.R. § 68.71 for their respective position(s). The listing required under this sub-paragraph 11.c. shall include, but is not limited to, all employees working in any of the following positions:

- i. Outside Operator (“OO”);
- ii. Board Operator (“BO”);
- iii. Chief Operator (“CO”);
- iv. Shift Supervisor;
- v. Process Technician (“PT”);
- vi. Control of Work/Lockout/TagOut (“CoW/LOTO”) personnel;
- vii. Maintenance Coordinator (“MC”); and
- viii. Specially assigned personnel (“SA”).

The Parties acknowledge that BP Products may change the title or name of the listed employee positions or develop new employee positions that assume certain of the responsibilities of the listed positions with respect to operating a covered process unit at the Texas City Facility.

However, should BP Products change the title or name of any of the listed positions or develop new positions that assume any of the responsibilities of the listed positions with respect to operating a covered process unit at the Texas City Facility, BP Products shall subsequently

include in each Semi-annual report the information required under this sub-paragraph 11.c. for each employee working in the newly titled or newly developed position.

12. Within 45 Days after BP Products submits the initial Semi-annual report, BP Products and EPA shall confer to schedule a meeting to discuss BP Products' compliance with the requirements of Section V of the Consent Decree, as well as any other relevant matters. This meeting shall be scheduled at a time and place to be agreed upon by BP Products and the EPA. BP Products and EPA may agree to schedule additional subsequent meetings to discuss BP Products' compliance with the requirements of Section V of the Consent Decree.

13. If applicable, each Semi-annual report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize future occurrences of such violation.

14. All Semi-annual reports shall be submitted to the persons designated in Section XI of this Consent Decree (Notices) and in accordance with the requirements of Section XI.

15. Each Semi-annual report submitted by BP Products under this Section shall be signed by an official of the submitting party and shall 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 fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

16. The compliance requirements of this Consent Decree do not relieve BP Products of any reporting obligations required by the CAA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

17. 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.

VI. STIPULATED PENALTIES

18. BP Products shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below. A violation includes failing to perform any obligation required by the terms of this Consent Decree according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

19. Late Payment of Civil Penalty.

If BP Products fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, BP Products shall pay a stipulated penalty of \$10,000 per Day for each Day that the payment is late.

20. Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for the following violations of the compliance requirements identified in Section V:

a. For failing to timely submit any Semi-annual report in accordance with the timeframe required by Section V:

<u>Penalty Per Violation Per Day Overdue</u>	<u>Period of Noncompliance</u>
\$ 3500	1st through 30th Day
\$ 5000	31st Day and beyond

b. For failing to include any information required as part of each Semi-annual report required by Section V, BP Products shall pay the following stipulated penalties:

i. For failing to include any incident investigation report required under sub-paragraph 11.a.:

\$ 25,000 per Semi-annual report missing such information

ii. For failing to submit any of the monthly overdue mechanical integrity inspection reports required under sub-paragraph 11.b. or failing to include any information required as part of the monthly overdue mechanical integrity inspection reports:

\$ 25,000 per Semi-annual report missing such information

iii. For failing to submit any of the process unit personnel training reports required under sub-paragraph 11.c. or failing to include any information required as part of the process unit personnel training reports:

\$ 25,000 per Semi-annual report missing such information

21. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

22. BP Products shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

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

24. Stipulated penalties shall continue to accrue as provided in Paragraph 21, during any Dispute Resolution, 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, BP Products 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, BP Products 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.

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

25. BP Products shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, 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.

26. If BP Products fails to pay stipulated penalties according to the terms of this Consent Decree, BP Products 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 BP Products' failure to pay any stipulated penalties.

27. Subject to the provisions of Section IX 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 BP Products' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CAA or any implementing regulations, BP Products shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VII. DISPUTE RESOLUTION

28. 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. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of BP Products that have not been disputed in accordance with this Section. BP Products' failure to

seek resolution under this Section of a dispute regarding an issue of which BP Products had notice shall preclude BP Products from raising any such issue as a defense to an action by the United States to enforce any obligation of BP Products arising under this Consent Decree.

29. 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 BP Products 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 45 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 45 Days after the conclusion of the informal negotiation period, BP Products invokes formal dispute resolution procedures as set forth below.

30. Formal Dispute Resolution. BP Products 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 BP Products' position and any supporting documentation relied upon by BP Products.

31. The United States shall serve its Statement of Position within 60 Days of receipt of BP Products' 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 BP Products, unless BP Products files a motion for judicial review of the dispute in accordance with the following Paragraph.

32. BP Products may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 15 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of BP Products' 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.

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

34. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 30, BP Products shall have the burden of demonstrating that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

35. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of BP Products 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, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 24. If BP

Products does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Stipulated Penalties).

VIII. INFORMATION COLLECTION AND RETENTION

36. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Texas City Facility, at all reasonable times, upon presentation of credentials, to:

- a. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- b. obtain documentary evidence, including photographs and similar data; and
- c. assess BP Products' compliance with this Consent Decree.

37. Notwithstanding the provisions of Section XV, until five years after the termination of this Consent Decree, BP Products 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 to BP Products' 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, BP Products shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

38. After the conclusion of the information-retention period provided in the preceding Paragraph, BP Products 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, BP Products shall deliver any such documents, records, or other information to EPA. BP Products 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 BP Products 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 BP Products. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

39. BP Products 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 BP Products seeks to protect as CBI, BP Products shall follow the procedures set forth in 40 C.F.R. Part 2 and as follows. If BP Products asserts a claim of CBI, it shall: 1) identify the portions of the information that are alleged to be entitled to confidential treatment under 40 C.F.R. Part 2; 2) identify the period of time for which confidential treatment is desired and provide an explanation as to why the specified period of time is necessary; 3) provide a written explanation as to whether BP Products asserts that disclosure of the information would be likely to result in substantial harmful effects on BP

Products' competitive position, and if so, explain what those harmful effects would be, why they should be viewed as substantial, and the causal relationship between any disclosure and such harmful effects; 4) provide a written description of the measures taken by BP Products to guard against undesired disclosure of the information to others; 5) provide EPA with any pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determination, or reference to it, if available; and 6) provide EPA with a redacted version of the information to be provided with all alleged confidential business information deleted.

40. 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 BP Products to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

IX. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

41. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action.

42. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 41. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraphs 27 and 41. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed

by the Texas City Facility whether related to the violations addressed in this Consent Decree or otherwise.

43. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Texas City Facility, BP Products 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 Paragraph 41 of this Section.

44. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. BP Products is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. BP Products' 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 BP Products' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

45. This Consent Decree does not limit or affect the rights of BP Products or of the United States against any third parties that are not party to this Consent Decree, nor does it

limit the rights of third parties that are not party to this Consent Decree against BP Products, except as otherwise provided by law.

46. 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.

X. COSTS

47. 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 BP Products.

XI. NOTICES

48. 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. Where an e-mail address is provided below, BP Products shall submit all Consent Decree submissions to the designated recipient electronically rather than by U.S. Mail, postage pre-paid, overnight mail or registered mail, return receipt requested. Electronic submissions will be deemed submitted on the date they are transmitted electronically and only one electronic submission is required per recipient.

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. 90-5-2-1-08741

Associate Director
Air/Toxics & Inspection Coordination Branch
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency - Region 6
1445 Ross Ave.
Dallas, Texas 75202-2733
herrera.esteban@epa.gov

Minerva De Leon
Enforcement Officer
U.S. Environmental Protection Agency - Region 6
10625 Fallstone Rd.
Mail Code: 6EN
Houston, Texas 77099
deleon.minerva@epa.gov

and

To BP Products:

Gabe Cuadra
Compliance Manager
Texas City Refinery
BP Products North America Inc.
2401 5th Avenue South
Texas City, Texas 77590

James A. Nolan, Jr.
Managing Attorney
BP America Inc.
4101 Winfield Road
Mail Code 4 West
Warrenville, Illinois 60555

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

50. 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.

XII. EFFECTIVE DATE

51. 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.

XIII. RETENTION OF JURISDICTION

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

XIV. MODIFICATION

53. Except as set forth in Paragraph 49, the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

54. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section VII of this Consent Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 34, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XV. TERMINATION

55. No earlier than three years after the Effective Date of the Consent Decree and after BP Products has completed the requirements of Section V (Compliance Requirements)

of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, BP Products may serve upon the United States a Request for Termination, stating that BP Products has satisfied those requirements, together with all necessary supporting documentation. Notwithstanding BP Products' Request for Termination, the information collection and retention obligations of Section VIII shall remain in effect and continue until completed in accordance with the terms contained therein.

56. Following receipt by the United States of BP Products' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether BP Products has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree except for the information collection and retention obligations of Section VIII.

57. If the United States does not agree that the Decree may be terminated, BP Products may invoke Dispute Resolution under Section VII of this Decree. However, BP Products shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 30 of Section VII, until no sooner than 90 Days after service of its Request for Termination.

XVI. PUBLIC PARTICIPATION

58. 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 inappro-

priate, improper, or inadequate. BP Products 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 Consent Decree, unless the United States has notified BP Products in writing that it no longer supports entry of the Consent Decree.

XVII. SIGNATORIES/SERVICE

59. Each undersigned representative of BP Products 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.

60. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. BP Products 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.

XVIII. INTEGRATION

61. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent 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 Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XIX. FINAL JUDGMENT

62. 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 BP Products. 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.

XX. APPENDICES

63. The following appendices are attached to and incorporated as part of this Consent Decree:

“Appendix A” provides the format for the monthly overdue mechanical integrity inspection reports required under sub-paragraph 11.b;

“Appendix B” provides the formats for the process unit personnel training reports required under sub-paragraph 11.c;

Dated and entered this _____ day of _____, 2010.

UNITED STATES DISTRICT JUDGE
Southern District of Texas

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America v. BP Products North America Inc.* (S.D. Tex.).

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

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

Attorney-in-Charge

STEVEN D. SHERMER
District of Columbia Bar No. 486394
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
202-514-1134 (Phone)
Steven.Shermer@usdoj.gov

JOSÉ ANGEL MORENO
United States Attorney
Southern District of Texas

Local Co-counsel:

KEITH WYATT
Assistant United States Attorney
T.B.N.: 16984550
Fed. Id.: 3177
Southern District of Texas
P.O. Box 61129
Houston, Texas 77208
Voice: 713-567-9000
Keith.Wyatt@usdoj.gov

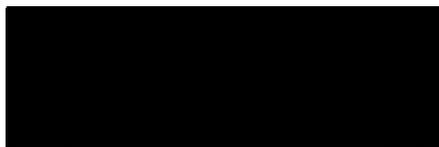
Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America v. BP Products North America Inc.* (S.D. Tex.).

**FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:**

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

Subject to the notice and comment provisions of 28 C.F.R. § 50.7,
THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter
of the *United States of America v. BP Products North America Inc.* (S.D. Tex.).

**FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
REGION 6:**



AL ARMENDARIZ
Regional Administrator
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave.
Dallas, TX 75202-2733

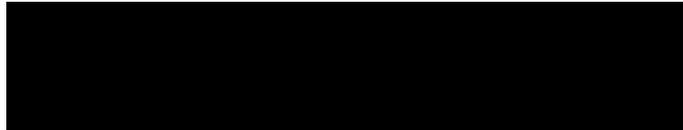
Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America v. BP Products North America Inc.* (S.D. Tex.).

**FOR THE DEFENDANT BP PRODUCTS
NORTH AMERICA INC.:**



KEITH M. CASEY

Vice President, BP Products North America Inc.
Business Unit Leader, Texas City Refinery
NOB/412
2401 5th Avenue South (P.O. Box 401)
Texas City, Texas 77590



GEORGE O. WILKINSON

Vinson & Elkins, L.L.P.

**ATTORNEYS FOR BP PRODUCTS NORTH
AMERICA INC.**

Appendix A:

Monthly overdue mechanical integrity inspection reports

BP Products shall submit the information required by sub-paragraph 11.b. in the

following format:

Typical Monthly Inspection Report									
Refinery Operating Area	UNIT	NO. VESSEL INTERNAL VISUAL ACTIVITIES OVERDUE	NO. PIPE CIRCUITS WITH THICKNESS ACTIVITIES OVERDUE	NO. PIPE CIRCUIT EXTERNAL VISUALS PAST DUE	NO. TANK INTERNAL VISUAL ACTIVITIES OVERDUE	PRV's OVERDUE	SAFETY INSTRUMENTS OVERDUE	WEEKLY PUMP INSPECTIONS MISSED	TOTAL OVERDUE ITEMS BY UNIT
Alkylation	ALKY2	0	0	0	0	0	0	0	0
	A3DEB	0	0	0	0	0	0	0	0
	ALKY3	0	0	0	0	0			
Cat Cracking	FCCU1	0	0	0	0	0	0	0	0
	FCCU3	0	0	0	0	0	0	0	0
Coker Complex	COKRA	0	0	0	0	0	0	0	0
	COKRB	0	0	0	0	0			
	COKRC	0	0	0	0	0			
	COKRS	0	0	0	0	0			
	COKRV	0	0	0	0	0			
	RDU01	0	0	0	0	0	0	0	0
HRU Unit	HRU01	0	0	0	0	0	0	0	0
Crude Distillation	PST3A	0	0	0	0	0	0	0	0
	PST3B	0	0	0	0	0	0	0	0
RHU Complex	RH200	0	0	0	0	0	0	0	0
	RH300	0	0	0	0	0			
	RH400	0	0	0	0	0			
	RH500	0	0	0	0	0			
	RH600	0	0	0	0	0			
	RHOSL	0	0	0	0	0			
	RHCAT	0	0	0	0	0	0	0	0
Aromatics	ARU01	0	0	0	0	0	0	0	0
	ARU02	0	0	0	0	0			
	AU002	0	0	0	0	0	0	0	0
Hydro-treating	CFHU1	0	0	0	0	0	0	0	0
	DDU01	0	0	0	0	0			
	DDU03	0	0	0	0	0	0	0	0
	NDU01	0	0	0	0	0	0	0	0
	ULCRK	0	0	0	0	0	0	0	0
Reformer Complex	ULFM3	0	0	0	0	0	0	0	0
	ULFM4	0	0	0	0	0	0	0	0

OMCC/ Blending/ Docks	TCR OMCC1	0	0	0	0	0	0	0	0
	TCR PRST2	0	0	0	0	0	0	0	0
TOTALS		0	0	0	0	0	0	0	0

Appendix B:

Process unit personnel training reports

BP Products shall submit the information required by sub-paragraph 11.c. in both of the following two formats:

Format 1:

Operator Competency Assessments and Unit Qualifications

Unit Name	Employee Title	FLL Name	OCA's Complete	Qualified as a Shift Supervisor
(Example: ARU, Coker, etc.)	(Example: Shift Supv A, Shift Supv B, Production Specialist, Asset Coord, TAR Coord, etc.)		Yes / No / N/A	Yes / No / N/A

Format 2:

Unit Name	Employee Name	Position	Shift No.	OO	Date OCA completed on OO	Kronos Start Date	Kronos End Date	BO	Date OCA completed on BO	Kronos Start Date	Kronos End Date	Qualified on all OO jobs	Qualified on all BO jobs	Qualified on all jobs	Total qualified
		(Example: BO, OO, PT-CO, OO-CO, OO-PT pay, BO-PT Pay, PT, PT-CO, LOTO, COW, MC-PT Pay		qualified / not qualified / in training				qualified / not qualified / in training				Yes/No	Yes/No	Yes/No	
Total Number of Unit Operators															
Number of operators qualified															
Percent of Operators qualified															% qualified