

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 30th JUDICIAL CIRCUIT
INGHAM COUNTY

BP PRODUCTS NORTH AMERICA INC,

Appellant,

v

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

File No. 08-000096-AV-C30
Hon. Clinton Canady, III

Appellee.

John A. Ferroli (P35869)
Dykema Gossett, PLLC
300 Ottawa Avenue, NW, Ste. 700
Grand Rapids, MI 49503-2306
(616) 776-7500

Grant P. Gilezan (P42951)
Dykema Gossett, PLLC
400 Renaissance Center
Detroit, MI 48243-1668
(313) 568-6789

Richard S. Kuhl (P42042)
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

Attorney for Appellee Michigan
Department of Environmental Quality

Attorneys for Appellant BP Products North
America Inc.

CONSENT ORDER

CONSENT ORDER

Page No.

CONSENT ORDER.....	1
I. JURISDICTION.....	1
II. SETTLEMENT/NON-ADMISSION.....	2
III. PARTIES BOUND	2
IV. STATEMENT OF PURPOSE	3
V. DEFINITIONS.....	4
VI. PERFORMANCE OF CORRECTIVE ACTION.....	7
VII. COMPLIANCE WITH STATE AND FEDERAL LAWS	15
VIII. EMERGENCY RESPONSE	16
IX. COMMUNICATIONS/NOTICES	18
X. PAYMENT	22
XI. STIPULATED PENALTIES.....	23
XII. DISPUTE RESOLUTION	26
XIII. INDEMNIFICATION AND INSURANCE	32
XIV. COVENANTS NOT TO SUE BY THE STATE	35
XV. RESERVATION OF RIGHTS BY THE STATE	38
XVI. COVENANT NOT TO SUE BY BP.....	41
XVII. CONTRIBUTION.....	42
XVIII. MODIFICATIONS.....	43
XIX. SEPARATE DOCUMENTS.....	43
XX. SEVERABILITY	43
XXI. TERMINATION OF CERTAIN PROVISIONS.....	43

CONSENT ORDER

The Appellant is BP Products North America Inc. The Appellee is the Michigan Department of Environmental Quality. This Consent Order ("Order") requires the preparation and performance of corrective actions to remediate releases of regulated substances from underground storage tank systems that MDEQ contends occurred at 18 gas stations formerly owned and operated by BP in the State of Michigan. BP agrees not to contest the authority or jurisdiction of the Court to enter this Order or any terms or conditions set forth herein.

The Court by entering this Order finds that the corrective actions set forth herein are necessary to abate the release or threatened release of regulated substances into the environment, to control future releases, and to protect the public health, safety, and welfare, and the environment.

NOW, THEREFORE, upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 600.631, MCR 7.101, and the Court's Order of September 24, 2009. This Court also has personal jurisdiction over BP. The Parties waive all objections and defenses that they may have with respect to jurisdiction of the Court or to venue in this Circuit.

1.2 The Court determines that the terms and conditions of this Order are reasonable, adequately resolve the environmental issues raised, and properly protect the interests of the people of the State of Michigan.

1.3 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Order and to resolve disputes arising under this Order, including those that may be necessary for its construction, execution, or implementation, subject to Section XII (Dispute Resolution).

II. SETTLEMENT/NON-ADMISSION

The entry of this Order by the Parties is for settlement purposes only and is neither an admission of liability with respect to any issue dealt with in this Order nor an admission of any factual allegations or legal conclusions stated or implied herein, for which BP expressly denies any liability.

III. PARTIES BOUND

3.1 This Order shall apply to and be binding upon BP and the State and their successors. Any change in ownership, corporate, or legal status of BP, including, but not limited to, any transfer of assets, or of real or personal property, shall in no way alter BP's responsibilities under this Order. To the extent that BP is the owner of part or all of any Site, and until such times as BP's responsibilities under Section VI (Performance of Corrective Action) are terminated pursuant to Section XXI (Termination of Certain Provisions), BP shall provide MDEQ with

written notice prior to its transfer of ownership of part or all of a Site, and shall provide a copy of this Order to any subsequent owners or successors prior to the transfer of any ownership rights. To the extent applicable, BP shall comply with the requirements of Section 21304c of Part 213, MCL 324.21304c.

3.2 Notwithstanding the terms of any contract that BP may enter with respect to the performance of corrective action pursuant to this Order, BP is responsible for compliance with the terms of this Order and shall ensure performance of all corrective action in conformance with the terms and conditions of this Order.

3.3 The signatories to this Order certify that they are authorized to execute this Order and to legally bind the Parties they represent.

IV. STATEMENT OF PURPOSE

4.1 In entering into this Order, it is the mutual intent of the Parties to:

- (a) To the extent it is applicable, achieve and maintain compliance with Section 21304c of Part 213;
- (b) Set forth the corrective actions to be performed by BP in accordance with Section VI (Performance of Corrective Action);

- (c) Achieve closure for releases of regulated substances at and/or migrating from the Sites in compliance with Section 21312a of Part 213.
- (d) Resolve fully and finally any obligations or liability of BP under Part 213 regarding the Sites, except those obligations or liabilities arising under this Order, and consistent with Section XIV (Covenants Not to Sue by the State) and Section XV (Reservation of Rights by the State); and;
- (e) Minimize disputes and litigation.

V. DEFINITIONS

5.1 “BP” means BP Products North America Inc. and its legal successors and assigns.

5.2 “CAP” means Corrective Action Plan, “FAR” means Final Assessment Report and “Closure Report” means Closure Report, as those terms are defined in Sections 21309a, 21311a and 21312a of Part 213.

5.3 “Day” means a calendar day.

5.4 “Effective Date” means the date the Court enters this Order.

5.5 “MDAG” means the Michigan Department of Attorney General and “MDEQ” means the Michigan Department of Environmental Quality, as well as their successor entities, and those authorized persons or entities acting on their behalf.

5.6 “Part 213” means Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301a *et seq.*

5.7 “Party” means either BP or MDEQ, and “Parties” means BP and MDEQ.

5.8 “RBCA” means the American society for testing and materials (ASTM) document entitled standard guide for risk-based corrective action applied at petroleum release sites, designation E 1739-95 (reapproved 2010) E1; standard guide for risk-based corrective action designation E 2081-00 (reapproved 2010) E1; and standard guide for development of conceptual site models and remediation strategies for light nonaqueous-phase liquids released to the subsurface designation E 2531-06 E1, all of which are hereby incorporated by reference.

5.9 “RRD” means the Remediation and Redevelopment Division of MDEQ and its successor entities.

5.10 "Site" or "Sites" means individually or collectively the following locations where a release has occurred or a threat of release exists from an underground storage tank system:

1. #9776, 470 East Division Street, Rockford, MI, Fac ID: 0-0005645;
2. #0155, 601 E. State Street, St. Johns, MI, Fac ID: 0-0009571;
3. #5039, 502 W. Michigan Ave, Kalamazoo, MI, Fac ID: 0-0005717;
4. #5953, 2145 Wealthy Street SE, East Grand Rapids, MI, Fac ID: 0-0004953;
5. #5440, 1435 E. Grand River Ave, East Lansing, MI, Fac ID: 0-0005814;
6. #5430, 2131 W. Grand River Ave, Okemos, MI, Fac ID: 0-0005763;
7. #5780, 4702 W. Main St, Kalamazoo, MI, Fac ID: 0-0005686;
8. #5374, 27951 Gratiot Ave, Roseville, MI, Fac ID: 0-0042068;
9. #5178, 200 Main St, Romeo, MI, Fac ID: 0-0005726;
10. #5376, 28992 Woodward Ave, Royal Oak, MI, Fac ID: 0-0005744;
11. #5378, 1512 North Eaton, Albion, MI, Fac ID: 0-0005745;
12. #5783, 2594 Capital Ave, Battle Creek, MI, Fac ID: 0-0005684;
13. #6917, 61588 County Rd 365, Lawrence, MI, Fac ID: 0-0016021;
14. #9772, 3000 East Saginaw St, Lansing, MI, Fac ID: 0-0005644;
15. #4194, 108 East Vienna Rd, Clio, MI, Fac ID: 0-0002195;
16. #5147, 1155 South Division Ave, Grand Rapids, MI, Fac ID: 0-0033189;

17. #5213, 1561 28th St SW, Wyoming, MI, Fac ID: 0-0005728; and

18. #5904, 3530 Sprinkle Rd, Kalamazoo, MI, Fac ID: 0-0004946;

5.11 “State” means MDAG and MDEQ and any authorized representatives acting on their behalf.

5.12 Unless otherwise stated herein, all other terms used in this Order which are defined in Part 3, Definitions, of the NREPA MCL 324.301; or Part 213 shall have the same meaning in this Order as in Parts 3 and 213.

VI. PERFORMANCE OF CORRECTIVE ACTION

6.1 BP shall perform all necessary corrective actions relating to the Sites to comply with the requirements of Part 213, including but not limited to the corrective actions outlined in this Order, as follows:

- a. BP will submit to MDEQ within 6 months of the Effective Date a masterplan for each Site (including a schedule) in the form attached hereto as Exhibit A (“Masterplan”) to accomplish the following actions with respect to each Site:
 - i. Based on the data available as of the submission of a Masterplan, BP shall identify each Site where BP must obtain access to third-party properties to fully delineate the extent of contamination at or migrating from a Site or to perform corrective action, and BP shall

identify the properties to which access must be obtained. BP shall secure access to such properties not later than 8 months after MDEQ approves a Masterplan. If after a Masterplan is approved by MDEQ access to additional properties (not included in the Masterplan) is subsequently determined by BP to be required, then BP shall submit a Masterplan amendment to MDEQ within 30 days of that determination and BP shall secure access to such properties not later than 8 months after MDEQ approves a Masterplan amendment. BP shall be deemed to be in compliance with this Paragraph if it files a legal proceeding seeking access within the referenced time periods.

- ii. At Sites where all necessary third party access has already been obtained by BP to delineate the extent of contamination at or migrating from the Site, BP shall either submit a FAR/CAP for each Site, or alternatively a Closure Report, within 12 months following approval of a Masterplan. This subparagraph does not apply to Site 5374 in Roseville, for which MDEQ approved a FAR/CAP prior to the entry of this Order and such approval shall be given full force and effect under this Order.
- iii. At Sites where all necessary third party access essential to the delineation of the extent of contamination at or migrating from the Site has not been obtained by BP, BP shall submit a FAR/CAP for

each Site within 12 months following its obtaining all such access by agreement, settlement, court order or other arrangements made by MDEQ. BP shall provide notice to relevant MDEQ staff within fourteen (14) days of obtaining all necessary third party access.

This subparagraph does not apply to Site 5374 in Roseville, for which MDEQ approved a FAR/CAP prior to the entry of this Order and such approval shall be given full force and effect under this Order.

iv. Except for when a Masterplan permits a Closure Report to be submitted instead of a FAR/CAP. BP shall set a Site-specific goal of submitting a Closure Report for each Site that meets the requirements of Section 21312a within a period of time after MDEQ's approval of the FAR/CAP for a Site, which goal, however, shall not be an enforceable deadline or schedule requirement of this Order.

b. MDEQ agrees to meet with BP within 60 days of the Effective Date in order to discuss any issues and planning necessary to meet the requirements set forth in Paragraph 6.1.a. MDEQ will make a good faith effort to coordinate the assignment of District personnel to facilitate consistency and efficiency in the Parties' performance of responsibilities hereunder regarding the Sites.

- c. Upon MDEQ's approval of a Masterplan or an amendment to a Masterplan, that approved Masterplan, as it may be amended, shall be incorporated into this Order and BP shall implement the actions set forth in that Masterplan in accordance with Paragraph 6.1.a.
- d. If BP cannot obtain access to third-party properties to fully delineate the extent of contamination at or migrating from a Site, BP shall remain responsible to conduct corrective actions to the extent required by Part 213. If BP's reasonable efforts do not result in an agreement for access to a third-party property, then MDEQ shall provide reasonable assistance to procure such access by contacting the owner of the third-party property to explain BP's obligation to conduct corrective action under this Order and Part 213, and, if BP initiates legal proceedings pursuant to Part 213, by supporting BP's efforts to obtain a court order for such access to comply with this Order and Part 213.
- e. The Parties shall meet quarterly (until termination of this Order as to a Site pursuant to Section XXI (Termination of Certain Provisions) or as mutually agreed upon) to discuss the schedule, status, results of corrective action being undertaken at each Site, access to properties, and any other matters related to the implementation of a Masterplan.
- f. Until the submission of an approvable Closure Report or as mutually agreed upon by the Parties, BP will submit, on a semi-annual basis, a

written status report to MDEQ for each Site that describes the activities that have been taken toward achieving compliance with this Order, all results of sampling and tests and other data received by BP, each third party property at which access has been achieved in order to fully delineate the extent of contamination at or migrating from a Site, BP's progress in implementing that Masterplan, any actual or potential problems that affect or might affect BP's ability to implement that Masterplan, how BP proposes to resolve such problems, and any request by BP to amend a Masterplan schedule requirement due to such problems.

- g. If a delay or anticipated delay in meeting a requirement for a Site under this Order is beyond the control of BP (including without limitation a determination that the achievement of a requirement is technically impracticable from an engineering perspective, and subject to Paragraph 6.1.a.i, difficulties encountered forming agreements for access and deed restrictions with third party property owners despite BP's reasonable efforts), the Parties shall amend or alter that requirement by written mutual agreement and any such modifications shall be incorporated into this Order.
- h. Absent agreement by the Parties, an extension of the schedule for any task or activity shall not, by itself, extend the schedule for the performance of any other task or activity.

6.2 Within 90 days of receipt of each Masterplan, Closure Report, and FAR/CAP as required in Paragraph 6.1.a, MDEQ shall review each submittal and respond by approving, approving with conditions, denying or make a determination that the submittal does not contain sufficient information for MDEQ to make a decision. If MDEQ's response is that the submittal does not include sufficient information, MDEQ shall identify the information that is required for MDEQ to make a decision.

6.3 If MDEQ requests further information or denies a Masterplan, Closure Report, or FAR/CAP submitted under this Order, then BP may proceed to dispute resolution specified in Section XII (Dispute Resolution) within 60 days of receipt of MDEQ's written determination or re-submit the Masterplan, Closure Report or FAR/CAP within 60 days of receipt of MDEQ's written determination. If, however, BP is required by MDEQ to conduct additional field work or secure access to additional properties in order to re-submit the Masterplan, Closure Report or FAR/CAP, then the schedule for that re-submission shall be established by mutual agreement of MDEQ and BP. MDEQ shall review a resubmitted Masterplan, Closure Report or FAR/CAP within 90 days from MDEQ's receipt to evaluate whether sufficient information has been provided or the identified deficiencies have been corrected. A Masterplan, Closure Report or FAR/CAP shall be considered out of compliance with this Order until sufficient information has been provided or the

identified deficiencies have been corrected, subject to Paragraphs 6.4, 6.6 and 11.4, and Section XII (Dispute Resolution).

6.4 If MDEQ does not comply with the time frames set forth in Paragraphs 6.2 or 6.3, a Masterplan, Closure Report, or FAR/CAP shall be considered approved.

6.5 If MDEQ approves or approves with conditions a Masterplan or FAR/CAP, or approves with conditions a Closure Report, submitted under Paragraph 6.1.a, then BP shall initiate implementation of the Masterplan, Closure Report or FAR/CAP, or proceed to dispute resolution specified in Section XII (Dispute Resolution) regarding the conditions, within 60 days of receipt of MDEQ's written approval decision, and BP shall provide proof of such initiation in writing at the next required meeting following such initiation. If, however, BP is required by MDEQ to conduct additional field work or secure access to additional properties in order to initiate implementation of the Masterplan, Closure Report or FAR/CAP, then the schedule for initiating such implementation shall be established by mutual agreement of MDEQ and BP.

6.6 If MDEQ denies a Closure Report submitted as part of an approved Masterplan that does not require a FAR/CAP, subject to BP's right to proceed to dispute resolution in Section XII (Dispute Resolution), BP shall prepare, pursuant

to a mutually agreed upon schedule, an amended Masterplan or Closure Report for that Site.

6.7 Any time frame required by this Order may be extended by mutual agreement of BP and MDEQ.

6.8 BP shall submit to the appropriate Register of Deeds for recording all institutional controls or land and resource use restrictions required by a CAP for a Site within 60 days of receipt of MDEQ's approval without conditions of a CAP or an amendment to a CAP submitted under Paragraph 6.1.a, unless a longer period of time is requested by BP and agreed to in writing by MDEQ, which agreement shall not be unreasonably withheld. With respect to Site 5374 in Roseville, BP shall submit to the appropriate Register of Deeds for recording (a) within 6 months of the entry of this Order, any institutional controls or land and resource use restrictions that are known to be required by that Site's CAP as of the entry of this Order, and (b) all other institutional controls or land and resource use restrictions that are subsequently determined to be required by that Site's CAP within 6 months of that determination. With respect to any Site that has an approved Masterplan that permits a Closure Report to be submitted instead of a FAR/CAP, BP shall submit to the Register of Deeds, prior to submitting the Closure Report, any institutional controls or land and resource use restrictions that are known to be required for the approval of the Closure Report. As an alternative to recording deed restrictions in

order to fulfill CAP or Closure Report requirements hereunder, BP may proceed as allowed under the terms of Part 213 to rely on a local groundwater ordinance.

6.9 If BP ceases to perform the corrective action required by this Order; is not performing corrective action in accordance with this Order; or is performing corrective action in a manner that causes or may cause an endangerment to public health, safety, or welfare, or the environment, MDEQ may, at its option and upon providing thirty (30) days prior written notice to BP, take over the performance of those corrective action. MDEQ, however, is not required to provide thirty (30) days written notice prior to performing corrective action that MDEQ determines are necessary pursuant to Section VIII (Emergency Response). If MDEQ finds it necessary to take over the performance of corrective action that BP is obligated to perform under this Order, BP shall reimburse the State for its costs lawfully incurred to perform this corrective action, including any accrued interest. Interest, at the rate specified in Section 21323b(3) of Part 213, shall begin to accrue on the State's costs on the day the State begins to incur costs for this corrective action. Costs incurred by the State to perform corrective action pursuant to this Paragraph (and any accrued interest) shall be reimbursed by BP in accordance with Paragraph 10.2 of Section X (Settlement).

VII. COMPLIANCE WITH STATE AND FEDERAL LAWS

7.1 All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and

appropriate state and federal laws, rules, and regulations, including, but not limited to, Part 213, and laws relating to occupational safety and health. Other agencies may also be called upon to review the performance of corrective action under this Order.

7.2 This Order does not relieve BP's obligation to obtain and maintain compliance with any applicable permits including, but not limited to, a National Pollutant Discharge Elimination System (NPDES) permit, Storm Water Management permit and soil erosion and sedimentation control permit.

7.3 Corrective action performed by BP pursuant to this Order shall be in accordance with the standards promulgated pursuant to the National Contingency Plan, 40 CFR 300.150; the Occupational Safety and Health Act of 1970, 29 CFR 1910.120; and the Michigan Occupational Safety and Health Act, 1974 PA 154, as amended, MCL 408.1001 et seq.

VIII. EMERGENCY RESPONSE

8.1 If during the course of BP's performance of corrective action pursuant to this Order, BP or its agents, doing work on BP's behalf, causes a release or threat of release of a hazardous substance at or from a Site, or causes exacerbation of existing contamination at a Site, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, BP shall immediately undertake all

appropriate actions under applicable law to prevent, abate, or minimize such release, threat of release, or exacerbation; and shall immediately notify the applicable MDEQ District Supervisor and the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by BP shall be in accordance with all applicable health and safety laws and regulations.

8.2 Within ten (10) days of notifying MDEQ of such an act or event described in Paragraph 8.1, BP shall submit a written report, setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate any release, threat of release, or exacerbation caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether BP notifies MDEQ under this Section, if BP's or its agents' performance of corrective action pursuant to this Order causes a release, threat of release, or exacerbation at or from a Site, MDEQ may:

- (a) require BP to stop corrective action at that Site for such period of time as may be needed to prevent or abate any such release, threat of release, or exacerbation;
- (b) require BP to undertake any actions that the MDEQ determines are necessary under applicable law to prevent or abate any such release, threat of release, or exacerbation; or

- (c) undertake any actions that MDEQ determines are necessary under applicable law to prevent or abate such release, threat of release, or exacerbation.
- (d) Although BP will retain its right to seek dispute resolution of any MDEQ determination in Paragraphs 8.2 (a)-(c), until the dispute resolution process is completed, BP will be required to undertake any actions that MDEQ determines are necessary pursuant to these Paragraphs.

IX. COMMUNICATIONS/NOTICES

9.1 The Parties anticipate that most communications regarding issues relating to preparation and performance of corrective action at a Site pursuant to this Order, including all communications and submissions set forth in Section VI (Performance of Corrective Action) and notifications BP is required to submit pursuant to Section 21307a(2), will take place between BP or its consultants and MDEQ's staff in the District responsible for a particular Site. With advance approval by MDEQ, communications hereunder between the Parties may be provided by electronic means. In addition to providing communications to relevant District staff and responsible personnel for BP, the following communications referenced in this Order must also be sent to BP's Project Manager and MDEQ District Supervisors:

- (a) Masterplan;

- (b) semi-annual status reports;
- (c) requests for modifications of any requirements in this Order;
- (d) Dispute Resolution;
- (e) Emergency Response;
- (f) requests by BP for MDEQ assistance in gaining access to properties;
- (g) any payments by BP; and
- (h) approvals or disapprovals by MDEQ of submissions under this Order.

9.2 BP shall designate one or more Project Managers. If BP changes its designated Project Manager, the name, address, and telephone number of the successor shall be provided to the MDEQ District Supervisors, in writing, as soon as practicable.

BP's Project Manager(s):

Stephen P. Gonzalski
LCM Strategy Manager
Atlantic Richfield Company
1 West Pennsylvania Ave.
Suite 440
Towson MD 21204
Phone: (410) 825-8146
E-mail Address: stephen.gonzalski@bp.com

And

Richard F. Kilcoyne
Remediation & Decommissioning Management
BP Remediation Management
150 West Warrenville Road
MC 200 1E
Naperville, IL 60563
Phone: (630) 420-5153
E-mail Address: richard.kilcoyne@bp.com

9.3 MDEQ shall designate one or more District Supervisors for each Site. If MDEQ restructures or changes the address for the District Supervisors, it will provide the new information, address or telephone number of the successor to BP's Project Manager(s), in writing, as soon as practicable. BP is only required to provide the communications listed in Paragraph 9.1(a)-(h) to those MDEQ District Supervisor(s) that have Sites in their District that are directly or indirectly referred to in the communications.

For the following Sites:

#9776, 470 East Division Street, Rockford, MI, Fac ID: 0-0005645
#5213, 1561 28th St SW, Wyoming, MI, Fac ID: 0-0005728
#5147, 1155 South Division Ave, Grand Rapids, MI, Fac ID: 0-0033189
#5953, 2145 Wealthy Street SE, East Grand Rapids, MI, Fac ID: 0-0004953

MDEQ Grand Rapids District Office
David O'Donnell, Supervisor
350 Ottawa Ave. NW, Unit 10
Grand Rapids, Michigan 49503-2341
Phone: (616) 356-0226
Fax: (616) 356-0202

For the following Sites:

#5780, 4702 W. Main St, Kalamazoo, MI, Fac ID: 0-0005686
#5378, 1512 North Eaton, Albion, MI, Fac ID: 0-0005745
#6917, 61588 County Rd 365, Lawrence, MI, Fac ID: 0-0016021

#5783, 2594 Capital Ave, Battle Creek, MI, Fac ID: 0-0005684
#5904, 3530 Sprinkle Rd, Kalamazoo, MI, Fac ID: 0-0004946
#5039, 502 W. Michigan Ave, Kalamazoo, MI, Fac ID: 0-0005717

MDEQ Kalamazoo District Office
Frank Ballo, Supervisor
7953 Adobe Road
Kalamazoo, Michigan 49009
Phone: (269) 567-3531
Fax: (269) 567-9440

For the following Sites:

#9772, 3000 East Saginaw St, Lansing, MI, Fac ID: 0-0005644
#4194, 108 East Vienna Rd, Clio, MI, Fac ID: 0-0002195
#5430, 2131 W. Grand River Ave, Okemos, MI, Fac ID: 0-0005763
#5440, 1435 E. Grand River Ave, East Lansing, MI, Fac ID: 0-0005814
#0155, 601 E. State Street, St. Johns, MI, Fac ID: 0-0009571

MDEQ Lansing District Office
Kathy Shirey, Supervisor
525 W. Allegan Street
P.O. Box 30242
Lansing, Michigan 48909
Phone: (517) 284-6651
Fax: (517) 241-3571

For the following Sites:

#5374, 27951 Gratiot Ave, Roseville, MI, Fac ID: 0-0042068
#5178, 200 Main St, Romeo, MI, Fac ID: 0-0005726
#5376, 28992 Woodward Ave, Royal Oak, MI, Fac ID: 0-0005744

MDEQ Southeast Michigan District Office
Paul Owens, Supervisor
27700 Donald Court
Warren, Michigan 48092
Phone: (586) 753-3821
Fax: (586) 753-3859

9.4 MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Order.

X. PAYMENT

10.1 In consideration of the covenants set forth in Section XIV (Covenants Not To Sue By The State), within sixty (60) days after the Effective Date of this Order, BP shall pay One Million Dollars (\$1,000,000.00) to MDEQ. Payment shall be made pursuant to the provisions of Paragraph 10.2 of this Order.

10.2 All payments made pursuant to this Order shall be by certified check, made payable to the "State of Michigan – Environmental Response Fund," and shall be sent by first class mail to the Accounting Services Division, Cashier's Office for MDEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or delivered by courier to the Accounting Services Division, Cashier's Office for MDEQ, 1st Floor, Van Wagoner Building, 425 W. Ottawa Street., Lansing, Michigan 48933. To ensure proper credit, the name BP Products North America Inc., the Court Case No. 08-000096-AV-C30, and the RRD Account Number RD60002 shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to Karen Kligman, Chief of the Compliance and Enforcement Section, Remediation and Redevelopment Division, Michigan Department of Environmental Quality, P.O. Box 30426, Lansing, Michigan 48909-7818. Payment pursuant to this section and payment of stipulated penalties pursuant to Section XI

(Stipulated Penalties), shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

10.3 If BP fails to make full payment to MDEQ as specified in Paragraph 10.1 of this Order, interest, at the rate specified in Section 21323b(3) of Part 213, MCL 324.21323b(3), shall begin to accrue on the unpaid balance on the day after payment was due, until the date upon which BP makes full payment including the accrued interest to the MDEQ.

XI. STIPULATED PENALTIES

11.1 BP shall be liable for stipulated penalties in the amounts set forth in Paragraphs 11.2 and 11.3 of this Order for failure to comply with the requirements of this Order, unless excused under Paragraph 6.1.g. "Failure to Comply" by BP shall include failure to complete submissions and notifications as required by this Order, and failure to perform corrective action in accordance with Section VI (Performance of Corrective Action) and this Order, within the specified implementation schedules established by or approved under this Order.

11.2 The following stipulated penalties shall accrue per violation per day for any violation of Section VI (Performance of Corrective action) of this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.00	1 st through 14 th day
\$500.00	15 th through 30 th day

\$2,000.00

31st day and beyond

11.3 Except as provided in Paragraph 6.1.g and Section XII (Dispute Resolution), if BP fails or refuses to comply with any other term or condition of this Order, BP shall pay the MDEQ stipulated penalties of Three Hundred Seventy Five Dollars (\$375.00) per day for each and every failure or refusal to comply.

11.4 If BP fails to comply with a requirement of Section VI (Performance of Corrective Action), stipulated penalties shall begin to accrue upon BP's receipt of MDEQ's written notice of accrual of stipulated penalties, which shall set forth specifically the compliance requirement(s) at issue. However, following receipt of such notice, BP shall have a grace period of sixty (60) days to comply with the requirement(s) set forth in MDEQ's notice. If BP achieves such compliance within sixty (60) days of receipt of MDEQ's notice, stipulated penalties shall not be demanded by MDEQ and shall lapse.

11.5 If BP does not achieve compliance with the requirement(s) set forth in MDEQ's notice by sixty (60) days after BP's receipt of MDEQ's notice, stipulated penalties may be demanded as specified in Paragraph 11.2 and shall continue to accrue until the lapse or violation is corrected. BP may proceed to dispute resolution specified in Section XII (Dispute Resolution) regarding any violation or

stipulated penalties claimed by MDEQ. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

11.6 Except as provided in Section XII (Dispute Resolution) of this Order, BP shall pay stipulated penalties owed to the State no later than sixty (60) days after BP's receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 10.2 of Section X (Payment) of this Order. Interest, at the rate provided for in Section 21323b(3) of Part 213, MCL 324.21323b(3), shall begin to accrue on the unpaid balance after payment was due until the date upon which BP makes full payment of those stipulated penalties and the accrued interest to MDEQ.

11.7 The payment of stipulated penalties shall not alter in any way BP's obligation to perform the corrective action required by this Order.

11.8 If BP fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if BP violates this Order. For any failure or refusal of BP to comply with the requirements of this Order, the State also reserves the right to pursue any other remedies to which it is entitled under this Order or any applicable law including,

but not limited to, seeking civil fines, injunctive relief, and the specific performance of corrective action and reimbursement of costs.

11.9 Notwithstanding any other provision of this Section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Order.

XII. DISPUTE RESOLUTION

12.1 Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to Section VI (Performance of Corrective Action) or Paragraph 8.2(a)-(c) of Section VIII (Emergency Response). Any other disputed issue relating to this Order shall be resolved pursuant to the terms of this Section, but shall not be eligible for review by the Dispute Resolution Panel, unless agreed upon by the Parties. However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of BP's obligations that have not been disputed in accordance with this Section. Engagement of dispute resolution pursuant to this Section shall not be cause for BP to delay the performance of any corrective action required under this Order.

12.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information BP provides to the State under Paragraphs 12.3 through 12.6 of this

Order, and any documents MDEQ and the State rely on to make the decisions set forth in Paragraphs 12.3 through 12.6 of this Order.

12.3 Any dispute subject to this Section shall in the first instance be the subject of informal negotiations between the appropriate MDEQ District staff and BP. A dispute shall be considered to have arisen on the date that a Party to this Order receives a written Notice of Dispute from the other Party. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. Except as otherwise set forth in Section VI (Performance of Corrective Action), in the event BP objects to any MDEQ decision concerning the requirements of this Order that is subject to this section, BP shall submit the Notice of Dispute within twenty-one (21) days of receipt of MDEQ's decision. The period of informal negotiations shall not exceed twenty (20) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty (20) days or within the agreed-upon time period, the appropriate RRD District Supervisor will thereafter provide MDEQ's Statement of Position, in writing, to BP. In the absence of initiation of formal dispute resolution by BP under Paragraph 12.4, MDEQ's position as set forth in MDEQ's Statement of Position shall be binding on the Parties.

12.4 If BP and MDEQ cannot informally resolve a dispute arising under Section VI (Performance of Corrective Action) or Paragraph 8.2(a)-(c) of Section VIII (Emergency Response) under Paragraph 12.3 of this Order, BP may initiate formal dispute resolution by submitting a written Notification of Request for Review by Dispute Resolution Panel ("Notification") to the appropriate MDEQ District Supervisor, requesting a review of the disputed issues. If BP and MDEQ cannot informally resolve any other disputed matter under Paragraph 12.3 of this Order, BP may submit a written Request for Review to the RRD Chief, with a copy to the appropriate MDEQ District Supervisor, requesting a review of the disputed issues pursuant to Paragraph 12.6. This Notification or Request for Review must be submitted within twenty-one (21) days of BP's receipt of the Statement of Position issued by MDEQ pursuant to Paragraph 12.3.

12.5 The Dispute Resolution Panel ("Panel") shall be comprised of a total of six (6) members, with three (3) Panel members designated by BP in its sole discretion and three (3) Panel members designated by MDEQ in its sole discretion. The Parties shall provide each other written notice of their Panel member designations within ten (10) days of BP's submittal of the Notification. Two (2) of the three (3) Panel members designated by each Party shall not have been directly involved in the informal negotiations referenced in Paragraph 12.3. Panel members may be employees, contractors or representatives of the Party which made the

designation, and any costs associated with a Panel member's functions hereunder shall be borne solely by the Party designating that Panel member. Within twenty (20) days of BP's submittal of the Notification, BP shall submit to each Panel member a written Request for Review ("Request") that shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting BP's position; and supporting documentation upon which BP bases its position. MDEQ may submit a written Response to BP's Request to each Panel member within twenty (20) thereafter. The Panel shall meet in person or by phone to discuss the issues in dispute. The Panel may seek further information from any Party. Within sixty (60) days of the submittal of BP's Notification, the Panel will provide a Statement of Decision, in writing, which will include a statement of its understanding of the issues in dispute; a description of the decision(s) the Panel was able to reach or not reach regarding the issues in dispute; and supporting documentation or information it relied upon in making its decision(s). The time period for the Panel's review of the Request may be extended by written agreement between the Parties. Subject to any right to seek further review as allowed in Paragraph 12.6, a decision by a majority of the Panel shall be binding on the Parties. If a majority of the Panel cannot agree upon a decision, within the time period set forth in Paragraph 12.5, it shall so advise the Parties in writing.

12.6 If after the Panel issues a decision or advises the parties that it cannot agree and BP continues to object to any MDEQ decision concerning the requirements of this Order that is subject to dispute under this Section, BP may submit a written Request for Review to the RRD Chief, with a copy to the appropriate MDEQ District Supervisor, requesting a review of the disputed issues. The Request for Review must be submitted within twenty-one (21) days of BP's receipt of the written Statement of Decision from the Panel. BP's Request for Review, as submitted under Paragraph 12.4 or this Paragraph, shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting BP's position; and supporting documentation upon which BP bases its position. Within twenty (20) days of the submittal of BP's Request for Review, the RRD Chief will provide his/her Statement of Decision, in writing, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her decision; and supporting documentation he/she relied upon in making the decision. The time period for the RRD Chief's review of BP's Request for Review may be extended by written agreement between the Parties.

12.7 The RRD Chief's Statement of Decision pursuant to Paragraph 12.6 shall control unless, within twenty-one (21) days after BP's receipt of the RRD Chief's Statement of Decision, BP files with this Court a motion for resolution of the dispute, which sets forth the matter in dispute, the efforts made by the Parties to

resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Order. Within sixty (60) days of BP's filing of a motion asking the Court to resolve a dispute, MDEQ will file with the Court the administrative record that is maintained pursuant to Paragraph 12.2.

12.8 Any judicial review of a disputed issue shall be limited to the administrative record. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the corrective action that is the subject of this Order, BP shall have the burden of demonstrating on the administrative record that the position of MDEQ on the disputed issue is arbitrary and capricious or otherwise not in accordance with law or this Order. In Court proceedings on any dispute hereunder, BP shall bear the burden of persuasion on factual issues under the applicable standards of review. If the Court finds that the administrative record is incomplete or inadequate, the Court may consider supplemental material.

12.9 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of BP's receipt of MDEQ's notice of accrual, but payment shall be stayed pending resolution of the dispute. In the event and to the extent that BP does not prevail on the disputed matters, MDEQ may demand payment of stipulated penalties and BP shall pay stipulated penalties as set forth in Paragraph 11.2 of Section XI (Stipulated Penalties). BP shall not be

assessed stipulated penalties for disputes that are resolved in its favor. MDAG, on behalf of MDEQ, may take civil enforcement action against BP to seek the assessment of civil penalties or damages, pursuant to Section 21323 of Part 213, or other statutory and equitable authorities, but shall not seek both stipulated penalties and statutory fines for the same violations.

12.10 Notwithstanding the provisions of this Section and in accordance with Section XI (Stipulated Penalties), BP shall pay to MDEQ that portion of the invoice for stipulated penalties that is not the subject of an ongoing dispute resolution proceeding.

12.11 Notwithstanding the provisions of this Section, BP shall pay to MDEQ that portion of any costs incurred by MDEQ that are reimbursable under this Order that are not the subject of an ongoing dispute resolution proceeding. With respect to any costs incurred by MDEQ under this Order that are the subject of a dispute resolution proceeding, in the event that BP does not prevail on the disputed matters, BP shall pay any costs to MDEQ within fourteen (14) days of the conclusion of the final dispute resolution proceeding pursuant to Paragraph 10.2.

XIII. INDEMNIFICATION AND INSURANCE

13.1 The State of Michigan does not assume any liability by entering into this Order. This Order shall not be construed to be an indemnity by the State of Michigan for the benefit of BP or any other person.

13.2 BP shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, acts or omissions of BP, their officers, employees, agents, or any other person acting on its behalf or under its control, in performing the activities required by this Order, but such indemnification and hold harmless requirements shall not apply to the portion of any claims or causes of action that arises from the grossly negligent acts or omissions, or willful misconduct, of the State of Michigan or any of its departments, agencies, officials, agents, employees, contractors or representatives.

13.3 BP shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for all claims or causes of action for damages or reimbursement from the State of Michigan that arise from, or on account of, any contract, agreement, or arrangement between BP and any person for the performance of corrective action at the Site, including any claims on account of construction delays, but such indemnification and hold harmless requirements shall not apply to the portion of any claims or causes of action that arises from the grossly negligent acts or omissions, or willful misconduct, of the State of Michigan or any of its departments, agencies, officials, agents, employees, contractors or representatives.

13.4 The State shall provide to BP written notice of any claim for which the State of Michigan intends to seek indemnification pursuant, to Paragraphs 13.2 or 13.3. Any such notice shall include all documentation available to MDEQ supporting such claim, and it shall be provided to BP as promptly as reasonably practicable after the State becomes aware of such claim. If the State fails to provide notice and that failure materially impairs BP's ability to defend against such claim, BP shall be relieved to the extent of the material impairment of any obligation to indemnify or hold harmless pursuant to Paragraphs 13.2 or 13.3.

13.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract that is entered into by or on behalf of BP for the performance of activities required by this Order. Neither BP nor their contractor shall be considered an agent of the State of Michigan.

13.6 Except to the extent set forth in Paragraphs 13.2 and 13.3, BP waives all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State of Michigan that arise from, or on account of, any contract, agreement, or arrangement between BP and any other person for the performance of corrective action pursuant to this Order, including any claims on account of construction delays.

13.7 Prior to commencing any corrective action at a Site pursuant to this Order, and for the duration of this Order, BP shall require its contractors to secure and maintain comprehensive general liability insurance with limits of One Million Dollars (\$1,000,000.00) of combined single limit, which names MDEQ, MDAG, and the State of Michigan as additional insured parties. Prior to commencement of corrective action at a Site pursuant to this Order, BP shall provide the appropriate MDEQ District Supervisor with certificates evidencing said insurance and the status of MDEQ, MDAG, and the State of Michigan as additional insured parties. Such certificates shall specify the relevant Site, the MDEQ Facility Number and the Remediation and Redevelopment Division.

XIV. COVENANTS NOT TO SUE BY THE STATE

14.1 In consideration of the actions that will be performed and the payments that will be made by BP under the terms of this Order, and except as specifically provided for in this Section and Section XV (Reservation of Rights by the State) of this Order, the State of Michigan hereby covenants not to sue under any statute, regulation, common law or any other basis, or to take further administrative action against BP for:

- (a) Performance of corrective action that BP performs pursuant to this Order.

- (b) Payment of civil fines and penalties and any applicable interest for acts or omissions allegedly occurring prior to the Effective Date and relating to the releases of regulated substances at the Sites that are addressed in a FAR/CAP or Closure Report under this Order.
- (c) Payment of costs incurred by the State of Michigan relating to the release of regulated substances at the Sites that are addressed in a FAR/CAP or Closure Report under this Order, except as otherwise required by this Order.
- (d) Any obligations or liabilities under Part 213 relating to the releases of regulated substances at the Sites that are addressed in a FAR/CAP or Closure Report under this Order, except as expressly required by this Order or reserved under Section XV (Reservation of Rights by the State).

14.2 The covenants not to sue shall take effect under this Order as follows:

- (a) With respect to BP's liability for performance of corrective action relating to a Site under this Order, the covenant not to sue shall take effect upon approval of the Closure Report for that Site pursuant to this Order. The covenant not to sue for a Site will

remain effective so long as BP is meeting the applicable RBCA standard specified in the approved Closure Report for that Site.

- (b) With respect to BP's liability for payment of civil fines and penalties, the covenant not to sue regarding all Sites shall take effect upon MDEQ's receipt of the payments required under Paragraph 10.1.
- (c) With respect to BP's liability for payment of costs incurred by the State of Michigan regarding any of the Sites, except as required by this Order, the covenant not to sue regarding all Sites shall take effect upon MDEQ's receipt of the payment required under Paragraph 10.1.
- (d) With respect to BP's liability under this Order for payment of certain costs that may be incurred by the State of Michigan on or after the Effective Date regarding any of the Sites, the covenant not to sue shall take effect upon MDEQ's receipt of payment for those costs.
- (e) With respect to BP's obligations or liabilities relating to the releases of regulated substances at a Site that are addressed in a FAR/CAP or Closure Report under this Order, the covenant not to sue shall take effect upon approval of the Closure Report for that Site.

14.3 The covenants not to sue extend only to BP and do not extend to any other person.

XV. RESERVATION OF RIGHTS BY THE STATE

15.1 The covenants not to sue apply only to those matters specified in Paragraph 14.1 of Section XIV (Covenants Not to Sue by the State). The State of Michigan expressly reserves, and this Order is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against BP with respect to the following:

- (a) The performance of corrective action relating to a Site that is required to achieve and maintain the applicable RBCA standard specified in the approved Closure Report for that Site.
- (b) The past, present, or future treatment, handling, disposal, release, or threat of release of regulated substances that occur outside of a Site and that are not attributable to any of the Sites.
- (c) The past, present, or future treatment, handling, disposal, release, or threat of release of regulated substances taken from the Sites.
- (d) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resource damage assessment.
- (e) Criminal acts.

- (f) Any matters for which the State is owed indemnification under Section XVI (Indemnification and Insurance).
- (g) The release or threatened release of regulated substances that occur during or after the performance of corrective action required by this Order or any other violations of applicable State of Michigan or federal law for which BP has not received a covenant not to sue under this Order.
- (h) Any issue addressed in MCL 324.21323a(4)(d)(i)-(v).

15.2 The State of Michigan reserves the right to take action against BP if it discovers at any time that any material information provided by BP prior to or after entry of this Order was known by BP to be false or misleading at the time it was provided.

15.3 MDEQ and MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Order.

15.4 In addition to, and not as a limitation of any other provision of this Order, MDEQ retains all of its authority and reserves all of its rights to perform, or contract to have performed, any corrective action that MDEQ determines is necessary under applicable law.

15.5 In addition to, and not as a limitation of any provision of this Order, MDEQ and MDAG retain all of their information-gathering, inspection, access, and enforcement authorities and rights under Part 213, and any other applicable statute or regulation, except as provided in Section XIV (Covenants Not to Sue by the State).

15.6 Except as otherwise provided in Section VI (Performance of Corrective Action), failure by MDEQ or MDAG to enforce any term, condition, or requirement of this Order in a timely manner shall not:

- (a) Provide or be construed to provide a defense for BP's noncompliance with any such term, condition, or requirement of this Order.
- (b) Estop or limit the authority of MDEQ or MDAG to enforce any such term, condition, or requirement of the Order, or to seek any other remedy provided by law.

15.7 This Order does not constitute a warranty or representation of any kind by MDEQ that the corrective action performed by BP in accordance with this Order will result in the completion of corrective action activities in accordance with Section 21312a of Part 213, or the remedial criteria established by law, or that

those corrective actions will assure protection of public health, safety, or welfare, or the environment.

15.8 Except as provided in Paragraph 14.1(a) of Section XIV (Covenants Not to Sue by the State), nothing in this Order shall limit the power and authority of MDEQ or the State of Michigan, pursuant to Section 21323g(7) of Part 213, to direct or Order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Sites.

XVI. COVENANT NOT TO SUE BY BP

16.1 Except with respect to the filing of a motion with this Court for resolution of a dispute as provided in Paragraph 12.7 of this Order, BP hereby covenants not to sue or to take any civil, judicial, or administrative action against the State of Michigan, its agencies, or their authorized representatives, for any claims or causes of action against the State of Michigan that arise from this Order, including, but not limited to, any direct or indirect claim for reimbursement from any State of Michigan fund, or any other provision of law.

16.2 After the Effective Date, if MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of costs, or other appropriate relief relating to any of the Sites, BP agrees not to assert and shall not maintain any

defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting; or that are based upon a defense that contends any claims raised by MDEQ or MDAG in such a proceeding were or should have been brought in this case, provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIV (Covenants Not to Sue by the State).

XVII. CONTRIBUTION

17.1 Pursuant to Section 21323d(5) of Part 213, and Section 113(f)(2) of the federal Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended ("CERCLA"), 42 USC Section 9613(f)(2), and to the extent provided in Section XIV (Covenants Not to Sue by the State), BP shall not be liable for claims for contribution for the matters set forth in Paragraph 14.1 of Section XIV (Covenants Not to Sue by the State), to the extent allowable by law. The Parties agree that entry of this Order constitutes a judicially approved settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 USC 9613(f)(3)(B), pursuant to which BP has, as of the Effective Date, resolved its liability to MDEQ for the matters set forth in Paragraph 18.1 of this Decree. Entry of this Order does not discharge the liability of any other person that may be liable under Part 213 or CERCLA. Pursuant to Section 21323d(9) of Part 213, any action by BP for contribution from any person that is not a Party to this Order shall be subordinate to the rights of the State of Michigan, if the State of Michigan files an action pursuant to the NREPA, or other applicable state or federal law.

XVIII. MODIFICATIONS

18.1 Except as otherwise permitted in Section VI (Performance of Corrective Action), the Parties may only modify this Order according to the terms of this Section.

18.2 Modifications of this Order shall be made only by written agreement between BP's Project Manager, the RRD Chief, or his or her authorized representative, and the designated representative of MDAG.

XIX. SEPARATE DOCUMENTS

19.1 The Parties may execute this Order in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

XX. SEVERABILITY

20.1 The provisions of this Order shall be severable. If a court of competent jurisdiction declares that any provision of this Order is inconsistent with state or federal law and therefore unenforceable, the remaining provisions of this Order shall remain in full force and effect.

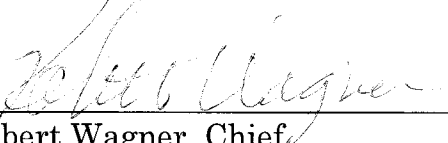
XXI. TERMINATION OF CERTAIN PROVISIONS

21.1 Except for Sections XIV (Covenants Not To Sue By The State), XV (Reservation of Rights By The State), and XVI (Covenant Not To Sue By BP), this

Order shall terminate as to any Site when both (a) MDEQ has approved or is deemed to have approved in accordance with Paragraph 6.4 a Closure Report for that Site under this Order, and (b) MDEQ has received any payment that BP is required to make under this Order prior to the date the Closure Report is approved.

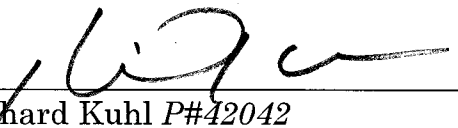
IT IS SO AGREED TO AND ORDERED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY


Robert Wagner, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

12/19/13
Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL


Richard Kuhl P#42042
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

12/19/13
Date

IT IS SO AGREED BY:

BP PRODUCTS NORTH AMERICA INC.

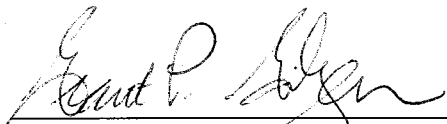


Corey Correnti
Vice President
BP Products North America Inc.
30 S. Wacker Dr., Suite 900
Mail Code 9-S
Chicago, IL 60606
(312) 594-5306

DEC 18, 2013

Date

And



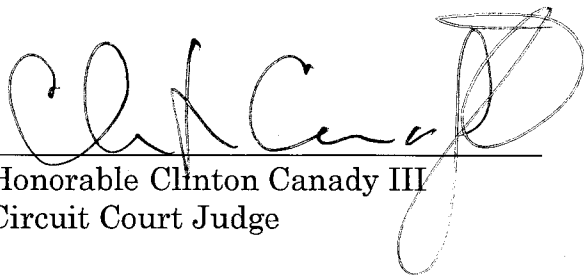
Grant P. Gilezan (P42951)
Attorneys for BP Products North America Inc.
Dykema Gossett
400 Renaissance Center
Detroit, MI 48243
(313) 568-6789

December 18, 2013

Date

IT IS SO ORDERED, ADJUDGED AND DECREED THIS _____ day of

June 26, 2013.

A handwritten signature in black ink, appearing to read "Clinton Canady III", written over a horizontal line.

Honorable Clinton Canady III
Circuit Court Judge

Site Master Plan

BP Site #
Facility ID #
Site Address

Site Contact Information

BP Project Manager	
BP Consultant	
MDEQ District	
MDEQ Case Manager	

Site/Remediation History

(Summary of release, response work performed (including any on-going) and current understanding of nature/extent of impacts) (Include Site/Isconcentration/Flow Maps as attachments??)

Delineation Status

(Description of current status and of any remaining delineation required for submission of FAR/CAP)

Off-Site Access Status

(Identification of third party properties to which access is required to complete delineation for submission of FAR/CAP, status of access agreements with the owners of those properties and Schedule for obtaining access agreements.)

Property	Status	Schedule for Obtaining

FAR/CAP Submittal Schedule

(Schedule for submitting FAR/CAP. Does not have to be specific date, can be dependent on timing of granting of access)

Closure Report Schedule

(Non-enforceable schedule goal for submitting a closure report. Does not have to be specific date, can be dependent on timing of FAR/CAP approval)

Status Update Meeting Schedule

(Timing of agreed upon Status Update Meeting between BP PM and MDEQ Case Manager. Meeting will discuss the schedule, status, results of corrective action being undertaken at each Site, and any other matters related to the implementation of the Site master plans.)

Semi-Annual Report Schedule

(Schedule for submission of semi-annual reports to MDEQ Case Manager. Will be a written status report to DEQ for each Site that describes the activities that have been taken toward achieving compliance with Decree, all results of sampling and tests and other data received by BP, BP's progress in implementing the master plans, any actual or potential problems that affect or might affect BP's ability to implement the master plans, how BP proposes to resolve such problems, and any request by BP to amend any master plan schedule requirement due to such problems.)

AGREED TO WITH EFFECTIVE DATE OF _____:

[PRINT NAME]

ON BEHALF OF MDEQ

[PRINT NAME]

ON BEHALF OF BP