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ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives  
Committee on Energy and Commerce  
Washington, DC 20515-6115

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October 6, 2006

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BUD ALBRIGHT, STAFF DIRECTOR

Mr. Kurt Fredriksson  
Commissioner  
Alaska Department of Environmental Conservation  
410 Willoughby Ave., Suite 303  
P.O. Box 111800  
Juneau, AK 99811-1800

Mr. Robert A. Malone  
Chairman and President  
BP America, Inc.  
501 Westlake Park Boulevard  
Houston, TX 77079

Dear Commissioner Fredriksson and Mr. Malone:

Attached please find a copy of Compliance Order by Consent No. 02-138-10 between the State of Alaska and BP Exploration (Alaska) Inc. (BPXA). Several of the issues contained in this Order appear directly related to the spills on the Prudhoe Bay Western Operating Line (WOL) and the Prudhoe Bay Eastern Operating Line (EOL) that were the subject of a hearing by this Committee on September 7, 2006.

As you are aware, on March 15, 2006, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Corrective Action Order (CAO) in response to the WOL failure. The CAO delineated specific requirements that BPXA needed to undertake to bring both its Eastern and Western lines into compliance.

Among the several items in the CAO was a requirement that BPXA "pig" several pipelines including the EOL and WOL. Subsequent to the issuance of the CAO, it was revealed that large sections of both the WOL and the EOL contained potentially significant amounts of scale, sludge, and/or other solids. For several months, following the issuance of the March CAO, BPXA attempted to develop solutions to (a) determine the amount of solids in each line, and (b) determine if and how it could pig these lines as required by the CAO. In early August of this year, BPXA discovered, after pigging part

of the EOL, that numerous instances of corrosion existed. Upon learning of this corrosion, BPXA subsequently ordered the shutdown of the Prudhoe Bay field.

In our September 7, 2006, hearing, BPXA acknowledged that it should have pigged both the WOL and EOL more frequently and that it had been caught off guard by the amounts of solids that were presently in these lines, particularly the EOL. However, this Compliance Order shows that BPXA was aware in at least 2001 that these lines possibly contained unacceptable amounts of solids and that the lines should be pigged. On page 5 of the Order are the following requirements:

- Determine sediment levels in EOL and WOL pipelines at Skid 50. [by 3/31/02]
- Modify EOL pig receiver at Skid 50. [by 3/31/02]
- Pig EOA pipeline from PS - 1 launcher to Skid 50. [by 6/30/02]
- Pig WOL pipeline segments if necessary. [by 9/30/02]
- Test and select flow meters at EOL pipelines, Skid 50 if necessary. [by 9/30/02]
- Complete WOL crude oil flow smoothing modifications. [by 12/31/02]
- Install and test meters on all pipelines. [by 12/31/02]
- Evaluate and establish leak detection systems' compliance. [by 12/31/02]

Had these actions been taken, BPXA would likely have been in a better position to understand the conditions that were forming in both the WOL and EOL -- conditions that ultimately resulted in the failures of these lines. However, it is unclear which, if any, of these actions occurred. Given the potential seriousness of this Order, and the direct relevance to the matters that occurred on both the Western and Eastern lines, we ask that you respond to the following questions by no later than Friday, October 20, 2006:


1. Was this Order received by BPXA? If so, by whom, and what actions were taken? If certain of these actions were not taken, explain why not.
2. The order is signed by a BPXA employee named Mr. Jack M. Fritts who is identified as the Greater Prudhoe Bay Unit Operations Manager. Does Mr. Jack M. Fritts still hold this position with the company? If not, is Mr. Fritts still employed by BPXA? If not, explain why not and provide the Committee with any documents surrounding his departure. Who did Mr. Fritts report to when this Order was signed, and is that person still employed by BPXA?
3. Why was this Order not provided to the Committee by BPXA pursuant to the Committee's document request letter dated August 31, 2006?
4. Prior to their sworn testimony before the Committee on September 7, 2006, was either Mr. Robert A. Malone or Mr. Steve Marshall briefed on or otherwise made aware of the existence of this Compliance Order? If not, why not? If so, why didn't either of them discuss the Order in their

Mr. Kurt Fredriksson  
Mr. Robert A. Malone  
Page 3

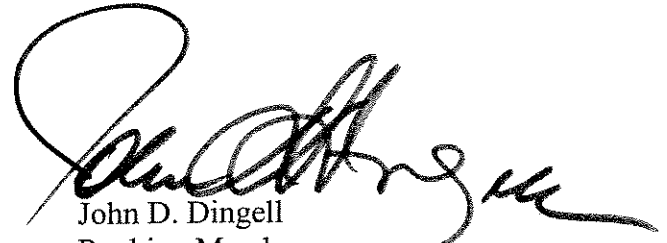
written testimony, oral testimony, or in response to questions posed by members of the Committee?

We appreciate your assistance with this request. If you need further information, please contact either Andrew Snowden with the Committee majority staff at (202) 225-2927 or Bruce Harris with the Committee minority staff at (202) 226-3400.


Sincerely,




Joe Barton  
Chairman  
Committee on Energy  
and Commerce



John D. Dingell  
Ranking Member  
Committee on Energy  
and Commerce



Ed Whitfield  
Chairman  
Subcommittee on Oversight  
and Investigations



Bart Stupak  
Ranking Member  
Subcommittee on Oversight  
and Investigations

cc: The Honorable Frank Murkowski, Governor  
State of Alaska

The Honorable Ted Stevens, Senator  
U.S. Senate

The Honorable Lisa Murkowski, Senator  
U.S. Senate

The Honorable Don Young, Member  
U.S. House of Representatives

The Honorable Alberto R. Gonzales, Attorney General  
Department of Justice

Vice Admiral Thomas J. Barrett, USCG (Ret.), Administrator  
Pipeline and Hazardous Materials Safety Administration

Attachment

BEFORE THE STATE OF ALASKA  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

*N. McCleary  
G. Blankenship  
I. Fritz / R. Gammang  
G. Campbell  
R. Jacobsen  
C. Phillips  
R. Klie  
M. Merrill  
N. Glouva*

In the Matter of: )  
STATE OF ALASKA, DEPARTMENT OF )  
ENVIRONMENTAL CONSERVATION )  
 )  
Complainant, )  
 )  
vs. )  
 )  
BP Exploration (Alaska) Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

BPXA LAW DEPT					
WHO	CO	ARMJ	JHD	SJS	QDB
KJW					
JUN 3 2002					
<i>Fully executed</i>					
File					
Court					

Consent Order No. 02-138-10

**COMPLIANCE ORDER BY CONSENT**

Whereas the Complainant, the State of Alaska, Department of Environmental Conservation ("ADEC"), and the Respondent, BP Exploration (Alaska) Inc. ("BPXA" or "Respondent"), desire to resolve and settle a disputed matter and to avoid the uncertainty and expense of formal enforcement proceedings, it is hereby agreed as follows:

**I. JURISDICTION**

1. This Compliance Order by Consent (hereinafter Order) is entered into under the authority of ADEC under AS 44.46.020, AS 46.03.020, AS 46.03.760(e), AS 46.03.765, AS 46.03.850, and 18 AAC 95.160, and the settlement authority of the Attorney General under AS 44.23.020.

**II. BACKGROUND**

2. BPXA is an owner and the operator of the Greater Prudhoe Bay Unit crude oil transmission pipeline system (hereinafter "FACILITY"). BPXA operates the FACILITY on the North Slope of Alaska, and receives mail at: P.O. Box 196612, Anchorage, Alaska 99519-6612. The FACILITY is a system of "pipelines" as that term is defined in AS 46.04.900(18).

3. In January 1999, ADEC approved and issued to ARCO Alaska Inc.

("AAF") a renewal of oil discharge prevention and contingency plan number 984-CP-4138 for the Prudhoe Bay eastern operating area ("EOA") crude oil transmission pipeline system ("EOA Plan"). Condition of approval number 8 of the EOA Plan required AAI to submit to ADEC a proposed leak detection system for the EOA crude oil transmission pipeline system that met the 1 percent daily throughput standard in 18 AAC 75.055(a) ("1% Standard") and a best available technology ("BAT") analysis for the leak detection system that met the BAT requirement in 18 AAC 75.425(e)(4)(A)(iv) ("BAT Requirement") by the end of August 1999.

4. In January 1999, ADEC approved and issued to BPXA a renewal of oil discharge prevention and contingency plan number 984-CP-4129 for the Prudhoe Bay western operating area ("WOA") crude oil transmission pipeline system ("WOA Plan"). Condition of approval number 8 of the WOA Plan required BPXA to submit to ADEC a proposed leak detection system for the WOA crude oil transmission pipeline system that met the 1% Standard and a BAT analysis for the leak detection system that met the BAT Requirement by the end of August 1999.

5. In August 1999, AAI submitted a proposed leak detection system for the EOA crude oil transmission pipeline system to ADEC. ADEC determined that the proposal was too general, did not include a BAT analysis and, accordingly, was insufficient for review. AAI requested an extension to submit a revised proposed leak detection system and the BAT analysis. ADEC granted an extension to October 15, 1999.

6. In August 1999, BPXA submitted a proposed leak detection system for the WOA crude oil transmission pipeline system to ADEC. ADEC determined that the proposal was too general, did not include a BAT analysis and, accordingly, was insufficient for review. BPXA requested an extension to submit a revised proposed leak detection system and the BAT analysis. ADEC granted the extension to mid-October 1999.

7. In October 1999, AAI resubmitted a proposed leak detection system for the EOA crude oil transmission pipeline system and a BAT analysis. ADEC determined these submissions satisfied the EOA Plan condition of approval number 8 requirement and initiated review of both documents under 18 AAC 75.455.

8. In mid-October 1999, BPXA resubmitted a proposed leak detection for the WOA crude oil transmission pipeline system and a BAT analysis. ADEC determined these submissions satisfied the WOA Plan condition of approval number 8 requirement and initiated

review of both documents under 18 AAC 75.455.

9. In June 2000 operational control of the EOA crude oil transmission pipeline system changed from AAI to Phillips Alaska, Inc.

10. On July 1, 2000, BPXA assumed the sole operator role for the EOA and WOA crude oil transmission pipeline systems (the FACILITY).

11. In August 2000, ADEC requested BPXA to submit an engineering package to verify that the proposed leak detection system for the EOA and WOA crude oil transmission pipeline systems would meet the 1% Standard for the FACILITY.

12. In October 2000, BPXA submitted the requested engineering package to ADEC.

13. In December 2000, ADEC determined that the proposed leak detection system for the FACILITY did not meet the 1% Standard and that the BAT analysis did not meet the BAT Requirement. ADEC interpreted the 1% standard as applying to each pipeline segment in the pipeline system, while BPXA's analysis used the combined flow into pump station 1 against which to measure the 1% detection accuracy. ADEC required BPXA to submit a revised leak detection system proposal for the FACILITY that met the 1% Standard and a BAT analysis that met the BAT Requirement by January 31, 2001.

14. In January 2001, BPXA submitted to ADEC a revised leak detection system proposal for the FACILITY that it maintains will meet the 1% Standard.

15. On March 1, 2001, BPXA submitted a BAT analysis to ADEC for the FACILITY leak detection system that it maintains will meet the BAT Requirement.

16. On April 30, 2001 BPXA met with ADEC to discuss BPXA's revised leak detection system proposal for the FACILITY. BPXA agreed to verify that the proposed leak detection system meets the 1% Standard for each pipeline segment by completing 12 action items within specified timelines in 2001. However, BPXA discovered settled solids in some pipeline segments that interfered with the proper functioning and operability of the meters. Those pipeline segments containing solids will need to be cleaned out, which will require the installation of pipeline pigging facilities prior to functional testing of the meters and leak detection system. Due to the unexpected discovery of these solids, BPXA completed only 5 of the action items within the agreed timelines. BPXA expects to complete the remaining action items on or before December 1, 2002.

### III. ADEC ALLEGATIONS

#### COUNT I

17. Since at least December 7, 2000 BPXA has failed to comply with EOA Plan condition of approval number 8 and WOA Plan condition of approval number 8 which require BPXA to submit a leak detection system for the FACILITY that meets the requirements of 18 AAC 75.055(a) and 18 AAC 75.425(e)(4)(A)(iv).

18. Based on the facts set out in paragraphs 2-16 above, since at least December 7, 2000 BPXA has operated the FACILITY in violation of AS 46.04.030(b) which requires operation of a pipeline in compliance with an oil discharge prevention and contingency plan.

#### COUNT II

19. Under this Order, BPXA will not comply with EOA Plan condition of approval number 8 and WOA Plan condition of approval number 8 and, accordingly, will continue to violate AS 46.04.030(b) until BPXA verifies that the proposed leak detection system for the FACILITY meets the requirements in 18 AAC 75.055(a) and 18 AAC 75.425(e)(4)(A)(iv).

#### COUNT III

20. Since at least December 7, 2000, BPXA has not equipped the FACILITY with the enhanced leak detection system to satisfy the requirement in 18 AAC 75.055(a) consistent with 18 AAC 75.425(e)(4)(A)(iv).

21. Based on the facts set out in paragraphs 2-16 above, since at least December 7, 2000, BPXA has been operating the FACILITY in violation of 18 AAC 75.055(a).

#### COUNT IV

22. Under this Order, BPXA will continue to operate the FACILITY in violation of 18 AAC 75.055(a) until BPXA verifies that the proposed leak detection system for the FACILITY satisfies the requirement in 18 AAC 75.055(a) consistent with 18 AAC 75.425(e)(4)(A)(iv).

### IV. REMEDIAL MEASURES

23. In order to address the violations outlined in Counts I-IV of Section III of the Order, the Respondent agrees to complete all outstanding action items to verify that the leak detection system for the FACILITY satisfies both the 1% leak detection requirement in 18 AAC 75.055(a), as applied to each pipeline segment, and the BAT requirement of 18 AAC 75.425(e)(4)(A)(iv). Specifically, BPXA agrees to perform the following tasks by the dates indicated herein:

- Determine sediment levels in EOA and WOA pipelines at Skid 50. [by 3/31/02]
- Modify EOA pig receiver at Skid 50. [by 3/31/02]
- Pig EOA pipeline from FS-1 launcher to Skid 50. [by 6/30/02]
- Pig WOA pipeline segments if necessary. [by 9/30/02]
- Test and select flow meters at EOA pipeline, Skid 50 if necessary. [by 9/30/02]
- Complete WOA crude oil flow smoothing modifications. [by 12/31/02]
- Install and test meters on all pipelines. [by 12/31/02]
- Evaluate and establish leak detection systems' compliance. [by 12/31/02]

24. BPXA and ADEC agree to meet and/or confer as necessary to reach a common understanding of the meaning and interpretation of 18 AAC 75.055(a) and 18 AAC 75.425(e)(4)(A)(iv), and to evaluate the Facility's compliance with those regulations.

#### V. TIME FOR COMPLIANCE

25. Time is of the essence in the Order. Failure to submit any document or make any payment by the deadlines set forth in this Order is a violation of the Order triggering any suspended damages and penalties unless a written extension of time is obtained from ADEC pursuant to paragraph 27.

26. Failure to submit any document or make any payment by the deadlines set forth in the Order, unless a written extension of time is obtained from ADEC pursuant to paragraph 27, may also terminate or serve as the basis for termination of the Order.



27. ADEC, in its discretion, may grant a written extension of time if the Respondent requests the extension prior to the deadline, and proves to the satisfaction of ADEC that any delay is beyond the control of the Respondent due to unforeseen circumstances such as adverse weather or natural disaster. Increases in costs incurred by the Respondent shall not be a basis for any extension of time. Any request for an extension of time must be provided in writing. A request for an extension of time does not toll any deadlines unless ADEC provides a written extension.

28. Unless otherwise specified, all references to days in this Order are to calendar days; however, if a deadline occurs on a weekend or legal holiday the deadline is extended to the next working day.

#### **VI. ADMINISTRATION FEES**

29. The Respondent agrees to reimburse ADEC for ADEC and Department of Law staff time spent developing and implementing this Order.

#### **VII. OTHER PAYMENTS**

30. Damages and Penalties. The Respondent agrees to pay damages and penalties pursuant to AS 46.03.760(e) as follows:

- a. the Respondent agrees to pay the State of Alaska the sum of \$300,000 in damages and penalties, with \$150,000 suspended on the condition that the Respondent complies with all terms and conditions of the Order to the reasonable satisfaction of ADEC. For purposes of this Order, \$121,000 represents economic savings realized by the Respondent in not complying with the requirements for which the violations were alleged; and \$29,000 represents the "gravity component" designed to deter future noncompliance;
- b. the Respondent agrees to pay the State of Alaska the unsuspended portion of the damages and penalties, \$150,000, within thirty days of the effective date of the Order;
- c. the Respondent agrees to pay the State of Alaska the suspended portion of the damages and penalties within seven calendar days after failing to submit any document or make any payment by the deadlines set forth in the Order, or after receiving notice of termination if the Order is

terminated pursuant to the provisions of paragraph 43(a) or 43(b) of this Order;

d. all payments under this section shall be made payable to the State of Alaska, Department of Environmental Conservation, shall include the number of the Order, and shall be directed to the Attention of: Cost Recovery Unit, SPAR Director's Office, Alaska Department of Environmental Conservation, 410 Willoughby Ave., Suite 105, Juneau, Alaska 99801-1795.

31. If any payment required by paragraph 30 of the Order is not made, or if any negotiable instrument presented as payment is not honored, ADEC may file a civil action to collect the amount due under the Order, plus interest, attorney's fees, and costs. In any collection action, the validity, amount, and appropriateness of damages and penalties is not subject to review.

#### **VIII. RESERVATION OF RIGHTS**

32. The requirements, duties, and obligations set forth in the Order are in addition to any requirements, duties, or obligations contained in any permit or plan approval which ADEC has issued or may issue to the Respondent and are in addition to any requirements, duties, or obligations imposed by State, local, or federal law. Other than as expressly provided herein, the Order does not relieve the Respondent from the duty to comply with requirements contained in any such permit or plan approval or with any State, local, or federal law.

33. ADEC expressly reserves the right to initiate administrative or legal proceedings relating to any violation not expressly described in Counts I-IV of Section III of the Order. In addition, ADEC expressly reserves the right to initiate administrative or legal proceedings and to seek additional civil assessments or seek injunctive relief for violations described in the Order if the Respondent does not comply with the provisions set forth herein to the reasonable satisfaction of ADEC or if, in ADEC's reasonable opinion, subsequently discovered events or conditions constitute an immediate threat to public health, public safety, or the environment, regardless of whether ADEC may have been able to discover the event or condition prior to entering into the Order. In the event that ADEC seeks civil assessments for violations described in the Order, amounts required to be paid under paragraph 30 of the Order may offset any subsequent assessments for those violations, but in no event shall a refund of any

portion of the penalties and damages assessed in this Order be required.

34. In signing the Order, the Respondent and ADEC do not admit, and reserve the right to controvert in any subsequent proceedings, other than for enforcement of the Order, the validity of, or responsibility for, any of the factual or legal determinations made herein.

#### **IX. COVENANT NOT TO SUE**

35. Subject to the provisions of Section VIII (Reservation of Rights), and provided the Respondent complies with the terms of the Order to the reasonable satisfaction of ADEC, ADEC shall not institute any further action against the Respondent for the violations alleged in Counts I-IV of Section III of the Order. However, nothing herein shall be construed as limiting ADEC's right to seek damages, penalties, and fines for violation of the terms and conditions of the Order.

36. The Respondent acknowledges and agrees that the Order constitutes a lawful order of ADEC for the purposes of AS 46.03.760, AS 46.03.765, AS 46.03.790, AS 46.03.850, 18 AAC 95.160 and for all other purposes. The Respondent shall not institute any action challenging the validity of the Order or the authority of ADEC to enforce the Order. The Respondent shall not controvert or challenge, in any subsequent proceedings initiated by the State of Alaska, the validity of the Order or the authority of ADEC to issue and enforce the Order.

37. The Respondent acknowledges that, by executing the Order, with regard to violations alleged in Counts I-IV of Section III of the Order, it is waiving the rights and procedures that would otherwise protect it in any formal administrative adjudicatory proceeding or any civil action in a court of law including the right to the filing of a notice of intent, to present evidence and witnesses on its behalf, to cross-examine ADEC's witnesses, to a jury trial, and to administrative and judicial review. The Respondent acknowledges that it is knowingly and voluntarily waiving these rights.

#### **X. DISPUTE RESOLUTION**

38. The parties agree to make reasonable efforts to informally resolve at the staff level all disputes that may arise in connection with this Order. If any dispute is still unable to be resolved, the Respondent may make a written request for the ADEC Commissioner or the Commissioner's delegate to resolve the dispute. The pendency of any dispute pursuant to this

paragraph shall not affect Respondent's responsibility for timely performance of the requirements of the Order. The Commissioner or the Commissioner's delegate will issue a final determination in writing. The written decision will be final for purposes of judicial review pursuant to Alaska Rule of Appellate Procedure 602(a)(2). The determination of the Commissioner or the Commissioner's delegate will remain in effect pending resolution of any judicial appeal unless a stay is sought and granted by the court on appeal.

#### **XI. REPORTING**

39. BPXA will submit monthly reports to ADEC that summarize activities undertaken under this Order. Either BPXA or ADEC may request a meeting at any time to discuss issues associated with this Order, and the party receiving such a request shall make itself available as promptly as practicable.

#### **XII. JURISDICTION AND VENUE**

40. Any judicial action brought by either party to enforce or adjudicate any provision of the Order shall be brought in the Superior Court for the State of Alaska, Third Judicial District at Anchorage.

#### **XIII. EFFECTIVE DATE**

41. The effective date of the Order shall be the date of the last signature when the Order is signed by authorized representatives of the BPXA, ADEC and the Alaska Attorney General's Office.

#### **XIV. SUCCESSORS**

42. The Order shall be binding upon the Respondent, its agents, successors, and assigns (including any lessee or grantee of the FACILITY), and upon all persons, contractors and consultants acting on behalf of the Respondent. The Respondent shall incorporate a copy of the Order into any conveyance of its interest in the FACILITY and into any lease or management agreement, and shall require in any conveyance that the grantee or lessee shall comply with all of the requirements of the Order.

#### **XV. TERMINATION**

43. The Order shall terminate on the first to occur of the following:
- a. the day after the Respondent misses a deadline imposed under paragraph 23, unless the delay is excused pursuant to paragraph 27;

- b. the day after ADEC notifies the Respondent that ADEC is terminating the Order due to the Respondent's failure to comply with any of the provisions set forth herein to the reasonable satisfaction of ADEC;
- c. the day after ADEC issues a voluntary written termination of the Order; ADEC will terminate the Order upon request if Respondent establishes to ADEC's satisfaction that it has established compliance for all of the issues outlined in Counts I-IV of Section III of the Order and has complied with the provisions of this Order.

DATED: 5/29/02

DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

By: *Jeff Mach*  
Jeff Mach  
Oil and Gas Coordinator

DATED: 30 May 2002

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By: *Campren Leonard*  
Campren Leonard  
Assistant Attorney General

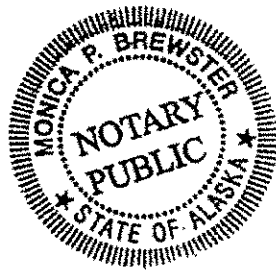
DATED: 05-14-02

BP EXPLORATION (ALASKA) INC.

By: *Jack M. Fritts*  
Jack M. Fritts      *Operations*  
Greater Prudhoe Bay Unit ~~Field~~ Manager

I, JACK M. Fritts, hereby certify that I hold the position of Greater Prudhoe Bay Operations Manager and that I am a responsible official for the Respondent's FACILITY and that I have the authority to enter into agreements on behalf of the Respondent and the FACILITY and to otherwise legally bind the Respondent and the FACILITY. I hereby acknowledge that I have freely and voluntarily entered into this agreement with the State of Alaska on behalf of the Respondent.

SUBSCRIBED AND SWORN to before me this 14<sup>th</sup> day of May, 2002.



Monica P. Brewster  
Notary Public, State of Alaska  
My commission expires: \_\_\_\_\_

My Commission Expires  
November 9, 2004