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I. INTRODUCTION

This case arises from a tragic industrial accident. On March 23, 2005, an explosion and fire occurred at BP Products North America Inc.'s ("BP Products") Texas City refinery, resulting in the deaths of 15 people and injuries to many others. Although BP Products could not undo the terrible harm caused by the accident, it immediately committed itself to accept responsibility for the accident and to work with regulators to significantly improve safety at its refinery.

BP Products accepts criminal responsibility for the Texas City accident. Pursuant to its Rule 11(c)(1)(C) plea agreement with the United States Department of Justice, BP Products has agreed to plead guilty to a knowing violation of Section 112(r)(7) of the Clean Air Act. By pleading guilty, BP Products admits that it failed to meet its own standards and the requirements of the law, for which the company offers its sincerest apologies. The details of the conduct that gives rise to this felony conviction are set out in the sixteen-page Statement of Facts agreed to by the parties, and will not be restated here.

Under the terms of the agreement, BP Products will pay a record fine of \$50 million. This is the largest criminal fine ever imposed under the Clean Air Act. This sentence agreed to by the United States Department of Justice and BP Products is a just and appropriate sentence. The record fine recognizes BP Products' violations that led to the accident, as well as the horrible consequences of the accident. At the same time, this sentence takes into account BP Products'

acceptance of responsibility, its cooperation, and its significant remedial efforts to enhance safety at the refinery.

II. THE PLEA AGREEMENT

BP Products and the United States Department of Justice have agreed to a specific sentence pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.¹ The sentence proposed under the Rule 11(c)(1)(C) plea agreement includes the following material terms:

(1) Guilty Plea: BP Products will plead guilty to an Information alleging a felony violation of the Risk Management Plan (“RMP”) provisions of the Clean Air Act (“CAA”). 42 U.S.C. §§ 7412(r)(7), 7413(c)(1). This is the first criminal conviction ever obtained by the United States Department of Justice for a company’s knowing failure to comply with the RMP regulations.

(2) Fine: BP Products will pay a fine of \$50 million within three days of sentencing. The \$50 million fine is the largest criminal fine ever assessed for a violation of the Clean Air Act. It is also the largest criminal fine ever imposed for a fatal industrial accident.

(3) Probation: BP Products will submit to a three-year period of probation, under which it will be required to comply with: (1) the terms of a Settlement Agreement previously executed by BP Products and the Occupational Health &

¹ Unless otherwise denoted, all further textual references to Rules are to the Federal Rules of Criminal Procedure.

Safety Administration (“OSHA”); and (2) the provisions of an Agreed Order executed by BP Products and the Texas Commission on Environmental Quality (“TCEQ”).

(4) Continued Cooperation: BP Products has agreed to continue its cooperation with the government, including providing the government with access to its employees, records, and facilities.

III. LEGAL STANDARD

As set forth in the plea agreement, the statutory maximum fine is \$500,000 or possibly up to twice the gross pecuniary gain or loss resulting from the offense. 18 U.S.C. § 3571(c)(2), (3), (d). Sentences for corporate violations of environmental laws are not governed by the Federal Sentencing Guidelines. *See* U.S.S.G. § 8C2.1 & commentary (specifically noting that guidelines addressing corporate fines do not apply to environmental offenses). Accordingly, in accepting the plea, the Court should confirm that the sentence agreed to by the United States Department of Justice and BP Products generally satisfies the purposes set out in 18 U.S.C. § 3553(a)(2), in light of the factors listed in 18 U.S.C. §§ 3553(a) and 3572(a). *See* U.S.S.G. § 8C2.10.

The United States Department of Justice and BP Products have entered into a binding Rule 11(c)(1)(C) plea agreement, which both the United States Department of Justice and BP Products agree is a just resolution of the government’s criminal investigation. The federal courts generally give deference

to the parties' agreed-upon resolution. It is well within this Court's sound discretion to accept this Rule 11(c)(1)(C) agreement. Fed. R. Crim. P. 11(c)(3)(A); *Santobello v. New York*, 404 U.S. 257, 262 (1971); *United States v. Smith*, 417 F.3d 483, 487 (5th Cir. 2005).

IV. THE AGREED-UPON SENTENCE IS MORE THAN ADEQUATE TO PROVIDE JUST PUNISHMENT, TO AFFORD ADEQUATE DETERRENCE, AND TO PROTECT THE PUBLIC

A. The Conviction and the Sentence Are Unprecedented

If the plea agreement is accepted by the Court, BP Products will be the first company ever to be criminally convicted of violating the CAA by knowingly failing to comply with the RMP regulations. As Granta Nakayama, the Environmental Protection Agency's Assistant Administrator for Enforcement and Compliance Assurance has noted, "[this plea] agreement sends a message that these types of crimes will be prosecuted."²

Further, the \$50 million fine provided for in the agreement is the largest fine ever levied under the CAA. Compared with the fines paid by other companies for violations of the environmental laws arising from large-scale industrial accidents, the \$50 million fine to be paid in this case is unprecedented.

The next largest fine paid for environmental offenses is the \$27.8 million criminal fine levied in late 2006 against Overseas Shipholding Group Inc., for

² Press Release, U.S. Dep't. of Justice, British Petrol. to Pay More than \$370 Million in Env'tl. Crimes, Fraud Cases (Oct. 25, 2007), *available at* www.usdoj.gov/criminal/pr/press_releases/2007/10/10-25-07bp-fraud.pdf.

thirty-three felony convictions arising from the company's intentional dumping of waste oil into navigable waters in multiple districts across the United States, falsification of pollution log entries, and obstruction of justice.³ Exxon ultimately paid a \$25 million criminal fine for its conviction arising from the Exxon *Valdez* oil spill.⁴ In 2002, Olympic Pipeline Co. and Equilon Pipeline Co. paid a combined \$21 million dollar fine for knowing violations of environmental laws stemming from a 1999 pipeline explosion that resulted in the deaths of three people, including two children, and the release of 230,000 gallons of gasoline into local streams.⁵ In 2005, Motiva Enterprises paid a fine of \$10 million to resolve a felony violation of the Clean Water Act and violations of the Clean Air Act arising from a fatal tank explosion that released over a million gallons of sulfuric acid into the air, and one hundred thousand gallons into the Delaware River.⁶

³ Press Release, U.S. Dep't. of Justice, U.S. Oil Tanker Firm to Pay \$10 Million as Part of Largest-Ever Penalty for Concealing Vessel Pollution (June 20, 2007), available at http://cybersafe.gov/opa/pr/2007/June/07_enrd_441.html.

⁴ *Payment is Made in Exxon Case*, New York Times, Nov. 14, 1991, at D4, available at <http://query.nytimes.com/gst/fullpage.html?res=9D0CEEDF133DF937A25752C1A967958260>.

⁵ Tracy Johnson and Vanessa Ho, *In Deal, Olympic Pipe Line, 3 Workers Admit Guilt in Blast*, Seattle Post-Intelligencer, Dec. 12, 2002, at A1, available at http://seattlepi.nwsourc.com/local/99588_olympic12.shtml.

⁶ Press Release, U.S. Dep't of Justice, Motiva Enters. Settles Fed.-State Lawsuit Resulting from Explosion at Del. City Refinery (Sept. 20, 2005), available at http://www.usdoj.gov/opa/pr/2005/September/05_enrd_488.html.

B. Steps Taken By BP Products in the Aftermath of the Explosion

BP Products immediately accepted responsibility for the accident and committed itself to discovering what went wrong at the refinery and what improvements needed to be made to ensure that the tragedy of March 23, 2005, never happens again. As described below, BP Products has expended more than 1.6 billion dollars to compensate the victims of the accident and to enhance safety at the refinery. As part of BP Products' commitment to improve its process safety and to prevent another tragedy, BP Products has committed billions of dollars for improvements, and has mobilized a massive effort to systematically improve its safety procedures at the Texas City Refinery. BP Products' full acceptance of responsibility, its massive efforts to improve process safety, and its cooperation with federal agencies are mitigating factors that this Court should consider. *See* 18 U.S.C. § 3553(a).

(1) Civil Settlements on Fair Terms: BP Products has spent \$1.6 billion to compensate the victims of the explosion and has resolved more than 1,650 personal injury claims arising from the accident. Settlements have been achieved with the families of the workers who died and with most of the workers who suffered significant injuries. BP Products continues to work to resolve the remaining claims where possible.

Even the plaintiffs' bar has acknowledged BP Products' exemplary efforts to treat the victims fairly. As prominent plaintiffs' lawyer Joseph "Joe" Jamail, Jr.

commented in a letter to the Houston Chronicle:

In my many years of practice representing victims, I have never dealt with a company that has stepped forward so quickly and in good faith to adequately compensate the ones who were harmed.

BP cannot undo the harm caused by the failure of equipment in its plant. The BP personnel and its lawyers have worked tirelessly to make as much “right” as it can for those who were so grievously hurt—and without resorting to legal delays or trickery.

BP stepped up. It did what the law provides, that is, to monetarily restore the financial loss. It is not possible to bring back the lost lives or restore health to those injured. It has done all it can do under the law.⁷

(2) Immediate Investigation and Cooperation: BP Products conducted an immediate, transparent investigation of the accident. Within three days of the explosion, BP Products had convened a team to conduct this internal investigation. From the outset, BP Products chose to conduct its investigation fully outside of privilege. The work-product created by the investigation—including verbatim transcriptions of all interviews—was shared with OSHA and the Chemical Safety and Hazard Investigation Board (“CSB”). The company’s internal investigation report was also made available to the public through an Internet posting.

BP Products was forthright and cooperated fully in the CSB and OSHA investigations of the accident. As the CSB Chairman noted in an August 17, 2005, press release:

⁷ Joseph Jamail, Jr., Letter to the Editor, *BP Doing the Right Thing*, Hous. Chron., July 18, 2005, at B8.

BP has cooperated fully with the Board's independent investigation, and that has very much facilitated our work here. BP has been forthcoming with documents, witnesses and other evidence that has advanced our work.⁸

Similarly, in a March 20, 2007 press release, issued with the CSB's Final Report, the CSB noted that:

BP cooperated with the investigation, furnished documents and interviews on a voluntary basis, and committed to widespread safety improvements and investments following the accident. BP published its own report on the explosion in December 2005, pledged the total elimination of the kind of unsafe disposal equipment that led to the explosion, and developed a new siting policy to remove trailers from hazardous process areas.⁹

Additionally, BP Products approached the Department of Justice ("DOJ") in 2005 to provide the DOJ with background information and also to give the DOJ its internal investigation report. BP Products has since provided extensive information to the DOJ and the Environmental Protection Agency.

⁸ Press Release, U.S. Chem. Safety & Hazard Investigation Board, Statement of CSB Chairman Carolyn W. Merritt on the Board's Urgent Safety Recommendation to BP N. Am. (Aug. 17, 2005), *available at* [http://www.csb.gov/new_releases/docs/CMerritt%20Statement%208.17.05\[1\].pdf](http://www.csb.gov/new_releases/docs/CMerritt%20Statement%208.17.05[1].pdf).

⁹ Press Release, U.S. Chem. Safety & Hazard Investigation Board, U.S. Chem. Safety Board Concludes "Organizational and Safety Deficiencies at All Levels of the BP Corp." Caused Mar. 2005 Tex. City Disaster that Killed 15, Injured 180 (Mar. 20, 2007), *available at* http://www.csb.gov/index.cfm?folder=news_releases&page=news&NEWS_ID=355.

(3) Safety Enhancements: BP Products has already expended over \$1 billion dollars to undertake an unprecedented program of safety enhancements at the Texas City refinery since the accident. The program has evolved from immediate corrective actions after the March 23, 2005 explosion to a broad program to enhance safety at the refinery. It includes the following:

(a) Trailer Siting: BP Products immediately removed occupants from all trailers that were located within 500 feet of process units at the refinery. BP Products then determined that 800 employees and contractors could be moved to locations off the refinery site. BP Products secured a facility near the refinery and turned it into an offsite office complex for 400 workers and arranged off-site work space for another 400 employees and contractors.

(b) Elimination of Blowdown Stacks and Process Safety

Improvement: By mid-May 2005, BP Products committed to eliminate from the refinery all blowdown stacks in light hydrocarbon, heavier-than-air service. The elimination of the blowdown stacks required the construction of new and temporary flares. BP Products also invested heavily to improve the condition of the equipment and infrastructure at the refinery. In addition, BP Products implemented an Inspection Renewal Program and a new Preventative Maintenance Policy and Procedure.

(c) Training: BP Products has built facilities for face-to-face training. BP Products expanded the refinery's Health Safety Security and Environment staff from 66 full-time employees in 2005 to approximately 160 employees as of today. The Process Safety Management Group staff has nearly tripled from 8 employees to 22 employees. Safety training has increased significantly, to a projected total of 300,000 training hours this year.

(d) Comprehensive Safety Program: BP Products' internal report and other independent investigations contained hundreds of recommendations for safety improvements at the Texas City refinery. To coordinate its response to these recommendations, BP Products implemented a program—known as the “Focus on the Future Program”—for which \$2.8 billion has been budgeted over the next seven years. “Focus on the Future” is a comprehensive program of 29 site-wide initiatives and 900 refinery systems and infrastructure remediation projects designed to comprehensively reform the refinery's systems, equipment, and culture.

BP Products has dedicated substantial resources and made real progress in the areas of process safety performance and risk management. The company

acknowledges, however, it has more to do and it is committed to doing all it can to prevent a similar tragedy.¹⁰

(4) OSHA Settlement: BP Products settled an OSHA enforcement action arising from the accident by agreeing to pay a \$21.4 million fine and to undertake programs to enhance safety at the refinery. One of the key components of this agreement was a third-party audit of process safety systems at the refinery. BP Products retained an independent organization expert to perform this audit of the refinery's safety culture and commitment. BP Products agreed to implement the corrective actions identified in this third-party audit or to provide an explanation for why a particular corrective action was not taken. BP Products also committed to perform safety and health training for all workers and managers. BP Products' continued compliance with the OSHA agreement is also a condition of the three-year probation to be imposed as part of the sentence in this case.

(5) TCEQ Agreed Order: BP Products entered into an Agreed Order with TCEQ. BP Products agreed to the applicability of certain flare emissions control requirements to the flares at the Texas City refinery. The limitations will be applied to existing flares at the refinery as well as to new flares constructed during the term of the Agreed Order to allow the elimination of blowdown stacks. BP

¹⁰ Two employees died in accidents at the refinery since 2005. While those deaths were not attributable to process safety deficiencies, they point to both the inherent dangers of refinery work and the need for BP Products and its employees to focus heavily on worker safety.

Products estimates the cost of compliance with the TCEQ agreement to be \$250 million. BP Products' continued compliance with the TCEQ agreement also is a condition of the three-year probation to be imposed as part of the sentence in this case.

V. CONCLUSION

For the reasons discussed above, the sentence that the parties have agreed to in their Rule 11(c)(1)(C) plea agreement is just. BP Products respectfully requests that the Court impose the agreed-upon sentence.

DATED: This 20th Day of November, 2007.

Respectfully submitted,

By: _____/s/_____

By: _____/s/_____

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