



MEMORANDUM

TO: Mayor Laurel L. Prussing and Members of the City Council
FROM: William R. Gray, P.E., Public Works Director
Gale L. Jamison, P.E., Assistant City Engineer
DATE: March 7, 2012
RE: BP Products North America, Inc.
Tiered Approach to Corrective Action Objectives Agreement
Green Street at Lincoln Avenue

INTRODUCTION/ISSUES

BP Products North America, Inc. (BP) is currently completing corrective action work at the southeast corner of Green Street and Lincoln Avenue (809 West Green Street) in accordance with 35 Illinois Administrative Code (IAC) Part 734, *Petroleum Underground Storage Tanks (Releases Reported on or after June 24, 2002)*, and 35 IAC Part 742, *Tiered Approach to Corrective Action Objectives (TACO)*, in response to leaking underground storage tank contamination discovered on the site. BP has requested risk-based closure utilizing site specific soil and/or groundwater remediation objectives from the Illinois Environmental Protection Agency (IEPA). In accordance with 35 IAC §742.1020, BP proposes the use of a Highway Authority Agreement (HAA) as an institutional control (1) to obtain a No Further Remediation (NFR) determination from the IEPA; (2) to ensure protection of human health and the environment by restricting or limiting land uses on property; and (3) to protect against exposure to contaminated soil or groundwater or both that may be present within the right-of-way as a result of the release.

On December 19, 2011, the City Council approved Ordinance No. 2011-12-137 authorizing the Mayor to sign a draft HAA for the right-of-way at 809 West Green Street. That draft HAA included provisions that provided for the responsibilities for removal of contamination within the right-of-way by BP, if encountered by construction activities. It also provided for remedies for the City if BP fails to take appropriate action. It also required the City to prohibit the use of groundwater as a potable water supply within the right-of-way.

Subsequent to that action and after consultation with IEPA and BP it was determined that IEPA would not approve the HAA as modified in the previous draft. It was determined that the HAA should be accompanied by a Supplemental Agreement between BP and the City that defined the responsibilities of BP and the City over and above those spelled out in the IEPA Model HAA.

That portion of the right-of-way covered is shown on the Figure 4 of the attached HAA.

FISCAL IMPACTS

There are no financial impacts to the City with either the TACO Agreement or the Groundwater Restriction Ordinance.

RECOMMENDATIONS

It is recommended that “AN ORDINANCE TO REPEAL ORDINANCE NO. 2011-12-137 AND TO APPROVE A HIGHWAY AUTHORITY AGREEMENT AND A SUPPLEMENTAL AGREEMENT WITH BP PRODUCTS NORTH AMERICA, INC. (809 West Green Street)” be approved.

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ORDINANCE NO. 2012-03-025

AN ORDINANCE TO REPEAL ORDINANCE NO. 2011-12-137 AND TO APPROVE A HIGHWAY AUTHORITY AGREEMENT AND A SUPPLEMENTAL AGREEMENT WITH BP PRODUCTS NORTH AMERICA, INC.

(809 West Green Street)

WHEREAS, the City Council heretofore did on the 19th day of December 2011, pursuant to Ordinance No. 2011-12-137, approve and authorize the Mayor to execute an agreement with BP Products North America, Inc. ("BP Products") for a Tiered Approach to Corrective Action Objectives (TACO) concerning a release of contaminants from underground storage tanks located at 809 West Green Street, Urbana, Illinois; and

WHEREAS, said agreement was not thereafter executed, as BP Products and the City subsequently determined that changes to the agreement were required; and

WHEREAS, after due and proper consideration, the City Council finds that the best interests of the City are served by repealing Ordinance No. 2011-12-137 and by approving a Highway Authority Agreement and a Supplemental Agreement with BP Products in lieu thereof as described herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

Ordinance No. 2011-12-137 is hereby repealed upon the effective date of this Ordinance. The repeal of such Ordinance shall not abrogate or affect any act committed or done or any penalty or forfeiture incurred or any pending litigation or prosecution under such repealed ordinance.

Section 2.

In place of said Ordinance herein repealed, a Highway Authority Agreement and a Supplemental Agreement with BP Products North America, Inc., in substantially the form of the copies of said Agreements attached hereto and hereby incorporated by reference, be and the same are hereby authorized and approved.

Section 3.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreements as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 4.

This Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

After recording return to:

City of Urbana Legal Division
400 S. Vine Street
Urbana, IL 61801

SUPPLEMENTAL AGREEMENT

This Supplemental Agreement (“Supplemental Agreement”) is entered into this _____ day of _____, 2012 by and between BP Products North America Inc. (“BP”), formerly known as Amoco Oil Company, as owner or operator of underground storage tank(s) (“Owner/Operator”), and the City of Urbana, Illinois (“Highway Authority”), as follows:

1. This Supplemental Agreement is not binding upon the Highway Authority until it is executed by the undersigned representative of the Highway Authority and prior to execution, this Supplemental Agreement constitutes an offer by Owner/Operator.
2. Owner/Operator stipulates:
 - a. Owner/Operator is pursuing a corrective action of a Site and of the right-of-way adjacent to the boundary of the Site located at 809 West Green Street, Urbana, Illinois (the “Site”).
 - b. Attached as Exhibit A is a site map that shows the area of estimated contaminant-impacted soil and groundwater at the time of this Supplemental Agreement in the right-of-way above Tier 1 residential levels under 35 Ill. Admin. Code Part 742.

Also attached as Exhibit A is a table that shows the concentration of contaminants of concern, hereinafter “Contaminants,” in the soil and groundwater within the area described in Exhibit A and that shows the applicable Tier 1 soil remediation objectives for residential property and Tier 1 objectives for groundwater of the Illinois Pollution Control Board that are exceeded. The right-of-way, and only the right-of-way, as described in Exhibit B, hereinafter the “Right-of-Way,” adjacent to the Site is subject to this Supplemental Agreement. As the drawings in the Exhibits are not plats, the boundary of the Right-of-Way in the Exhibits may be an approximation of the actual Right-of-Way lines. In the event that either the Highway Authority or Owner/Operator determines that the area of estimated contaminant impacted soil and groundwater has expanded or materially changed, the Parties shall amend Exhibit A of this Agreement to reflect the estimated contaminant impacted soil and groundwater. Also, in the event the Highway Authority expands the right-of-way by acquiring all or part of the Site property or a property adjacent to the Site property which is or may be contaminated, the Parties shall amend Exhibit A and Exhibit B of this Agreement to reflect the estimated contaminant impacted soil and groundwater and describe and depict the right-of-ways.

c. The Illinois Emergency Management Agency has assigned incident number 900883 to this release at the Site.

d. Owner/Operator intends to request risk-based, site specific soil and/or groundwater remediation objectives from Illinois Environmental Protection Agency (“IEPA”) under 35 Ill. Admin. Code Part 742.

e. Under these rules, use of risk-based, site-specific remediation objectives in the Right-of-Way may require the use of a Highway Authority Agreement as defined in

35 Ill. Admin. Code Section 742.1020.

3. The Highway Authority stipulates:

The Highway Authority holds a fee simple interest or a dedication for highway purposes in the Right-of-Way, or the Right-of-Way is a platted street, and the Highway Authority has jurisdiction of the Right-of-Way. As such, the Highway Authority exercises sole control over the use of groundwater beneath the Right-of-Way and over access to the soil beneath the Right-of-Way because a permit is required for said access.

4. The parties stipulate that:

a. They have agreed to enter into a Highway Authority Agreement regarding the Right-of-Way in the form attached as Exhibit C, and this Supplemental Agreement is intended to supplement the parties' rights and obligations provided for in the Highway Authority Agreement.

b. This Supplemental Agreement shall be null and void should the IEPA not approve the Highway Authority Agreement or should the Highway Authority Agreement not be referenced in the "No Further Remediation" letter for incident number 900883.

5. Except for ordinary maintenance consistent with that performed by the Highway Authority on other Highway Authority highways, the Highway Authority does not agree to perform maintenance of the Right-of-Way, nor does it agree that the Right-of-Way will always remain a Highway Authority highway or that it will maintain the Right-of-Way as an engineered barrier. If the "No Further Remediation" letter dictates extraordinary maintenance of the Right-of-Way, the Owner/Operator shall pay the extraordinary costs of said maintenance.

6. Provided that the Highway Authority notifies Owner/Operator within thirty (30) working days of receiving a claim, and further provides Owner/Operator with an opportunity to defend said claim, the Owner/Operator agrees to indemnify and hold harmless the Highway Authority, and other highway authorities, if any, maintaining the highway Right-of-Way by an agreement with the Highway Authority, and the Highway Authority's agents, contractors or employees for all obligations asserted against or costs incurred by them, including attorney's fees and court costs, associated with the release of Contaminants from the Site by the Owner/Operator.

7. As an additional consideration, Owner/Operator agrees to reimburse the Highway Authority for the reasonable costs it may incur in protecting human health and the environment, including, but not limited to, identifying, investigating, handling, storing and disposing of contaminated soil and groundwater in the Right-of-Way as a result of the release of Contaminants at this Site by the Owner/Operator.

8. This Supplemental Agreement shall be binding upon all successors in interest to the Owner/Operator and to the Highway Authority. A successor in interest of the Highway Authority would include a highway authority to which the Highway Authority would transfer jurisdiction of the highway.

9. This Supplemental Agreement shall continue in effect from the date of this Supplemental Agreement until the Right-of-Way is demonstrated to be suitable for unrestricted use and there is no longer a need for a Highway Authority Agreement for incident number 900883, and the IEPA has, upon written request to the IEPA by the Owner/Operator and notice to the Highway Authority, amended the notice in the chain of title of the Site to reflect unencumbered future use of that highway Right-of-Way.

10. This Supplemental Agreement is in settlement of claims the Highway Authority may have arising from the release of Contaminants into the Right-of-Way associated with incident number 900883.

11. The Highway Authority Agreement and this Supplemental Agreement do not limit the Highway Authority's ability to manage, construct, reconstruct, improve, repair, expand, maintain and operate (collectively "Work") a highway upon its property, or to construct, maintain and operate subsurface utility mains, pipes and structures, including, but not limited to, such structures necessary for water and sewer systems and utilities and storm water drainage systems, or to allow others to use the highway Right-of-Way by permit. To the extent necessary for its Work, the Highway Authority reserves the right and the right of those using its property under permit to remove contaminated soil and/or groundwater above Tier 1 residential remediation objectives from its Right-of-Way and to dispose of them as they deem appropriate not inconsistent with applicable environmental regulations so as to avoid causing a further release of the Contaminants and to protect human health and the environment.

Prior to taking any such action, the Highway Authority will first give Owner/Operator no less than sixty (60) working days' written notice prior to a letting for Work, unless there is an immediate threat to the health or safety of any individual or to the public, that it intends to perform Work in the Right-of-Way which may involve removing and disposing of contaminated soil or groundwater to the extent necessary for its Work. During this period, which may be extended by agreement of the parties, the Highway Authority and Owner/Operator will engage in a good-faith, collaborative process to arrive at a consensus approach to managing the impacted soil or groundwater

in the Right-of-Way in an attempt to reconcile Owner/Operator's preference for performing as much of this work as possible with the Highway Authority's engineering and other constraints in doing so. Work performed by Owner/Operator would be performed under a permit from the Highway Authority. The final decision for management will be in the discretion of the Highway Authority.

Failure to give notice is not a violation of this Supplemental Agreement. The removal and disposal shall be based upon the site investigation (which may be modified by field conditions during excavation), which Owner/Operator may review or may perform at no cost to the Highway Authority, if requested to do so by the Highway Authority. If practicable, as determined by the Highway Authority, the Highway Authority may request Owner/Operator to remove and dispose of the contaminated soil or groundwater necessary for the Highway Authority's work in advance of that work.

The Owner/Operator shall reimburse the reasonable costs incurred by the Highway Authority to perform a site investigation of the Right-of-Way, to monitor the removal, to transport and dispose of any Contaminant-impacted soil or groundwater from the Right-of-Way, and to administer and enforce this Agreement; provided, however, that if Owner/Operator has not been given notice and an opportunity to engage in the consensus process allowing it to perform that investigation and that disposal within the process described in the preceding paragraphs and there was no immediate threat to health or safety, reimbursement shall be limited to actual costs not to exceed \$10,000.00. There is a rebuttable presumption that the Contaminants found in the highway Right-of-Way arose from the release of Contaminants from the Site. Should Owner/Operator not reimburse the reasonable costs under the conditions set forth herein, the Highway

Authority Agreement and this Supplemental Agreement shall be null and void, at the Highway Authority's option, upon written notice to Owner/Operator by the Highway Authority that those costs have not been reimbursed. Owner/Operator may cure that problem within forty-five (45) working days by making payment, or may seek to enjoin that result.

12. Written notice required by this Supplemental Agreement shall be mailed to the following: if to Owner/Operator: BP Products North America Inc., Attn: Janet Wager, BP Remediation Management, 201 Helios Way, Helios Plaza 6.370B, Houston, TX 77079, and if to Highway Authority: City of Urbana Director of Public Works, 706 South Glover Avenue, Urbana, IL 61802.

13. Provided that the Highway Authority provides Owner/Operator with notice within thirty (30) working days of receiving a claim, and further provides Owner/Operator with an opportunity to defend said claim, Owner/Operator hereby releases the Highway Authority from liability for breach of the Highway Authority Agreement by others under permit and indemnifies the Highway Authority against claims that may arise from others under permit causing a breach of the Highway Authority Agreement. Owner/Operator also agrees that its personnel, if any, at the Site who are aware of the Highway Authority Agreement will notify anyone they know is excavating in the Right-of-Way about the Highway Authority Agreement.

14. The Highway Authority and the Owner/Operator may enforce this agreement in any court of competent jurisdiction by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements and obligations contained herein.

15. The Highway Authority Agreement and this Supplemental Agreement are entered into by the Highway Authority in recognition of laws passed by the General Assembly and regulations adopted by the Pollution Control Board that encourage a tiered-approach to remediating environmental contamination. The Highway Authority Agreement and this Supplemental Agreement are entered into by the Highway Authority in the spirit of those laws and under its rights and obligations as property owner. Should any provisions of the Highway Authority Agreement or this Supplemental Agreement be struck down as beyond the authority of the Highway Authority, this Supplemental Agreement shall be null and void.

IN WITNESS WHEREOF, the Highway Authority has caused this Supplemental Agreement to be signed by its _____, a duly authorized representative, and be binding upon it, its successors and assigns.

[Highway Authority]

BY: _____

DATE: _____

(Printed) _____

Its: _____

IN WITNESS WHEREOF, Owner/Operator, BP Products North America Inc., has caused this Agreement to be signed by its duly authorized representative, and be binding upon it, its successors and assigns.

BY: _____

DATE: _____

(Printed) _____

Its: _____

After recording return to:

City of Urbana Legal Division
400 S. Vine Street
Urbana, IL 61801

Highway Authority Agreement

This Agreement is entered into this ____ day of _____, 20____ pursuant to 35 Illinois Administrative Code (IAC) 742.1020 by and between the (1) BP Products North America Inc. (“Owner/Operator”) and (2) City of Urbana (“Highway Authority”), collectively known as the “Parties.”

WHEREAS, BP Products North America Inc. is the owner or operator of one or more leaking underground storage tanks presently or formerly located at 809 West Green Street, Urbana, Illinois (“the Site”);

WHEREAS, as a result of one or more releases of contaminants from the above referenced underground storage tanks (“the Release(s)”), soil and/or groundwater contamination at the Site exceeds the Tier 1 residential remediation objectives of 35 IAC §742;

WHEREAS, the soil and/or groundwater contamination exceeding Tier 1 residential remediation objectives extends or may extend into the Highway Authority’s right-of-way;

WHEREAS, the Owner/Operator or Property Owner is conducting corrective action in response to the Release(s);

WHEREAS, the Parties desire to prevent groundwater beneath the Highway Authority’s right-of-way that exceeds Tier 1 remediation objectives from use as a supply of potable or domestic water and to limit access to soil within the right-of-way that exceeds Tier 1 residential remediation objectives so that human health and the environment are protected during and after any access;

NOW, THEREFORE, the Parties agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein.
2. The Illinois Emergency Management Agency has assigned incident number(s) 900883 to the Release(s).
3. Attached as **Exhibit A** is a scaled map(s) prepared by the Owner/Operator that shows the Site and surrounding area and delineates the current and estimated future extent of soil and

groundwater contamination above the applicable Tier 1 residential remediation objectives as a result of the Release(s).

4. Attached as **Exhibit B** is a table(s) prepared by the Owner/Operator that lists each contaminant of concern that exceeds its Tier 1 residential remediation objective, its Tier 1 residential remediation objective and its concentrations within the zone where Tier 1 residential remediation objectives are exceeded. The locations of the concentrations listed in Exhibit B are identified on the map(s) in Exhibit A.
5. Attached as **Exhibit C** is a scaled map prepared by the Owner/Operator showing the area of the Highway Authority's right-of-way that is governed by this agreement ("Right-of-Way"). Because **Exhibit C** is not a surveyed plat, the Right-of-Way boundary may be an approximation of the actual Right-of-Way lines.
6. Because the collection of samples within the Right-of-Way is not practical, the Parties stipulate that, based on modeling, soil and groundwater contamination exceeding Tier 1 residential remediation objectives does not and will not extend beyond the boundaries of the Right-of-Way.
7. The Highway Authority stipulates it has jurisdiction over the Right-of-Way that gives it sole control over the use of the groundwater and access to the soil located within or beneath the Right-of-Way.
8. The Highway Authority agrees to prohibit within the Right-of-Way all potable and domestic uses of groundwater exceeding Tier 1 residential remediation objectives.
9. The Highway Authority further agrees to limit access by itself and others to soil within the Right-of-Way exceeding Tier 1 residential remediation objectives. Access shall be allowed only if human health (including worker safety) and the environment are protected during and after any access. The Highway Authority may construct, reconstruct, improve, repair, maintain and operate a highway upon the Right-of-Way, or allow others to do the same by permit. In addition, the Highway Authority and others using or working in the Right-of-Way under permit have the right to remove soil or groundwater from the Right-of-Way and dispose of the same in accordance with applicable environmental laws and regulations. The Highway Authority agrees to issue all permits for work in the Right-of-Way, and make all existing permits for work in the Right-of-Way, subject to the following or a substantially similar condition:

As a condition of this permit the permittee shall request the office issuing this permit to identify sites in the Right-of-Way where a Highway Authority Agreement governs access to soil that exceeds the Tier 1 residential remediation objectives of 35 IAC §742. The permittee shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil.

10. This agreement shall be referenced in the Agency's no further remediation determination issued for the Release(s).
11. The Agency shall be notified of any transfer of jurisdiction over the Right-of-Way at least 30 days prior to the date the transfer takes effect. This agreement shall be null and void upon the transfer unless the transferee agrees to be bound by this agreement. The transferee's agreement to be bound by the terms of this agreement shall be memorialized at the time of

transfer in a writing ("Rider") that references this Highway Authority Agreement and is signed by the Highway Authority, or subsequent transferor, and the transferee.

12. This agreement shall become effective on the date the Agency issues a no further remediation determination for the Release(s). It shall remain effective until the Right-of-Way is demonstrated to be suitable for unrestricted use and the Agency issues a new no further remediation determination to reflect there is no longer a need for this agreement, or until the agreement is otherwise terminated or voided.
13. In addition to any other remedies that may be available, the Agency may bring suit to enforce the terms of this agreement or may, in its sole discretion, declare this agreement null and void if any of the Parties or any transferee violates any term of this agreement. This Parties or transferee shall be notified in writing of any such declaration.
14. This agreement shall be null and void if a court of competent jurisdiction strikes down any part or provision of the agreement.
15. This agreement supersedes any prior written or oral agreements or understandings between the Parties on the Subject matter addressed herein. It may be altered, modified, or amended only upon written consent and agreement of the Parties.
16. Any notices or other correspondence regarding this agreement shall be sent to the Parties at following addresses:

Manager, Division of Remediation Management
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, IL 62974-9276

Director of Public Works
Department of Public Works
706 South Glover Avenue
Urbana, IL 61802

BP Products North America Inc.
Janet Wager
BP Remediation Management
201 Helios Way
Helios Plaza 6.370B
Houston, TX 77079

IN WITNESS WHEREOF, the Parties have caused this agreement to be signed by their duly authorized representatives.

City of Urbana

Date: _____ By: _____

Its: _____

BP Products North America Inc.

Date: _____ By: _____

Its: _____