

**FILED**

OCT 25 2007

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

v.

BP PRODUCTS NORTH AMERICA INC.,

Defendant.

CIVIL ACTION NO. 06-C-3503

Consent Order for  
Permanent Injunction and Other  
Relief

**I. BACKGROUND**

1. On June 28, 2006, the Commodity Futures Trading Commission ("Commission" or "CFTC") filed its complaint against Defendant BP Products North America Inc. seeking injunctive and other equitable relief, including a civil monetary penalty, for violations of the Commodity Exchange Act, as amended (the "Act"), as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2002) (the "Complaint").

2. In particular, the Complaint alleges that Defendant BP Products North America Inc. ("BP" or "Defendant"), by and through its employees, engaged in acts and practices that constitute violations of the Act. In short, BP unlawfully attempted to manipulate and did manipulate the price of February 2004 TET physical propane by cornering the market for February 2004 TET physical propane. Further, BP also attempted to manipulate the price of April 2003 TET physical propane, again by seeking to corner the April 2003 TET physical propane market.

## II. CONSENTS AND AGREEMENTS

3. BP hereby warrants and represents that the Board of Directors of BP has duly authorized, in a specific resolution that is attached hereto, the entry of this Consent Order by BP. BP further agrees that the terms and conditions of this Order are binding upon any BP subsidiary or BP business group or entity that operates with or provides services for BP (hereinafter referred to as "BP Entities") in the United States.

4. BP agrees that in the event it sells, merges, or transfers all or substantially all of its business operations or any part of the trading operations as they exist as of the date of this Order, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, they shall include in any contract for sale, merger or transfer a provision binding the purchaser(s) or any successor(s) in interest thereto to the obligations described in this Order.

5. In order to dispose of all the claims and issues raised in the Complaint and to reach a full and final settlement between the parties without a trial on the merits or further judicial proceedings, BP:

a. Consents to the entry of this Consent Order of Permanent Injunction and Other Relief ("Order");

b. Affirms that it has read and agreed to this Order voluntarily, and that no threat, or promise other than as set forth specifically herein, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order;

c. Acknowledges service of the Summons and Complaint;

d. Admits that this Court has jurisdiction over it and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

e. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

f. Waives:

i. All claims which may be available under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 and 28 U.S.C. § 2412 (2000), relating to, or arising from, this action and any right under EAJA to seek costs, fees and other expenses relating to, or arising from this action;

ii. Any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

iii. Any rights of appeal from this Order;

g. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order, to assure compliance with the Order, and for any other purposes relevant to this case;

h. Agrees that neither it nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect BP's (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. BP shall take all necessary steps to ensure that all of its agents or employees understand and comply with this Order. Should BP issue a press release in connection with this Order or the ongoing civil and

criminal investigations of the propane market, BP shall provide the text of the press release to the Commission at least twenty-four hours before its public release.

6. By consenting to the entry of this Order, BP neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Order, except as to jurisdiction and venue, which it admits. However, BP agrees, and the parties to this Order intend, that the allegations of the Complaint and the Findings of Fact made by this Court shall be taken as true and correct and given preclusive effect, without further proof, in any proceeding in bankruptcy or to enforce the terms of this Order. BP shall provide immediate notice to this Court and the Commission via certified mail of any bankruptcy proceeding filed by, on behalf of, or against it, and shall provide immediate notice of any change of address, telephone number, or contact information.

#### **Compliance & Ethics Program**

7. BP represents that it has implemented and will continue to implement a compliance and ethics program designed to detect and prevent violations of the Commodity Exchange Act, 7 U.S.C. § 1, *et seq.*, by any BP director, officer, employee or agent, in accord with the general standards outlined in Section 8B2.1 of the Federal Sentencing Guidelines for Organizations which defines an Effective Compliance and Ethics Program. In particular, BP represents that it has undertaken, or agrees that it will undertake, the steps set forth in Attachment A.

8. BP's failure to comply with the conditions and requirements set forth in Attachment A will constitute a breach of this Consent Order and the Commission may institute a contempt action or any other action it is authorized to commence against BP for such failure.

### Independent Monitor

9. BP, the CFTC, and the U.S. Department of Justice, Fraud Section (the "Department") shall use mutual best efforts to identify a mutually acceptable person, who, subject to the approval of the Court, shall serve as the Monitor.

10. BP, the BP Entities and their directors, officers, employees, and agents shall cooperate fully with the Monitor, as further described in Attachment B.

11. BP's, the BP Entities' and their directors', officers', employees', and agents' failure to comply with the conditions and requirements set forth in Attachment B will constitute a breach of this Consent Order and the Commission may institute a contempt action or any other action it is authorized to commence against BP for such failure.

### Cooperation

12. For a period of three (3) years commencing upon the Court's entry of this Consent Order, BP and the BP Entities agree to cooperate fully with the Commission, the Department, an independent monitor (described in "Attachment B"), any "registered entity" as that phrase is defined in 7 U.S.C. § 1a(29) or any "self-regulatory organization" as that phrase is defined in 17 C.F.R. § 1.3(ee), as directed by the Commission or the Department, and an independent monitor (described in Attachment B), whenever any such entity, agency, or monitor investigates whether BP, the BP Entities, or any of their directors, officers, employees, agents or consultants may have:

(1) engaged in any potential act of manipulation, attempted manipulation, cornering, or attempted cornering relating to the price of a "commodity," as commodity is defined in Section 1(a) of the CEA, in interstate commerce, or for future delivery; (2) knowingly delivered or caused to be delivered any false, misleading, or knowingly inaccurate information that could tend to affect the

price of a commodity in interstate commerce; and/or (3) made any false or misleading statements to any registered entity (collectively referred to as “Manipulative Conduct”). BP and the BP Entities agree that their cooperation shall include, but is not limited to, the following:

a. BP and the BP Entities shall truthfully disclose all information with respect to the activities of BP and the BP Entities directors, officers, employees, agents or consultants, concerning all matters relating to any alleged Manipulative Conduct, about which BP, the BP Entities or their directors, officers, employees, agents or consultants have any knowledge or about which the Commission or Department shall inquire. BP and the BP Entities shall be deemed to “have any knowledge” of alleged Manipulative Conduct when information about such alleged Manipulative Conduct is known to a representative from any BP legal division, a representative of a BP compliance group, or any individual responsible for the supervision of trading managers or his or her supervisor(s). This obligation of truthful disclosure includes the obligation of BP and the BP Entities to provide to the Commission, the Department, or any agency designated by the Department or the Commission, upon request, any document, record, or other tangible evidence relating to such Manipulative Conduct and internal compliance controls about which the Commission shall inquire of BP or the BP Entities.

b. Upon request of the Commission or the Department, with respect to any issue relevant to Manipulative Conduct or internal compliance controls, BP and the BP Entities shall designate knowledgeable employees, agents, or attorneys to provide to the Commission or the Department the information and materials described in Paragraph 12(a) above, on behalf of BP and the BP Entities. It is further understood that BP and the BP Entities must at all times provide complete, truthful, and accurate information.

c. With respect to any issue relevant to the Commission's or Department's investigation of any alleged Manipulative Conduct, BP and the BP Entities shall use reasonable efforts to make available for interviews or testimony, as requested by the Commission or the Department, current or former directors, officers, employees, agents and consultants of BP or the BP Entities, or any of their current or former subsidiaries, affiliates, or parent companies. This undertaking also includes identification of witnesses who, to the knowledge of BP, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, document, record, or other tangible evidence provided to the Commission or the Department pursuant to this Order, BP and the BP Entities consent to any and all disclosures to other government agencies, whether agencies of the United States or a foreign government, as the Department and the Commission shall deem appropriate provided that prior to providing any information, the Commission will seek reasonable assurances from the agency or foreign government that it will abide by the terms of this Agreement and keep the information confidential except as may be necessary to discharge its official duties.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of Findings of Fact, Conclusions of Law, and a permanent injunction and ancillary relief pursuant to § 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

#### **I. Introduction**

14. From February 5, 2004, through March 12, 2004, employees of subsidiaries of BP or the BP entities (hereinafter collectively referred to as "BP") conspired to manipulate the

February 2004 propane market for propane transported in the TEPPCO pipeline system (hereinafter referred to as "TET" propane). As a result, the price of TET propane was artificial and inflated from February 12, 2004 through March 2, 2004.

15. In accordance with the plan, the employees used the financial resources of BP to buy contracts for substantially all of the February 2004 TET propane supply to become the dominant owner, or "long-holder," of TET propane. The employees, at specific times thereafter, withheld supply from the market while continuing to purchase contracts to own more than the supply of TET propane in the TEPPCO system. BP's dominant ownership position, continued purchases of said propane subsequent to obtaining such a position, and withholding of supply at specific times thereafter, all distorted and made artificial the price of TET propane during February 2004. As a result of the employees' conduct, by the end of February 2004, BP acquired ownership of substantially all of the available supply of February 2004 TET propane in the United States. The employees executing the plan thus cornered the market for February 2004 TET propane, distorted and made artificial the price of February 2004 TET propane, and sold a portion of the supply at an artificial and inflated price.

## **II. Background**

### **A. TET Propane Market**

16. Propane is a natural gas liquid ("NGL"). Propane is used by petrochemical industries to produce plastics and is also used as a source of energy for residential and commercial purposes. Residential and commercial demand for propane is seasonal. Typically, propane inventory levels are built up during the spring and summer. Then, during the winter heating season, propane consumption is high, resulting in lower inventory levels at the end of the heating season in February and March.



17. Residential and commercial consumption of propane is greatest in the Northeast and Midwest sections of the United States. The primary means by which propane is delivered to these regions is the Texas Eastern Products Pipeline Company, LLC (“TEPPCO”) pipeline system, which is the only pipeline transporting propane from the TEPPCO storage facility in Mont Belvieu, Texas, to the Northeast and Midwest. Propane in the TEPPCO system is identified as TET propane. Propane in storage facilities at Mont Belvieu that is not maintained by TEPPCO or transported in the TEPPCO pipeline is referred to as “non-TET” propane.

18. TET propane is a commodity as defined in Title 7, United States Code, Section 1(a)(4), and TET propane that flows through the TEPPCO pipeline crosses various states. TET propane is a commodity in interstate commerce.

19. TET propane is predominantly traded “over-the-counter” in one of three ways: (1) direct, bilateral transactions between two parties; (2) voice broker transactions; and (3) electronic transactions on the “Chalkboard” trading platform.<sup>1</sup> In voice broker transactions, the brokers negotiate and execute deals on behalf of a buyer and seller. In Chalkboard transactions, buyers and sellers post anonymous bids and offers on an electronic website, Chalkboard, and only learn the counterparty’s identity when the transaction is completed. Propane sales are generally traded in lots of 1,000 barrels (bbls) and each barrel is the equivalent of 42 gallons of propane.

20. Propane prices are published by the Oil Price Information Service (“OPIS”). The prices published by OPIS are specific to the type of propane, such as TET propane, and the month or time period for which the propane is to be delivered. Generally, a price is published for the current (or “prompt”) month, the next (or “forward”) month and for delivery the next day. Propane traders trade TET propane contracts based upon these delivery distinctions.

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<sup>1</sup> During all times relevant to this Statement of Facts, Chalkboard was owned by Chemconnect, Inc.

21. OPIS also publishes “average” prices, such as “daily average” and “monthly average,” based on information collected directly from market participants. An OPIS “daily average” price consists of the mean between the lowest and the highest reported prices on a given day. Parties sometimes trade propane based on a “daily” or “monthly” average price as published by OPIS. As a result, OPIS prices published for TET propane can affect the price paid by both commodity traders and end users for many categories of propane in the Midwest and Northeast, including, but not limited to, the District of Columbia and Illinois.

**B. Corporate Organization and Structure**

22. Within and across the corporate structure of BP, there were a number of groups, business units, and teams that focused on specific aspects of the companies’ business. These groups and business units were not separate legal entities but rather existed within and across various BP legal entities.

23. The organizational group responsible on a global basis for overseeing trading activity was the Integrated Supply & Trading (“IST”) group. Within IST there were a number of regional business units. The regional business unit responsible for the trading of gas and power products, including propane, in North America was North America Gas & Power (“NAGP”). During 2003 and 2004, the team within NAGP focused on the trading of natural gas liquids, including propane, was known as the NGL trading bench (“NGL Trading Bench” or “Bench”).

24. A separate regional business unit responsible for the production, transportation, and sales of natural gas liquids, including propane, in North America was the Natural Gas Liquids Business Unit (“NGLBU”).

**C. The NGL Trading Bench**

25. During February 2004, the NGL Trading Bench was located in Houston, Texas, and employed approximately eight traders. All of the members of the NGL Trading Bench were employees of BP America Production Company, reporting to managers and other executives who were employed by other BP America subsidiaries. The NGL Trading Bench entered into contracts to purchase and sell propane on behalf of BP Products North America, Inc.

26. Once a contract was executed, a confirmation notice was sent to the counterparty, via the mails and wires of the United States, between BP's offices in Texas or Illinois and the various counterparties' offices which were located in Texas, Illinois, New York, and elsewhere.

27. BP recorded the NGL Trading Bench traders' telephone communications. Traders had stations on the bench with separate telephone lines. The traders were aware that their conversations were recorded on those telephones.

28. The NGL Trading Bench purchased and sold propane for use in BP's wholesale and petrochemical businesses, and for speculative purposes to generate a profit.

29. BP Trader #1 was the primary trader responsible for trading TET propane from at least January 2003 to April 2005.

30. Dennis N. Abbott was another trader on the NGL Trading Bench during the relevant time period. Abbott's primary responsibility involved the trading of heavy NGLs such as butane, and as the need arose, light NGLs, such as propane and other commodities.

31. BP Trader #2 was a trader primarily responsible for trading ethane and other NGLs, as well as propane, during 2003 and 2004. During February 2004, BP Trader #2 assisted with the trading of TET propane and aided in the execution of the manipulation scheme.

32. BP Trader #3 was primarily responsible for trading other categories of propane during 2003 and 2004, but also traded TET propane during the relevant time period.

33. The direct supervisor of the traders on the NGL Trading Bench was the “bench leader” (“BP Bench Leader”). The BP Bench Leader’s responsibilities included the development and oversight of the NGL Trading Bench’s trading strategies, and reporting to and seeking approval from executives who oversaw the NGL Trading Bench’s trading operations.

34. The BP Bench Leader reported to a Vice President responsible for supervising BP’s trading in NGLs (“BP Executive #1”). BP Executive #1 was an employee of BP America Production Company.

35. BP Executive #1 reported to the Chief Operating Officer of NAGP (“BP Executive #2”). BP Executive #2 was responsible, among other things, for the development, implementation, and execution of trading and marketing strategies for NAGP and was an employee of BP International Services Company.

36. BP Executive #2 reported to the Chief Executive Officer or Business Unit Leader of NAGP (“BP Executive #3”). BP Executive #3 was an employee of BP International Services Company.

37. A BP Compliance Manager for NAGP (“BP Compliance Manager”) sat on the NAGP trading floor and was an employee of BP America Production Company.

### **III. 2003 TET Propane Manipulation Attempt**

38. The BP Bench Leader and members of the NGL Trading Bench conspired to manipulate the price of TET propane during February 2004 based, in part, upon information and experience gained in April and May of 2003 when members of the NGL Trading Bench attempted to manipulate the price of April 2003 TET propane. During April 2003, the NGL

Trading Bench attempted to corner April 2003 TET propane by taking a large long position. Through this strategy, the NGL Trading Bench members sought to make money by purchasing substantially all of the available April TET propane supply, and sought to hold those barrels until the price increased based on the resulting lack of supply and then sell the barrels to market shorts.

39. During a conversation on April 12, 2003 between BP Trader #1, Abbott, and the BP Bench Leader stated:

Abbott: *How does it feel taking on the whole market, man?*

BP Trader #1: Whew. It's pretty big man.

Abbott: Dude, you're the entire f[\*\*\*]ing propane market.

\* \* \*

BP Bench Leader: Don't worry about it, it's the first two days of the month. Plenty of lead time for people to think that barrels will emerge and take a short position.

Abbott: No, I mean, it's cool, *100% of the open interest in propane* probably, and uh 3% of the open interest in nat gas....I dig it, it just, sometimes its hard, *it just feels hard to take on the whole market sometimes.*

...

(emphasis added).

40. Based on the April 2003 attempt to manipulate the price of TET propane, members of the NGL Trading Bench booked a profit and learned information that they later used during the February 2004 manipulation strategy. In particular, the NGL Trading Bench learned what they believed to be the "dead stock" level of TET propane, or the "minimum operating level" needed for the TEPPCO pipeline to function. The traders' perception of the dead stock level, later coupled with knowledge of the total TEPPCO propane inventory, led the NGL

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Trading Bench to believe they could estimate the total size of the available physical supply of

TET propane, thereby allowing them to estimate the total amount of physical contracts they would have to purchase to corner February 2004 TET propane and effectuate a manipulation.

41. On or about February 5, 2004, the BP Bench Leader and Abbott discussed the attempt to manipulate or “squeeze” the price of April 2003 TET propane and the dead stock information they gleaned from the prior attempt stating:

BP Bench Leader: The second point is, that I would imagine that the minimum operating level at the end of Feb[ruary] is higher than it is at the end of March or April because I think the wholesalers have to hold barrels. So I think the minimum level might be a little higher than we're assuming based on what we experienced in April *when we squeezed the April May.*

Abbott: Right, which was one of the reasons why it was harder to own all that April. That's why we had to take on a little bit more than we thought we had to take on, in April. And that's why I think that 2 mm, 2.1 mm barrels as that minimum in Feb., I think that's real, man, I think that is, that's the bottom at TET.

(emphasis added).

#### **IV. 2004 Propane Manipulation**

42. During February 2004, members of the NGL Trading Bench developed a plan to manipulate the price of February 2004 TET propane by becoming the dominant owner of February 2004 TET propane. As explained below, the strategy was intended to force other market participants holding short positions in TET propane at the end of February to purchase February 2004 TET propane from BP at an artificial and inflated price. Between approximately February 9, 2004, and February 27, 2004, members of the NGL Trading Bench executed the manipulation scheme by buying almost all of the available February TET supply in the TEPPCO

system, withholding that supply during the month, and selling a portion of the supply later in the month, to certain counterparties holding short positions at artificial and inflated prices.

43. Due to BP's conduct, from approximately February 12, 2004 through approximately March 2, 2004, the price of February TET propane was artificial and inflated by BP's conduct.

**A. The Scheme**

44. During January 2004, the BP Bench Leader identified and discussed conditions relating to the TET propane market that would render the market ripe for manipulation. On or about January 8, 2004 during a regularly scheduled call the BP Bench Leader stated to other employees located in Texas, Illinois, and elsewhere that the TET propane market was "vulnerable to a squeeze."

45. In addition, on or about January 13, 2004, the BP Bench Leader stated to another employee that February 2004 TET propane in the short term was "tight enough that if someone wanted to play games with it, potentially they could." The BP Bench Leader further stated that if someone wanted "to get a hold of this [TET propane] market and play some games with it" they could.

46. On or about February 5, 2004, during a conversation with Abbott, the BP Bench Leader articulated the intent of the February 2004 TET trading strategy and the justification necessary for obtaining approval for the strategy:

Two things I thought of. One, in terms of whether we should do this or not, in terms of talking to [BP Executive #1], what we stand to gain, is not just we'd make money out of it, but we would know from thereafter that *we can control the market at will*. If we never break the threshold, we'll never know what the answer is, you know what I mean?

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(emphasis added).

47. During January 2004 and the beginning of February 2004, the BP Bench Leader also instructed the NGL Trading Bench to amass a significant position in February TET propane, both contracts for delivery of physical barrels as well as financial or “swap” contracts. By the estimate of BP Executive #1, entering February 2004, BP owned contracts for delivery for nearly 50% of all of the available physical February TET propane.

48. Members of the NGL Trading Bench intended to earn a significant profit for BP by selling a portion of their February 2004 TET propane at the end of the month at prices inflated by their conduct, and then taking a small loss on the remaining barrels which would be carried into March. As such, the NGL Trading Bench recognized that they would purchase more propane than BP needed for its own business or commercial purposes, or could actively sell to counterparties during February. Furthermore, the NGL Trading Bench members could expect to profit personally by obtaining bonuses and other remuneration as a result of the anticipated profits BP would achieve through their market manipulation.

**B. Execution of the Scheme: Buy, Withhold, and Sell**

**1. The NGL Trading Bench’s Attempt to Buy All Available Supply**

49. Between on or about February 5, 2004 and on or about February 9, 2004, the BP Bench Leader directed the execution of the manipulation scheme by instructing BP Trader #1, Abbott, BP Trader #2, and BP Trader #3 to buy a significant amount of February 2004 TET propane without arousing the suspicion of other market participants.

50. On the afternoon of February 9, 2004, the BP Bench Leader spoke to BP Trader #1 and Abbott to check the progress of the scheme. During the conversation, the BP Bench Leader, BP Trader #1, and Abbott stated:

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BP Bench Leader: What’s been going on?



BP Trader #1: How much we got on? I was just looking at that, you wanna guess? 3.1 [million bbls].

BP Bench Leader: Has it been busy today?

BP Trader #1: Oh yeah. Did it very quietly. 10 lots, 5 lots, 10 lots, 15 here, 5 here. The biggest lot I think was 75.

\* \* \*

BP Bench Leader: Did you feel good about it?

Abbott: I kinda characterize it as . . . I characterize it as I was kinda surprised we were able to get 300 from the marketplace, basically, maybe 3-400 from the marketplace, without moving it that much. I mean we definitely were moving it [the price of TET propane] at the end of the day, it was definitely firming up at the end of the day . . . So it's kinda . . . it seems like something that will just kinda move fairly easily.

51. Later, during the same telephone call on February 9, 2004, the same traders discussed the plan to continue to purchase large quantities of TET propane:

Abbott: I mean tomorrow, tomorrow if we are able to buy another 4-500 [thousand] barrels tomorrow from the marketplace, I would be genuinely shocked. I mean, really shocked so . . . that's it. Then I think . . . we'll just have to play a waiting game and see, you know, how it's gonna shape up.

BP Bench Leader: It, um, still remains to be seen, doesn't it? Still need to see some of these shorts come in . . . .

52. Finally, during the same February 9, 2004 telephone call, the traders identify the true nature of the scheme as one to "squeeze" other market participants:

BP Bench Leader: Half of me is saying, look, the fact that nothing's really moved in terms of the spread yet is good, because people aren't looking for ways out . . . alternative feeds, or backing out demand, so that's kind of a good thing. The down side is, of course, if it all happens at the last minute, it gets a bit messy. People start cheating, not delivering, and may start

to look a little bit funny as well that the spread, you know, just erupts at the last minute.

BP Trader #1: And we don't get the price out on all this paper [financial or "swap" contracts].

Abbott: Well, that's a different, thing, if we don't get a price out on all this paper.

BP Bench Leader: The advantage of paper, is that we're selling at an index price there's no complaints. *If we squeeze it in the last four or five days of the month, ah, forgive my French, but ah, you know, it's going to be hard to say what's the fair price of the market at the time.*

(emphasis added).

53. Based on the activities of the BP Bench Leader, and BP Trader #1, Abbott, BP Trader #2, and BP Trader #3, between the morning of February 9, 2004 and the close of business of February 13, 2004, the NGL Trading Bench purchased contracts for an additional 1.4 million barrels of February 2004 TET propane. As a result, at the close of business on February 13, 2004, the position of the NGL Trading Bench exceeded 3 million barrels of physical propane, in addition to a volume equivalent to approximately 480,000 barrels in "paper" or financially settled propane contracts.

54. As of February 13, 2004, the NGL Trading Bench estimated that BP's position then exceeded the volume of TET propane supply in the TEPPCO system. Additional waterborne imports or other sources could increase the supply, and delivery from the storage facility through the pipeline to end users could reduce supply during the month. Therefore, the NGL Trading Bench continued to monitor the TEPPCO inventory level. The traders on the NGL Trading Bench frequently discussed these inventory levels and also their estimates of the "dead stock," or minimum amount of propane needed for the pipeline to operate.

55. On approximately February 15, 2004, factors unanticipated by the NGL Trading Bench caused the price of TET propane to decrease and the amount of available TET propane to increase. First, on February 15, 2004, the TEPPCO pipeline ruptured near Coschocton, Ohio, causing a suspension in the delivery of propane until the pipeline was repaired. The rupture caused the amount of propane stored in Mont Belvieu, Texas to accumulate and decreased the amount of propane that could be delivered from the pipeline. Second, weather forecasts around that time changed and unexpectedly indicated warmer weather in the Northeast, reducing the demand and expected demand of TET propane. Third, on February 17, 2004, BP received a published report from Commercial Services Company, Ltd. which forecast approximately 4.2 million barrels of propane destined for the United States via cargo ship in February 2004. This represented an increase in the amount of propane being imported into the United States. Combined, these factors put downward pressure on the price throughout the remainder of the month.

56. Because the NGL Trading Bench had already purchased such a large quantity of February TET propane, by February 17, 2004, the NGL Trading Bench anticipated a significant loss of money if they began to unwind, or sell, their position at the prevailing price or if prices dropped further from the then-existing levels. Nevertheless, the NGL Trading Bench accumulated even more TET propane.

57. Between February 17, 2004 and February 20, 2004, the NGL Trading Bench purchased a substantial amount of additional contracts for more than 1.4 million barrels of physical February 2004 TET propane. By February 20, 2004, BP's position exceeded the TET propane in the TEPPCO system by approximately 1 million barrels.

58. Between February 20, 2004, and February 29, 2004, the TEPPCO system propane inventory continued to increase. At various times during that period, BP's position in February TET propane also increased. During the last trading week of the month, BP's position reached approximately 5 million barrels of physical TET propane. From approximately February 17, 2004 through the last trading day of the month, February 27, 2004, BP's position exceeded the TEPPCO system inventory.

## 2. Selective Withholding of Supply

59. At certain times during late February, members of the NGL Trading Bench refused to sell physical TET propane to counterparties as part of their strategy to drive up the price. Acting at the direction of the BP Bench Leader, the traders at certain times refused to show offers or sell any of BP's TET propane, even though BP held contracts for delivery of millions of barrels, and in at least one instance a counterparty had offered "best bid."

60. For example, on February 23, 2004, BP Trader #1 stated to a counterparty:

Counterparty: Can you use any Dynegy propane?

BP Trader #1: Yea.

Counterparty: Do you have any TET you can sell?

BP Trader #1: Thought you were asking me about Dynegy.

Counterparty: Well I am. I got a guy who wants to sell Dynegy and buy TET. Do you have any TET you can sell?

BP Trader #1: Not right now, I don't, but I'll take the Dynegy side.

At the time BP Trader #1 refused to sell, BP's position exceeded 4 million physical barrels.

61. Similarly, on February 26, 2004, BP Trader #2 stated to a counterparty:

Counterparty: I'm looking for 5,000 barrels of TET propane, didn't know if you guys were selling or not.

BP Trader #2: No we're not right now, actually.

\* \* \*

Counterparty: If you guys decided to come back in, I'm the best bid at five.

At the time of this conversation, BP held contracts for delivery of approximately 4.9 million barrels of February TET propane.

62. BP did not offer or sell physical barrels of propane on February 26, 2004, but continued to purchase even more TET propane during the day.

**3. The NGL Trading Bench Sells at an Inflated Price**

63. At the beginning of February 27, 2004, the last trading day of the month, BP held contracts for delivery of approximately 4.9 million barrels of February TET propane. The NGL Trading Bench began the day by buying additional barrels of February TET propane before 9:00 a.m. from the remaining counterparties who still had barrels to sell. This meant that although BP already owned contracts for more than the deliverable supply of February TET propane on the last trading day of the month, they bought more in an effort to ensure that they would be the only company in the market that could sell significant quantities of TET propane. By the end of the day, BP sold approximately 530,000 physical barrels of its accumulated February TET propane position. BP had to accept delivery of the remaining 4.4 million barrels and carry them into March at a significant loss.

64. By mid-morning on February 27, 2004, the price for TET propane was not the result of legitimate forces of supply and demand, but was dictated by BP. Certain counterparties had no ability to bargain that day, but instead had to pay the prices set by BP:

BP Trader #1: [Company A] buys 25,000 at .89.

Voicebroker: .89. Where's your next? .89 and a half?

BP Trader #1: .89 and a half.

Voicebroker: Alright. .89 and a half, next....are you just walking them up half step?

BP Trader #1: Now.

Voicebroker: For now you are?

BP Trader #1: Yes.

Voicebroker: 89 and half is next, his next offer is coming in a penny higher.

65. Later in the morning on February 27, 2004, BP Trader #1 stated to a voicebroker:

Voicebroker: Hey, um, do you have an offer? I got .90 bid by [Company C].

BP Trader #1: Uh, .905.

Voicebroker: .905. Can you hang one second? [Talking on another line]. . . .905, he's about to hang up.

BP Trader #1: No I'm not. Don't make me feel like the bad guy here.

Voicebroker: Would you do 50 [thousand barrels].

BP Trader #1: 50? I'll do 50.

Voicebroker: He'll do 50. [Company D]'s telling him to buy it because there's nobody else out here that has any but you. F\*\*\*, *what's it gonna go to [BP Trader #1]? A buck?*

BP Trader #1: Don't tell him you said that.

Voicebroker: I didn't tell him that.

\* \* \*

BP Trader #1 Everything you say is recorded on all these lines.

Voicebroker: I hear you.

66. Further, in addition to the telephone sales, on certain occasions, BP was actively dictating the price of sales through the use of Chalkboard. During periods when there were relatively few sellers of February 2004 TET propane in the market, members of the NGL Trading Bench posted both bids and offers on Chalkboard. At regular intervals, and usually after a single transaction in the market occurred, the members of the NGL Trading Bench, often working in a highly coordinated fashion, would withdraw the bids and offers and increase both the bids and the offers, thereby effectively "stepping up the price."

67. On February 27, 2004, a counterparty located in the Northern District of Illinois holding a short position in February TET propane was forced to buy from BP at an artificial and inflated price:

Counterparty: We just did a deal on Chalkboard, do you want to do another 5?

Abbott: Another five, hold on . . . we're at .925 for 5 [thousand bbls].

Counterparty: Holy smokes! Okay. What's going on? Just people like me out there trying to find this?

Abbott: Yeah.

Counterparty: Well crap, I may have to, I gotta do something here. .925 is it?

Abbott: Yep

Counterparty: Jesus Christ, I don't have a choice do I? Not really?

Abbott: Not if you need to cover.

Counterparty: I need to cover, why don't we go ahead and do that.

68. After selling concluded on February 27, 2004, the NGL Trading Bench had not sold enough to make a profit and had to take delivery of the remaining barrels at a significant

loss. In an effort to mitigate these losses, in March 2004, the bench members refused to accept “late” deliveries and required counterparties that were “caught short” in their position from February to financially settle such contracts by paying the February 27 OPIS high price, which had been artificial and inflated by BP.

### C. Market Reaction and Industry Reports

69. Members of the NGL Trading Bench knew that counterparties and market observers were making allegations that someone was attempting a short squeeze, and that some suspected BP. BP Trader #1, Abbott, BP Trader #2, and BP Trader #3 were each confronted by market participants with allegations that BP was involved in a “short squeeze.”

70. On February 23, 2004, OPIS published a newsletter that included the following:

The gas liquids market is largely focused on the antics of Mt. Belvieu propane. Prices have held a strong tone as traders gossip about *the possibility that a short squeeze is being put in play in the TET market*. The short squeeze could be complicating the efforts of some to price inbound cargos of propane, traders add. Indeed, TET propane “anys” traded from 72-75.375cts/gal through the morning. Non-TET barrels were worked from 67-69.375cts/gal. In contrast, the Conway propane market has been quiet with confirmed deals holding a 61.25-61.75cts/gal range. Bushton barrels are thought to be trading at a 1-2cts/gal discount to Conway.

(emphasis added).

71. On February 24, 2004, OPIS published a newsletter that included the following:

In spot trading . . . the talk in the propane markets is that one or more firms may be involved in a short squeeze in the TET propane market. Traders speculate that those firms own a hefty proportion of the inventories in TET storage and they are making sellers pay up for the right to cover. “Somebody’s got to be getting killed,” said one trader. “I hope nobody that owes me money.” Traders marveled at the fact that TET propane opened at 74 cts/gal and ended the session at 88.25 cts/gal[.]



**D. BP Management's Failure to Address the Conduct**

72. During and after the execution of the manipulation scheme, members of the NGL Trading Bench provided certain information to various BP executives and the BP Compliance Manager. Although the conduct violated BP's written policy, the BP Executives and Compliance Manager failed to report this conduct to authorities, take affirmative steps to ensure such trading strategies did not recur, and chose not to discipline any of the traders, managers, or the compliance official involved until the CFTC initiated an investigation. At no time during February 2004 did anyone at BP bring the scheme to the attention of the legal department.

73. Initially, between February 5 and 9, 2004, the BP Bench Leader provided BP Executive #1 with certain information about the proposed strategy.

74. On or about February 19, 2004, the BP Bench Leader met with BP Executive #1, BP Executive #2, and the BP Compliance Manager. At the time of the meeting, the TEPPCO pipeline had ruptured, the NGL Trading Bench had exceeded its position limit size imposed by BP policy, BP had accumulated contracts for over 4.5 million barrels of February TET propane, and the total available supply of propane in the TEPPCO storage facility was approximately 3.5 million barrels. After the February 19, 2004 meeting, the NGL Trading Bench continued to accumulate February TET propane.

75. After the February strategy had concluded and the NGL Trading Bench anticipated that the loss associated with the strategy would be approximately \$10 million, BP management instituted a business review of the trading strategy.

76. In preparation for the business review, the BP Bench Leader and BP Executive #1 caused a PowerPoint presentation entitled "Lessons Learned" to be drafted. A purpose of the "Lessons Learned" PowerPoint presentation was to determine why BP lost money and how to

make such a strategy profitable. One slide in the presentation compared BP's position in physical TET propane during February to the available supplies in the TEPPCO system, and clearly indicated that BP's position exceeded the available supply of propane by as early as February 11, 2004. The slide also indicated that BP continued to accumulate more propane after its position significantly exceeded the total TEPPCO inventory. Certain slides from the "Lessons Learned" PowerPoint were presented, again, on or about March 26, 2004, and at high level management meetings on April 15 and July 28, 2004.

77. Further, by at least May 5, 2004, BP Executive #3 and the BP Compliance Manager became aware of the tape recorded conversation of February 9, 2004 in which the BP Bench Leader used the word "squeeze" to describe the February trading activity to BP Trader #1 and Abbott.

78. The conduct of the NGL Trading Bench was not self-reported to the authorities, nor was timely discipline imposed on any of the traders, managers, or the compliance official involved. In fact, BP initially informed members of the NGL Trading Bench that they would receive monetary bonuses at the end of the year. BP Executive #2 also informed the NGL Trading Bench in early March 2004, despite the \$10 million loss, that no trader would lose his or her job. Only after a regulatory inquiry commenced in 2005 was disciplinary action taken against certain individuals and other traders learned they would not receive their anticipated end of the year bonuses.

## **V. Conclusion of Law**

79. Based on the facts set forth above, BP admits that through the actions of its employees, BP conspired to corner the market and manipulate and attempt to manipulate the price

of February 2004 TET propane and attempted to manipulate the price of April 2003 TET propane contrary to Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).

**ORDER FOR PERMANENT INJUNCTION**

83. With the consent of the Commission and BP, IT IS NOW HEREBY ORDERED THAT:

a. BP is permanently restrained, enjoined and prohibited from directly or indirectly engaging in any conduct that violates Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2), including:

i. Manipulating or attempting to manipulate the price of any commodity in interstate commerce or for future delivery on or subject to the rules of a registered entity; and

ii. Cornering or attempting to corner any commodity in interstate commerce.

84. The injunctive provisions of this Order shall be binding upon BP, upon any person acting in the capacity of officer, agent, servant, or employee of BP, and upon any person who receives actual notice of this Consent Order by personal service or otherwise insofar as he or she is acting in active concert or participation with BP.

**ORDER FOR A CIVIL MONETARY PENALTY AND OTHER ANCILLARY RELIEF**

85. With the consent of the Commission and BP, IT IS NOW HEREBY ORDERED that BP shall comply fully with the following terms, conditions and obligations relating to the payment of restitution and a civil monetary penalty.

86. Restitution: Criminal Restitution is being made by BP pursuant to the terms of the Deferred Prosecution Agreement BP America Inc. has entered into with the Department of Justice. Accordingly, no civil restitution award is required by this Order.

87. Civil Monetary Penalty

a. A civil monetary penalty in the amount of \$125,000,000 is assessed against BP, and is due and owing thirty days from the date of entry of this Order.

b. Post-judgment interest authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 shall accrue beginning on the date payment is due and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

c. BP shall pay this civil monetary penalty by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
Attn: Marie Bateman – AMZ-300  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, Oklahoma 73169  
Telephone: 405-954-6569

88. If payment is to be made by electronic funds transfer, BP shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. BP shall accompany payment of the penalty with a cover letter that identifies BP and the name and docket number of the proceedings. BP shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of

Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup>

Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address.

89. BP shall comply with the settlement conditions and agreements set forth above in paragraphs 3 through 12, as well as the conditions, agreements and terms incorporated by reference in Attachments A and B of this Order.

### MISCELLANEOUS PROVISIONS

90. Notices. All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Plaintiff Commission:

Division of Enforcement  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Notice to BP:

Stephen R. Winters  
Associate Group General Counsel  
BP America Inc., 200  
Westlake Park Blvd., Houston, TX 77079.

90. Entire Agreement, Amendments and Severability. This Order incorporates all of the terms and conditions of the settlement among the parties and shall not be amended except by order of the Court.

91. Invalidation: If any provision of this Order, or if the application of any provisions of this Order are held to be invalid, the remainder of the Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.

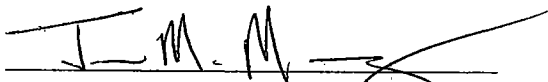
92. Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances

of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

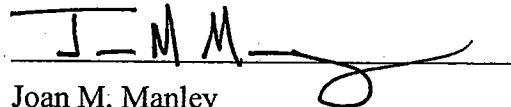
93. Continuing Jurisdiction of this Court. The Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

**WHEREFORE**, there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Relief Against Defendant BP.

**FOR THE COMMODITY FUTURES TRADING COMMISSION**

  
for Gregory M. Mocek, Esq.

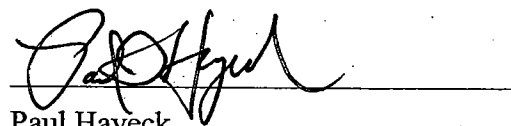
Director, Division of Enforcement



Joan M. Manley

Deputy Director, Division of Enforcement

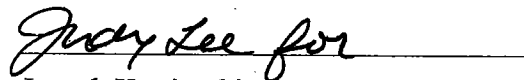
202-418-5356



Paul Hayeck

Associate Director, Division of Enforcement

202-418-5312



Joseph Konizeski

Trial Attorney, Division of Enforcement

312-596-0546



Judy Lee

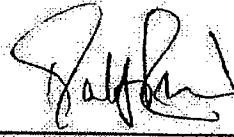
Trail Attorney, Division of Enforcement

**Commodity Futures Trading Commission**

1155 21<sup>st</sup> Street, N.W.

Washington D.C. 20581

**FOR BP PRODUCTS NORTH AMERICA INC.**



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Paul Reed  
Vice President  
BP Products North America Inc.



## ATTACHMENT A

### BP COMPLIANCE AND ETHICS

#### I. OVERVIEW

Within ninety (90) calendar days of the entry of the Consent Order of Permanent Injunction and Other Relief (hereinafter “Order”) against BP Products North America Inc. (“BP”), BP and any BP subsidiary or BP business group or entity that trades commodities with or provides commodity services for BP in the United States (hereinafter referred to as “BP Entities”) agree to implement and maintain an effective commodity trading compliance and ethics program (“Compliance Program”).

#### II. COMPLIANCE PROGRAM

1. BP and the BP Entities shall include, at a minimum, the following provisions in their Compliance Program:
  - a. Compliance controls designed to detect, identify, and prevent violations of the applicable provisions of the Commodity Exchange Act, 7 U.S.C. § 1, *et seq.*, (“CEA”) or Commodity Futures Trading Commission (“CFTC” or “Commission”) regulations;
  - b. Clearly articulated corporate policies, procedures, and standards designed to prevent and detect violations of the CEA or Commission regulations (“Compliance Code”);
  - c. The assignment of one or more senior corporate officials of BP and each of the BP Entities, who shall report directly to BP’s U.S. Compliance and Ethics Officer, and who shall be responsible for the implementation and oversight of

- compliance with the Compliance Code as well as other aspects of the Compliance Program of BP and the BP Entities;
- d. The effective communication to all BP and BP Entities' directors, officers, employees, agents and consultants of corporate and compliance policies, standards, and procedures regarding compliance with the CEA and Commission regulations;
  - e. Training concerning the requirements of the CEA and CFTC regulations, on an annual basis to all directors, officers, traders, book leaders, trading managers, trading regulation personnel, risk managers, compliance personnel and the head of each BP Entity, certifying compliance therewith;
  - f. A clearly articulated corporate policy that requires any director, officer, employee, agent or consultant that is aware of any violation of any law or any unethical conduct that has not been reported to an appropriate federal, state or municipal agency, to report such violation or conduct to a BP or BP Entity compliance officer or the Monitor;
  - g. A clearly articulated corporate policy that requires the Compliance Division to affirmatively investigate potential violations of the CEA or CFTC regulations;
  - h. A reporting system, including a "Helpline" for directors, officers, employees, agents, and consultants to report suspected violations, anonymously if the reporter so desires, of the Compliance Code or suspected criminal conduct; and,
  - i. Appropriate disciplinary procedures to address matters involving violations or suspected violations of the CEA, CFTC regulations, or the Compliance Code.

2. In particular, BP and the BP Entities agree that the Compliance Program shall include or otherwise integrate the following trading related provisions:
- a. The establishment within sixty (60) calendar days of the entry of this Order of a both a physical and electronic centralized location or source of trade regulation information that contains all current processes, policies, and training materials related to trading. This shall include, at a minimum, a consolidated trade regulation manual that incorporates the Compliance Code, training curriculum, related requirements and information regarding the trade monitoring tools employed by BP or the BP Entities;
  - b. A clearly articulated and uniform corporate policy requiring trading transaction information, including deal entries, executions, and trading bench strategy documents, to be preserved;
  - c. A clearly articulated and uniform corporate policy continuing the established practice of recording external telephone lines, Instant Messages (IMs), electronic mail ("email"), and any other authorized methods of communication, for traders, book leaders, and trading managers;
  - d. A clearly articulated and uniform corporate policy continuing the established practice of monitoring external telephone lines, IMs, email, and any other authorized methods of communication for traders, book leaders, and trading managers;
  - e. A clearly articulated and uniform corporate policy regarding out of office dealing in which traders execute deals when not on the premises of BP or the premises of a subsidiary;

- f. A clearly articulated and uniform corporate policy requiring compliance with the trading guidelines to be a component in the compensation calculus for all traders, book leaders, and trading managers, and senior management in the trading function; and,
  - g. A clearly articulated and uniform corporate policy regarding document retention and destruction policies and the appointment of a designated department responsible for records management for BP and the BP Entities.
3. In addition, BP and the BP Entities agree that the Compliance Code shall include the following requirements:
- a. A policy continuing the established practice of recording all external telephone lines, IMs, email, and any other authorized methods of communication of all traders, book leaders, and trading managers; and
  - b. A policy continuing the established practice of retaining all recordings of external telephone lines, IMs, email, and any other authorized methods of communication of all traders, book leaders, and trading managers, for a period of five (5) years, unless required by law to be maintained for a longer period of time.

### **III. COMPLIANCE AND TRADER TRAINING**

4. BP's and the BP Entities' compliance training and trader training guidelines shall include, at a minimum, the following:
- a. Mandatory orientation training for all directors, officers, traders, book leaders, trading managers, trading regulation personnel, risk managers, compliance personnel, legal personnel, and the head of each subsidiary business, division

and group, to be completed within one hundred and twenty (120) days of the employee's start date in one of the aforementioned positions, regarding corporate and compliance policies, standards, and procedures regarding the CEA, CFTC regulations, and U.S. anti-manipulation laws;

- b. Annual training for all directors, officers, traders, book leaders, trading managers, trading regulation personnel, risk managers, compliance personnel and the head of each BP Entity;
- c. Training regarding corporate and compliance policies, standards, and procedures regarding the CEA and CFTC regulations to be included in the BP Trader Assessment Course or any similar BP or BP Entity trader assessment program; and,
- d. The creation and maintenance of attendance records and documentation that required individuals have fulfilled their compliance training.

## ATTACHMENT B

### INDEPENDENT MONITOR

#### I. ENGAGEMENT OF THE MONITOR

1. Engagement. BP Products North America Inc. (“BP”) agrees to engage an independent monitor (“Monitor”) within sixty (60) calendar days of the entry of the Consent Order of Permanent Injunction and Other Relief Against Defendant BP (“Consent Order” or “Order”) to oversee BP’s and any BP subsidiary’s, or BP business group’s or entity’s that operates with or provides services for BP (hereinafter collectively referred to as the “BP Entities”) in the United States, compliance with their obligations under the Order, to review and monitor the effectiveness of BP and the BP Entities’ compliance controls as they pertain to the applicable anti-manipulation and reporting provisions of the Commodity Exchange Act, 7 U.S.C. § 1, *et seq.*, (“CEA”) and applicable Commodity Futures Trading Commission (“CFTC”) regulations, and to make such recommendations as the Monitor believes are necessary to comply with the Order.

2. Consultation and Selection. BP America, the CFTC, and the U.S. Department of Justice, Fraud Section (the “Department”) shall use mutual best efforts to identify a mutually acceptable person, who, subject to the approval of the Court, shall serve as the Monitor.

3. Period of Engagement. BP agrees that the period of engagement for the Monitor is three (3) years from the date of the engagement of the Monitor, provided however, that, in the event that the CFTC or the Department determines, in their sole discretion, that BP has knowingly violated any provision of this Consent Order, a one-year extension of the monitorship may be imposed by either the CFTC or the Department, and, in the event of additional violations, such additional one-year extensions as appropriate, but in no event shall the total term of the

monitorship exceed five (5) years. Any extension of the monitorship period extends all terms of this Consent Order for an equivalent period.

4. Replacement. If the Monitor resigns or is terminated by the Department or the CFTC, or is otherwise unable to fulfill his or her obligations as set out herein, BP, shall within thirty (30) calendar days nominate a proposed replacement to the Department and the CFTC for approval. If, after an additional thirty (30) day period, the parties are unable to identify a mutually acceptable person, then the Department, in consultation with the CFTC, shall propose two candidates to BP for selection.

5. Hiring Authority and Compensation. The Monitor shall have the authority to employ legal counsel, consultants, investigators, experts, and any other personnel reasonably necessary to assist in the proper discharge of the Monitor's duties, as specified herein. BP shall have the opportunity to perform routine conflict checks on individuals or entities the Monitor proposes to engage and within two weeks, BP shall advise the Monitor if any conflicts exist. The Monitor shall not engage any individual or entity as to which BP reasonably believes a conflict exists. The compensation and expenses of the Monitor, and any persons hired by the Monitor pursuant to his or her authority under the Order, shall be paid by BP or its successor. The Monitor, and any persons hired by the Monitor, shall be compensated in accordance with their respective typical hourly rates or a reasonable fee determined by the Monitor.

6. No Affiliation. The Monitor is not, and shall not be treated for any purpose, as an officer, employee, agent, or affiliate of BP, the BP Entities, the Department, or the CFTC. The Monitor shall not owe any fiduciary duties or other duties or obligations of any kind to BP and the BP Entities, or their directors, officers, employees, shareholders, bondholders or creditors.

Moreover, BP and the BP Entities shall not employ the Monitor for a period of five (5) years

commencing on the date of the Monitor's engagement. Further, BP and the BP Entities shall not employ any entity or individual hired by the Monitor to fulfill its responsibilities during the Monitor's engagement, either directly or indirectly, for a period of two (2) years, commencing on the date that the entity or individual's engagement terminates, without prior approval from the Department and the CFTC.

7. No Attorney-Client Relationship. It shall be a condition of the Monitor's retention that the Monitor is independent of BP and the BP Entities and that no attorney-client relationship shall be formed between them. BP shall not claim any work-product privilege as to documents created by the Monitor or by any agents of the Monitor.

8. Indemnification. BP shall provide an appropriate indemnification agreement to the Monitor with respect to any claims arising out of the performance of the Monitor's duties.

9. No Defense Premised on Monitor's Findings. BP and the BP Entities agree that the Monitor's findings do not constitute a defense to any action that the CFTC or the Department may elect to bring against BP or the BP Entities for such activities.

10. Notice of the Monitor. Within thirty (30) days of the engagement of the Monitor, BP and the BP Entities shall advise its employees in writing of the engagement of the Monitor, the Monitor's powers and duties pursuant to this Order, and the ability of employees to communicate with the Monitor through OpenTalk and a method of communicating by telephone and/or email directly with the Monitor. Such notice shall inform employees that they may communicate with the Monitor anonymously or otherwise, and that no director, officer, employee, agent or consultant shall be penalized in any way for providing information to the Monitor. In addition, such notice shall direct that, if any director, officer, employee, agent or consultant is aware of any violation of any law relating to Manipulative Conduct, as defined by paragraph 12 of the Consent



Order that has not been reported to an appropriate federal, state or local agency, the director, officer, employee, agent or consultant is obligated to report such violation or conduct to BP, a BP Entity, a BP compliance officer, or the Monitor. Such notice shall also include directions that cooperation with the Monitor is mandatory.

11. Cooperation. BP and the BP Entities' shall direct their directors, officers, employees, agents, and consultants to cooperate with the Monitor in the execution of his or her duties under the Order. If, in the Monitor's discretion, a director, officer, employee, agent, or consultant of BP or the BP Entities fails to cooperate with the Monitor, the Monitor may notify BP, the Department and the CFTC. The Commission may evaluate BP's response to the uncooperative individual in evaluating BP's cooperation under this Order. Further, BP and the BP Entities agree that any director, officers, employees, agents, and consultants may communicate with the Monitor anonymously and that no director, officer, employee, agent or consultant shall be penalized in any way for providing information to the Monitor. In addition, if any director, officer, employee, agent or consultant is aware of any violation of any law relating to Manipulative Conduct that has not been reported to an appropriate federal, state or local agency, the director, officer, employee, agent or consultant is obligated to report such violation or conduct to BP or a BP Entity, a BP compliance officer, or to the Monitor.

## **II. OVERSIGHT AUTHORITY AND DUTIES**

### **A. Monitor Responsibilities**

The Monitor shall:

12. Review and monitor BP's compliance with the Order.
13. Review, evaluate, and monitor BP and the BP Entities' compliance policies and procedures to ensure they are generally effective in preventing and detecting (1) any potential act

of manipulation, attempted manipulation, cornering, or attempted cornering relating to the price of a “commodity,” as commodity is defined in Section 1(a) of the CEA, in interstate commerce, or for future delivery; (2) any delivery of false, misleading or knowingly inaccurate information that could tend to affect the price of a commodity in interstate commerce; and/or (3) any false or misleading statements made to any registered entity (collectively referred to as “Manipulative Conduct”), by any BP or BP Entity director, officer, employee, or agent. This shall include a review of the Integrated Supply & Trading (“IST”) group’s policies and procedures as they apply to BP and the BP Entities.

14. Review, evaluate, and monitor BP and the BP Entities’ commodity trading compliance programs, including but not limited to trading surveillance systems, risk management systems, regulatory training, and compliance training, to ensure they are generally effective in preventing and detecting any Manipulative Conduct by any BP or BP Entity director, officer, employee, or agent.

15. Review, evaluate, and monitor BP and the BP Entities’ commodity trading compliance structure, composition, and resources, including but not limited to, compliance personnel compensation, compliance personnel recruitment programs, and compliance personnel training, to ensure the compliance group or function has the appropriate authority, structure, and resources to be generally effective in preventing and detecting any Manipulative Conduct by any BP or BP Entity director, officer, employee, or agent.

16. Review, evaluate, and monitor BP and the BP Entities’ commodity trading policies, procedures, and practices, including but not limited to any trader recruitment, training, compensation, and evaluation process, to determine if they are generally effective to prevent and detect any Manipulative Conduct by any BP or BP Entity director, officer, employee, or agent.

17. Pursuant to paragraphs 31 and 32 of this Attachment to the Consent Order, conduct an audit of BP and the BP Entities' commodity trading operations for the purpose of testing and evaluating the effectiveness of BP and the BP Entities' trading compliance systems, policies and programs. This shall necessarily include an operational audit of the IST group's operations as it pertains and functions within the commodity trading operations of BP and the BP Entities.

18. Review activities relating to the commodity trading operations of BP and the BP Entities to provide recommendations for corrective action and to evaluate the effectiveness of implemented recommendations.

19. The Monitor's authority and duties are to be broadly construed.

**B. Written Reports and Recommendations**

20. BP agrees that during the three (3) year period of engagement, and any extensions thereof, the Monitor shall prepare work plans for assessment, an initial report, and at least two (2) follow-up reports (subject to extension) as described below.

**1. Work Plans**

21. Within sixty (60) days of the engagement of the Monitor, the Monitor shall prepare a written work plan. In order to conduct an effective initial review and to fully understand any existing deficiencies in controls, policies and procedures related to commodities trading and Manipulative Conduct, the Monitor's initial work plan shall include such steps as are necessary to develop an understanding of the facts and circumstances surrounding the trading activities of BP and the BP Entities. The work plan shall be submitted to the Department, the CFTC, and BP for review. In the event BP objects to any part of the work plan, the Department and the CFTC, shall, in their discretion, determine the matter.

22. With respect to each of the two (2) follow-up reviews (subject to extension), the Monitor shall prepare a written work plan, which shall be submitted to BP, the Department, and the CFTC for comment. In the event BP or the BP Entities objects to any part of the work plan, the Department and the CFTC, shall, in their sole discretion, determine the matter.

**2. Initial Review**

23. In connection with the Monitor's responsibility to determine whether BP and the BP Entities' policies and safeguards are generally effective in detecting and deterring Manipulative Conduct, the Monitor shall conduct an initial review and prepare an initial report assessing the areas described in Section II. A. herein.

24. In connection with the initial review, the Monitor shall issue a written report within one hundred eighty (180) calendar days from the date of the Monitor's engagement setting forth the Monitor's assessment and making recommendations, if any, reasonably designed to improve the policies and procedures of BP and the BP Entities for detecting and deterring Manipulative Conduct. The Monitor shall provide the report to the Department, the CFTC, the Vice-President for Compliance and Ethics, BP America Inc., the Board of Directors of BP America, and the Board of Directors of BP Products North America. The Monitor may extend the time period for issuance of the report with prior written approval of the Department and the CFTC.

25. The initial report shall describe the Monitor's assessment of BP and the BP Entities in the areas described in Section II. A. herein. The report shall include the Monitor's methodology, information relied upon, and basis for assessment. In addition, in undertaking the assessment and review, the Monitor shall formulate conclusions based on, among other things:

- a. inspection of documents, including all the policies and procedures relating to the trading and compliance programs designed to detect and deter Manipulative Conduct;
- b. meetings with and interviews of employees, officers, and directors of BP and the BP Entities, and any other relevant persons;
- c. an on-site observation of BP and the BP Entities' trading surveillance systems, risk management systems, and telephonic and instant message recording system; and
- d. analyses, studies and testing of the trading and compliance programs designed to detect and deter Manipulative Conduct at BP and the BP Entities.

26. The initial report shall also contain any recommendation the Monitor may have with regard to matters assessed, setting forth why such recommendations are reasonably designed to improve BP's and the BP Entities' compliance with the anti-manipulation and record keeping provisions of the CEA.

27. Within sixty (60) calendar days after receiving the Monitor's report, BP and the BP Entities shall adopt all recommendations in the report; provided, however, that within thirty (30) calendar days after receiving the report, BP shall:

- e. advise the Monitor, the CFTC, and the Department in writing of any recommendations that BP or the BP Entities considers unduly burdensome, impractical, or unreasonably costly; and
- f. propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose or provide an explanation as to the reason for

disagreement regarding the objective or purpose of the Monitor's recommendation.

With respect to any recommendation that BP or the BP Entities considers unduly burdensome, impractical, or costly and that BP provides written notice of such, BP and the BP Entities need not adopt the Monitor's recommendation within the aforementioned sixty (60) day time period.

As to any recommendation on which BP and the Monitor do not agree, such parties shall attempt to reach an agreement within thirty (30) calendar days after BP serves the written notice and proposed alternative. In the event BP and the Monitor are unable to agree on an alternative proposal, BP shall submit the issue and supporting documentation in writing to the Department and the CFTC within thirty (30) calendar days of the Monitor's decision to reject BP's proposed alternative. The Department and the CFTC's determination on the issue shall be binding. With respect to any recommendation that the Monitor determines cannot reasonably be implemented within sixty (60) calendar days after BP receives the report, the Monitor may extend the time period for implementation with prior written approval of the Department and the CFTC.

28. All Monitor recommendations that are mutually acceptable to both the Monitor and BP shall be employed by BP and the BP Entities for at least a period of (3) years from the time of the implementation.

### **3. Annual Reviews**

29. The Monitor shall undertake two (2) follow-up reviews to further monitor and assess whether the policies and procedures of BP and the BP Entities are reasonably designed to detect and prevent violations of the anti-manipulation provisions of the CEA.

30. With regard to the second assessment and report, the time frames and requirements set forth above in Paragraphs 23 through 28 shall apply, except for the following modifications:

- a. The work plan for the second assessment shall be submitted to the parties by the Monitor no later than sixty (60) calendar days from the first anniversary of the date of entry of the Order. The work plan for the third assessment shall be submitted to the parties by the Monitor no later than sixty (60) calendar days from the second anniversary of the entry of the Order;
- b. The second assessment shall be completed no later than one hundred eighty (180) calendar days from the first anniversary of the date of the entry of the Order. The third assessment shall be completed no later than one hundred eighty (180) calendar days from the second anniversary of the date of the entry of the Order; and
- c. In addition to the minimal requirements set forth in Paragraph 25, the second and third assessments shall include a test of the effectiveness of BP and the BP Entities' compliance programs and policies.

**C. Operational Audit**

31. The Monitor shall conduct an audit of BP and the BP Entities' commodity trading operations for the purpose of testing and evaluating the effectiveness of BP and BP Entities' trading compliance systems, policies and programs. In determining the scope of the audit, the Monitor shall review and consider KPMG's Report of its review of BP's Integrated Supply & Trading Compliance Program, but shall retain discretion to determine the scope of any additional audit work.

32. The Monitor, in his or her discretion, may engage an audit firm with the necessary resources to conduct the operational audit.

**D. Investigation of Potential Violations**

33. The Monitor shall keep records of his or her activities.

34. At any time during the course of the engagement, should the Monitor discover any evidence indicating that BP or the BP Entities, its officers, directors, employees or agents have violated provisions of the CEA, the CFTC's regulations, or have violated any provision of this Order, the Monitor shall notify BP, unless the Monitor in his or her discretion determines notification directly to the Department and the CFTC is necessary and appropriate. BP shall have thirty (30) days from the date of notice from the Monitor to provide notice to the Department and the CFTC of the alleged violation. If BP fails to provide notice to the Department and the CFTC within the thirty (30) day period, the Monitor shall then report the matter directly to the Department and the CFTC. If a matter is reported by the Monitor to the Department and/or the CFTC, the Monitor shall provide the Department and the CFTC any and all information relating to the evidence or alleged violations. This Paragraph shall not preclude the Monitor from discussing other related matters directly with the Department or the CFTC.

35. If at any time during the course of the engagement, the Monitor discovers evidence of a potential violation of the CEA or CFTC regulations that occurred after the date of this Agreement, the Monitor shall have the discretion to investigate and report to the Department and the CFTC about the matter. At the sole discretion of either the Department or the CFTC, either government agency may direct the Monitor to discontinue the investigation to allow for a government investigation to commence.



36. BP agrees that during the engagement of the Monitor, the Monitor shall have the discretion to review activities that occurred prior to the date of the agreement for the purpose of informing him or herself of the relevant facts to develop prospective recommendations for corrective action.

### III. ACCESS TO INFORMATION

37. BP and the BP Entities shall cooperate fully with the Monitor and the Monitor shall have the authority to take such reasonable steps, in his or her view, as may be necessary to be fully informed about the operations of BP and the BP Entities within the scope of his or her responsibilities as set forth in this Order. To that end, BP and the BP Entities shall provide the Monitor:

- g. access to all files, books, records, personnel, and facilities that fall within the scope of responsibilities of the Monitor pursuant to this Order, subject to a legitimate claim of attorney-client privilege;
- h. the right to interview any director, officer, employee, agent or consultant of BP or the BP Entities and to participate in any meeting concerning any matter within or relating to his or her jurisdiction; and
- i. the right to observe BP or the BP Entities business operations that fall within the scope of responsibilities of the Monitor pursuant to this Order, subject to a legitimate claim of attorney-client privilege.

38. If BP or the BP Entities agree to provide the Monitor with access to Privileged Materials, the Monitor will agree (a) not to assert that BP's or the BP Entities' provision of the Privileged Materials in any way constitutes a waiver by BP or the BP Entities of the attorney-client privilege and/or the work-product doctrine and (b) to maintain the confidentiality of the

Privileged Materials and not to provide them to any third party, except to the extent that disclosure is required by law or may be necessary in furtherance of the Monitor's discharge of his or her official duties and responsibilities.

39. In the event that BP and the BP Entities seek to withhold from the Monitor access to Privileged Materials, then:

- j. BP and the BP Entities shall provide written notice to the Commission and the Monitor of their intention to withhold access to information, documents, records, facilities and/or employees based upon an assertion of a valid claim of attorney-client privilege or application of the attorney work-product doctrine. Such notice shall include a general description of the nature of the information, documents, records, facilities and/or employees that are being withheld, as well as the basis of the claim.

40. Failure of any BP or BP Entity director, officer, employee or agent to cooperate with the Monitor may, in the sole discretion of the Monitor, serve as a basis for the Monitor to refer the non-cooperating individual to BP or the appropriate BP Entity for disciplinary action.

41. The Monitor shall take appropriate steps to maintain the confidentiality of any information entrusted to him or her while executing his or her duties pursuant to this Order and shall share such information only with the Department, the CFTC, and individuals or entities hired by him or her. The Monitor shall also take appropriate steps to ensure that any consultants, entities, and/or individuals engaged by him or her to assist with the duties pursuant to the Order shall maintain the confidentiality of information obtained while executing his or her duties.

42. Any reports and information that are provided to the Department and/or the CFTC by the Monitor shall be filed under seal with the Court. The Department and the CFTC shall

maintain the confidentiality of all information provided by the Monitor to the Department or the CFTC, including the periodic reports required pursuant to the Order, except to the extent that disclosure may be necessary by the Department or the CFTC in connection with the discharge of their official duties.