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16 Attorneys for Petitioner  
17 **BP PIPELINES (NORTH AMERICA) INC.**

18 **STATE OF CALIFORNIA**

19 **WATER RESOURCES CONTROL BOARD**

20 In the Matter of Los Angeles Regional Water  
21 Quality Control Board 13267 Order – near 712  
22 Baker Street in Long Beach, California; The  
23 Petition of

24 BP PIPELINES (NORTH AMERICA) INC.,

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**VERIFIED PETITION FOR REVIEW**

[Request To Hold Petition In Abeyance]

**INTRODUCTION**

Pursuant to California Water Code section 13320 and California Code of Regulations (“CCR”) Title 23, sections 2050 *et seq.*, BP Pipelines (North America) Inc. (“Petitioner”) respectfully petitions the State Water Resources Control Board (“State Board”) for review of a Water Code section 13267 Order (the “Order”) dated May 11, 2012 and issued to Petitioner by the Executive Officer of the Los Angeles Regional Water Quality Control Board (“Regional Board”)

1 with regard to an investigation near 712 Baker Street in Long Beach, California (“Site”). Oil  
2 Operators Incorporated (“OOI”) has been conducting environmental investigation and cleanup at its  
3 property located at 712 Baker Street, Long Beach, California. The OOI property covers about 20  
4 acres and is bounded on the east by Golden Avenue. BP Pipeline No. 32 (“Line 32”) runs beneath  
5 Golden Avenue along the eastern boundary of the OOI property.

6 The Order seeks a work plan for soil and soil vapor investigations on both sides of Line 32,  
7 along Golden Avenue. A copy of the Order is attached hereto as Exhibit 1.

8 **1. NAME AND ADDRESS OF PETITIONER**

9 Petitioner may be contacted through its counsel of record: Viviana L. Heger, Tropio &  
10 Morlan, 21700 Oxnard Street, Los Angeles, California 91367 and Deborah P. Felt, BP America Inc.  
11 – Legal, 6 Centerpointe Drive, 5<sup>th</sup> Floor, La Palma, California 90623.

12 **2. THE ACTION OR INACTION FOR WHICH PETITIONER SEEKS REVIEW**

13 This petition for review concerns the issuance of the Regional Board’s Order, entitled  
14 “Requirement for Technical Report on Soil and Soil Vapor Investigations – Pursuant to California  
15 Water Code Section 13267 Order,” dated May 11, 2012. Petitioner was named in the Order because  
16 the Regional Board states that it “has evidence from recent site assessment activities conducted in  
17 the vicinity of the subject location by California Environmental that indicates that there is or has  
18 been a discharge of waste from a pipeline that runs beneath the western portion of Golden Avenue,  
19 outside the eastern perimeter of the OOI property (Line 32).” Petitioner, however, has no evidence  
20 that it has discharged any waste or contributed in any manner to the conditions observed at the Site.

21 The Order states that Charles Buckley of California Environmental provided the Regional  
22 Board photo ionization detector (PID) readings on or about April 25, 2012 that “elevated gasoline  
23 type hydrocarbon contamination was observed in soil vapor and soil during installation of vapor  
24 extraction well A,” one of four wells OOI installed at the Site. Petitioner has requested, but not yet  
25 received, data from California Environmental associated with the soil vapor extraction (“SVE”) well.  
26 This data is essential to Petitioner’s response to the Order, and Petitioner’s response to the Order  
27 could change dramatically depending on the review of the data. The Order states that high  
28 concentrations of total petroleum hydrocarbon (“TPH”) as gasoline (“TPH-g”) were found in soil

1 vapor in close proximity to an asphalt patch above Line 32. BP recently placed Line 32 back into  
2 service and excavated near the asphalt patch (*see* Order at ¶3); however, BP did not find evidence of  
3 a release in the area it investigated.

4 **3. DATE THE REGIONAL BOARD ACTED OR FAILED TO ACT**

5 The date of the Regional Board's action that is subject to review is May 11, 2012, when the  
6 Order was signed by the Executive Officer of the Regional Board. Petitioner first received a copy of  
7 the Order, via electronic mail, on May 11, 2012.

8 **4. STATEMENT OF REASONS THE ACTION IS INAPPROPRIATE AND IMPROPER**

9 The issuance of the Order was beyond the authority of the Regional Board, inappropriate,  
10 improper, or not supported by the record, for the following reasons:

11 a) The Order is unreasonable in that it seeks to impose burdensome and  
12 unreasonable obligations, including, without limitation, investigation and studies which are not  
13 authorized under the Water Code. Water Code section 13267(b)(1) allows the Regional Board to  
14 issue a Water Code 13267 order to "any person who has discharged, discharges, or is suspected of  
15 having discharged or discharging, or who proposes to discharge waste within its region." A  
16 preliminary set of data referenced in the Order – which Petitioner has not yet seen – is not sufficient  
17 to establish that Petitioner has discharged and is suspected of having discharged waste near the Site.  
18 Additionally, data in the form of PID readings cannot be directly correlated to TPH-g in the absence  
19 of additional certified laboratory data. Water Code section 13267 does not authorize the Regional  
20 Board to order Petitioner's response simply by virtue of owning and now operating a pipeline near  
21 the Site. Various pipelines through the decades may have operated near the Site, and no evidence  
22 shows that Line 32 leaked and caused the TPH-g reported to be impacting the Site. At a minimum, a  
23 thorough review of the SVE data referenced in the Order is required for Petitioner to evaluate the  
24 nature and source of the reported TPH-g at the Site.

25 The obligations under the Order are further unreasonable because they are not supported by,  
26 or are inconsistent with, direct evidence about Line 32. Petitioner's records for Line 32 indicate that  
27 the pipeline has not been used for the conveyance of gasoline. Petitioner recently completed  
28 preventative maintenance in two areas of Line 32 to prepare to place the line back in service. No

1 corrosion or metal loss was observed at the areas, and no indications of leaks were noted. The line  
2 passed hydrotests in 2004 and most recently on November 2, 2011. Accordingly, Petitioner disagrees  
3 that the Order's reference to "the pipeline release" from Line 32 is an appropriate conclusion.  
4 Petitioner's review of its records has located no evidence that Line 32 leaked any product, much less  
5 product consistent with the TPH-g referenced in the Order. Accordingly, Petitioner believes it is not  
6 a discharger or suspected discharger subject to the requirements of Water Code section 13267. The  
7 Regional Board acted improperly by relying on an isolated set of preliminary data that is not  
8 sufficient evidence to justify requiring Petitioner to perform the work requested in the Order.

9           b)       The burden, including costs, of the directives set forth in the Order, including  
10 without limitation, additional data, information and reports, do not bear a reasonable relationship to  
11 the need for said data, information and/or reports, or the benefits to be obtained therefrom, and,  
12 therefore, are contrary to California Water Code section 13267(b)(1). The burden, costs, and  
13 directives set forth in the Order are largely, if not entirely, duplicative of (a) work undertaken by  
14 OOI and (b) Petitioner's voluntary efforts to work cooperatively with OOI to determine if Line 32  
15 has any involvement at the Site. Petitioner understands that OOI has already sampled the subsurface  
16 areas beneath Golden Avenue (in the vicinity of Line 32) in conjunction with implementing a  
17 temporary SVE system at the Site. The Order does not demonstrate a need for Petitioner to incur  
18 additional costs of further sampling. Additional costs to Petitioner are also particularly burdensome  
19 where Petitioner has already voluntarily undertaken steps to assess the Site, even prior to the  
20 issuance of the Order. Petitioner has been in communication with OOI about responding to the  
21 Golden Avenue soil vapor concerns since about April 25, 2012. Since the Regional Board's first  
22 information request in January 2012, Petitioner has been searching for and reviewing records and  
23 data related to Line 32. Thus far, no data or records support the contention that Line 32 has leaked  
24 and impacted surrounding soils in the manner the Order alleges. Petitioner has also requested that  
25 OOI provide it with chromatograms and other data associated with the SVE well referenced in the  
26 Order. These voluntary efforts reflect that no Order is necessary at this time, and, as a result, the  
27 Order is contrary to Water Code section 13267(b)(1) because it will provide no benefit greater than  
28 that already undertaken voluntarily.

1 c) The Order is vague and ambiguous, including without limitation, its failure to  
2 provide legally sufficient grounds for requiring Petitioner to engage in additional investigation  
3 activities, complete and submit additional data, information and/or reports. The Order is  
4 broad and unnecessarily burdensome to the extent it is interpreted to require Petitioner to do  
5 anything more than supplement information previously provided to the Regional Board concerning  
6 the location and operation of Line 32.

7 d) The Order is further unreasonable in that the Regional Board has failed to  
8 provide Petitioner with a meaningful opportunity to address or refute the Order's alleged findings  
9 and directives with existing information and data. The Order was issued just days after the Regional  
10 Board received data on or about April 25, 2012 from California Environmental. As such, Petitioner  
11 has been denied its rights to procedural due process, resulting in substantial harm through the  
12 imposition of unjustified and inappropriate regulation requirements, costs, and potential for  
13 imposition of civil liability penalties for failure to comply with the Order.

14 **5. PETITIONER IS AGGRIEVED**

15 Petitioner is aggrieved for the reasons set forth in the sections above. Petitioner is  
16 potentially subject to substantial regulatory requirements pursuant to an Order that is contrary to law.  
17 Even if such costs were authorized, which they are not, they are largely duplicative of existing OOI  
18 studies and Petitioner's voluntary efforts to assess the Site. The Order is not tailored in a manner  
19 that will provide any benefit to regional water quality, the environment or human health.

20 **6. PETITIONER'S REQUEST TO THE STATE BOARD**

21 Petitioner requests that the Order be vacated. Alternatively, Petitioner seeks a  
22 determination from the State Board that the Regional Board's issuance of the Order, in part, was  
23 inappropriate and improper and should be modified so that:

- 24 (i) Petitioner may fully satisfy the terms of the Order by supplementing  
25 information previously provided to the Regional Board to further demonstrate  
26 that Petitioner's Line 32 did not experience a leak of refined product  
27 consistent with the reported TPH-g found at the Site;
- 28 (ii) the deadlines under the Order be extended by at least 30 days with an option

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to seek additional time; and

(iii) any obligation for Petitioner to sample subsurface conditions in the vicinity of Site be eliminated as they have been or will be sampled in conjunction with continuing investigations at the OOI site.

**7. STATEMENT OF POINTS & AUTHORITIES**

Petitioner's statement of points and authorities will be provided at such time this matter is set for hearing.

**8. STATEMENT OF TRANSMITTAL OF PETITION TO THE REGIONAL BOARD**

A true and correct copy of this petition for review was transmitted to Samuel Unger, Executive Officer of the Los Angeles Regional Board, on June 8, 2012.

**9. SUBSTANTIVE ISSUES RAISED BEFORE THE REGIONAL BOARD**

Petitioner has not yet been afforded a meaningful opportunity to be heard on the substantive issues set forth in the Order. Pending efforts to resolve disputed issues with Regional Board staff, Petitioner may be without an adequate remedy unless the State Board grants this petition for review and a hearing with respect to the issues presented here.

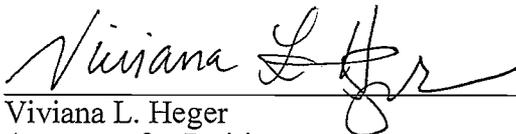
**10. REQUEST FOR HEARING**

In the event Petitioner determines that it is necessary to activate this petition, Petitioner will request that the State Board schedule a hearing at the earliest feasible date. In connection with any such hearing, Petitioner reserves the right to present additional evidence or testimony to the State Board and will submit to the State Board, if appropriate, statements regarding evidence pursuant to Code of California Regulations, title 23, section 2050(b).

DATED: June 8, 2012

VIVIANA L. HEGER  
TROPIC & MORLAN

DEBORAH P. FELT  
BP AMERICA INC. LEGAL DEPARTMENT



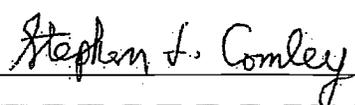
Viviana L. Heger  
Attorneys for Petitioner  
BP PIPELINES (NORTH AMERICA) INC.

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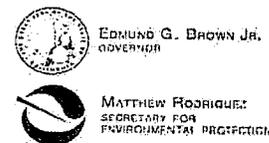
VERIFICATION

I, Stephen D. Comley, am employed by BP Pipelines (North America) Inc. and am the Environmental Coordinator primarily responsible for overseeing BP's response to the May 11, 2012 order from the Los Angeles Regional Water Quality Control Board ("Order") related to property near 712 Baker Street in Long Beach ("Site"). I have read the foregoing Verified Petition for Review and believe that the statements therein are true and correct. If called as a witness to testify with respect to the matters stated therein, I could and would competently do so under oath.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed in Long Beach, California on June 8, 2012.

  
\_\_\_\_\_  
Stephen D. Comley

# **EXHIBIT 1**



Los Angeles Regional Water Quality Control Board

May 11 2012

Ms. Donna DiRocco  
BP Pipelines (North America) Inc./Atlantic Richfield Company  
1300 Pier B Street  
Long Beach, CA 90813

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7001 2510 0002 2221 6115**

**SUBJECT: REQUIREMENT FOR TECHNICAL REPORT ON SOIL AND SOIL VAPOR INVESTIGATIONS – PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER**

**SITE/CASE: NEAR 712 BAKER STREET, LONG BEACH, CALIFORNIA**

Dear Ms. DiRocco:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of groundwater and surface water quality for all beneficial uses within major portions of Los Angeles and Ventura counties, including the referenced Site. To accomplish this, the Regional Board oversees the investigation and cleanup of discharges of waste adversely affecting the State's water, authorized by the Porter-Cologne Water Quality Control Act (California Water Code [CWC], Division 7).

Under the oversight of this Regional Board and the Long Beach Health and Human Services Department, Oil Operators Incorporated (OOI) has been conducting environmental investigation and cleanup at its property located at 712 Baker Street, Long Beach. The OOI property covers approximately 20-acres and is located south of the 405 Freeway, east of the 710 Freeway and the Los Angeles River, in the City of Long Beach. It is bounded on the south by Wardlow Road and on the east by Golden Avenue. A residential development is present to the east of the property, across Golden Avenue.

The Regional Board has evidence from recent site assessment activities conducted in the vicinity of the subject location that indicates that there is or has been a discharge of waste from a pipeline that runs beneath the western portion of Golden Avenue, outside the eastern perimeter of the OOI property (Line 32). BP Pipelines (North America) Inc./Atlantic Richfield Company (BP) owns and operates this crude and refined products pipeline.

In order to determine the impact to soil resulting from the pipeline release, and to protect human health and the waters of the state for their beneficial uses, a work plan for soil and soil vapor investigations on both sides of Line 32 along Golden Avenue is required.

Enclosed is a Regional Board Order requiring, pursuant to section 13267 of the CWC, that you provide this Regional Board with a work plan for soil and soil vapor investigations on both sides of Line 32, along Golden Avenue, to determine the extent of wastes in soil in the vapor and adsorbed phases.

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

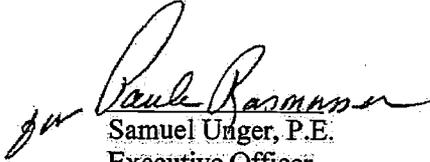
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Ms. Donna DiRocco  
BP Pipelines (North America) Inc./Atlantic Richfield Company

May 11, 2012

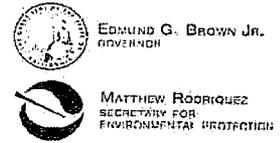
Should you have any questions, please contact Mr. Pinaki R. Guha-Niyogi, of my staff at (213) 576-6731 ([pguha@waterboards.ca.gov](mailto:pguha@waterboards.ca.gov)).

Sincerely,

  
Samuel Unger, P.E.  
Executive Officer

*Attachment: Requirement to Provide Technical Report*

cc: Councilman James Johnson, City of Long Beach  
Ms. Nelson Kerr, City of Long Beach, Health and Human Services Department  
Ms. Carmen Piro, City of Long Beach, Health and Human Services Department  
Ms. Tracy Barreau, California Department of Public Health  
Ms. Marylyn C. Underwood, California Department of Public Health  
Ms. Joan Greenwood, Wrigley Area Neighborhood Alliance  
Mr. Kevin Laney, Oil Operators, Inc.  
Mr. George B. Paspalof, Brycon LLC  
Mr. Bob Sinclair, Plaines Pipeline



Los Angeles Regional Water Quality Control Board

**REQUIREMENT TO PROVIDE A TECHNICAL REPORT ON  
SOIL AND SOIL VAPOR INVESTIGATIONS**

**CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2012-0085**

**DIRECTED TO BP PIPELINES (NORTH AMERICA) INC./ATLANTIC RICHFIELD  
COMPANY**

**SOIL AND SOIL VAPOR INVESTIGATIONS IN THE VICINITY OF GOLDEN AVENUE AND  
BAKER STREET  
LONG BEACH, CALIFORNIA**

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code section 13267.

1. Under the oversight of this Regional Board and the Long Beach Health and Human Services Department, Oil Operators Incorporated (OOI) has been conducting environmental investigations and cleanup at its property, located at 712 Baker Street, Long Beach. The OOI property covers approximately 20 acres and is located south of the 405 Freeway, east of the 710 Freeway and the Los Angeles River, in the City of Long Beach. It is bounded on the south by Wardlow Road and on the east by Golden Avenue. A residential development is present to the east of the property, across Golden Avenue.
2. California Water Code section 13267(b) states, in part: In conducting an investigation . . . , the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
3. The Regional Board has evidence from recent site assessment activities conducted in the vicinity of the subject location by California Environmental that indicates that there is or has been a discharge of waste from a pipeline that runs beneath the western portion of Golden Avenue, outside the eastern perimeter of the OOI property (Line 32). BP Pipelines (North America) Inc./Atlantic Richfield Company (BP) owns and operates this crude and refined products pipeline. The evidence supporting this requirement includes data provided by Charles Buckley of California Environmental on April 25, 2012, that elevated gasoline type hydrocarbon contamination was observed in soil vapor and soil during installation of vapor extraction well A. Vapor extraction well A was installed along with four other vapor extraction wells (B, C, D & E)

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

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to mitigate the benzene soil vapor plume, present beneath the northern portions of the OOI site, beneath portions of Golden Avenue and beneath some residential homes on the east side of Golden Avenue. Very strong gasoline-type odors and grey discoloration was observed in the sediments in well A, from a depth of 8 feet to 28 feet below grade. Photo Ionization Detector (PID) readings taken during installation of well A ranged from 500-2000 parts per million parts by volume (ppmv). High concentrations of Total Petroleum Hydrocarbon as gasoline (TPH-g) were found in soil vapor extracted from well A (>18,000 ppmv via PID). Well A is in close proximity to an asphalt patch present directly above Line 32, on the west side of Golden Avenue. Review of building permit records at the City of Long Beach revealed that BP applied for a Discretionary Permit on September 19, 2011, to excavate at two locations on Golden Avenue along Line 32, in order to expose the piping at these two locations and perform necessary repairs to maintain the integrity of Line 32. The location of the northern excavation, indicated in the permit, matched the asphalt patched area near well A, confirming that a potential release occurred in the pipeline that caused the soil discoloration resulting in high PID readings.

4. This Order identifies BP Pipelines (North America) Inc./Atlantic Richfield Company as the entity suspected of being responsible for the discharges of waste identified in paragraph 3, because it owns or operates pipelines in the vicinity of Golden Avenue.
5. This Order requires the persons named herein to prepare and submit a work plan for soil and soil vapor investigations on both sides of Line 32 along Golden Avenue to determine the impact to soil resulting from the pipeline release.
6. The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The information is necessary to determine the extent of waste detected in the soil beneath Golden Avenue in Long Beach, and to protect human health and the waters of the state.
7. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of technical and/or monitoring reports that will not have adverse impacts on the environment. If the implementation results in significant impacts to the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any work.
8. Any person aggrieved by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**THEREFORE, IT IS HEREBY ORDERED** that BP Pipelines (North America) Inc./Atlantic Richfield Company, pursuant to section 13267(b) of the California Water Code, is required to submit the following:

May 11, 2012

1. By **June 11, 2012**, prepare and submit a work plan for a soil (soil vapor and soil matrix) investigation to assess and delineate the lateral and vertical extent of contamination in the vapor and adsorbed phase, on both sides of Line 32 along Golden Avenue.

Item 1 shall be sent via electronic mail to:

Mr. Pinaki Guha-Niyogi  
Case Manager  
California Regional Water Quality Control Board – Los Angeles Region  
320 W. 4<sup>th</sup> Street, Los Angeles, CA 90013  
213-576-6731  
pguha@waterboards.ca.gov

The technical report is required to be submitted under the CWC section 13267 Order. Pursuant to 13267(a) of the CWC, any person who fails to submit reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268(b) of the CWC, failure to submit the required technical report described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the technical report is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

The Regional Board, under the authority given by California Water Code (CWC) section 13267, subdivision (b), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized BP Pipelines (North America) Inc./Atlantic Richfield Company representative (not by a consultant). The perjury statement shall be in the following format:

*"I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

The State Water Resources Control Board (State Water Board) adopted regulations requiring the electronic submittals of information over the Internet using the State Water Board GeoTracker data management system. You are required not only to submit electronic copy reports required in this Order, but also to comply by uploading all reports and correspondence prepared to date on to the GeoTracker data management system. The text of the regulations can be found at the URL:

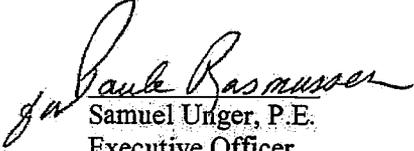
Ms. Donna DiRocco  
BP Pipelines (North America) Inc.  
Atlantic Richfield Company

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May 11, 2012

[http://www.waterboards.ca.gov/water\\_issues/programs/ust/electronic\\_submittal](http://www.waterboards.ca.gov/water_issues/programs/ust/electronic_submittal)

SO ORDERED.

  
Samuel Unger, P.E.  
Executive Officer

May 11, 2012