

This Document prepared by
and when recorded return to:
Brad Krabel (630) 536-2729
BP Products North America Inc.
150 W. Warrenville Road
Building 605 – 3rd floor
Naperville, Illinois 60563

BP File: 4000 - 438
DATABASE # 6586

PERMITTED FACILITIES AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2011, by and between **BP Products North America Inc.**, a Maryland corporation, with a mailing address of 150 W. Warrenville Road, Building 605 – 3rd floor, Naperville, Illinois 60563 (hereinafter referred to as "BP"), and **The City of Rochelle, Illinois**, an Illinois municipal corporation, with a mailing address of City Hall, 420 North 6th Street, Rochelle, Illinois 61068, (hereinafter referred to as "ROCHELLE");

WITNESSETH:

WHEREAS, by the following instrument recorded in the records of Ogle County, Illinois, granted unto Standard Oil Company, predecessor of BP, a certain right-of-way easement (hereinafter referred to as "Easement"), together with and including the right to lay, maintain, operate, repair, replace and remove pipelines and all necessary fixtures, equipment and appurtenances thereto, (hereinafter referred to as "Pipeline Facilities"), in over through and across the following described lands, (hereinafter referred to as the "Original Easement Property"):

<u>INSTRUMENT</u>	<u>DATED</u>	<u>GRANTOR</u>	<u>GRANTEE</u>	<u>RECORDED</u>
Right of Way Contract	June 12, 1946	Herman F. Rewerts Conservator for Foske M. Rewerts	Standard Oil Company (predecessor of BP)	Book 15 (Misc) Page 157

**The W1/2 of NE1/4, & E1/2 of NW1/4, Section 32,
Township 40N, Range 2E, Ogle County, Illinois**

together with the right of ingress and egress to and from said Original Easement Property; and

WHEREAS, Standard Oil Company, an Indiana corporation, did assign its rights, title and interests in the Easement to the American Oil Company, a Maryland corporation, on December 31, 1960, said Assignment of Rights of Way filed as Document Number 347341, in Book 43, Page 303 in the records of Ogle County; and

WHEREAS, the American Oil Company did change its name to Amoco Oil Company on December 31, 1972; and

WHEREAS, Amoco Oil Company did change its name to BP Products North America Inc. on October 1, 2001; and

WHEREAS, pursuant to the Easement, a pipeline was or pipelines were constructed together with other associated facilities (such pipeline and associated facilities being collectively referred to as "Pipeline Facilities") and installed over, through and across the above described Original Easement Property and is presently maintained and operated as part of the pipeline system of BP; and

WHEREAS, the Easement was amended and limited to a strip of land (hereinafter called the "Easement Strip") 50 feet in width by an Agreement and Partial Release (hereinafter called the "Defining Agreement") dated March 22, 2011, executed by BP Products North America Inc. as grantor, unto Prologis Land LLC it's successors and assigns, as grantee, said Defining Agreement being recorded as Instrument No. 201101102129; and

WHEREAS **The City of Rochelle** has requested BP to consent to the installation of a multi-use path (hereinafter called "Permitted Facilities"), as shown on the Exhibit "A" attached hereto and made a part hereof, which would be within the Easement Strip.

NOW, THEREFORE, in reliance on the aforesaid representation and the mutual covenants herein contained, notwithstanding any of the provisions of the Easement and the Defining Agreement which prohibit such construction within the Easement Strip, in conformity with Exhibit A, BP hereby consents and agrees, insofar as it has the lawful right so to do, to the construction and maintenance of the Permitted Facilities within the Easement Strip, subject to the following terms and conditions:

- 1) BP has the right to remove portion(s) of the Permitted Facilities as necessary in BP's sole discretion in the exercise of its rights under the Easement. After BP has completed any work necessitating the removal of the Permitted Facilities or any portion thereof, ROCHELLE shall be responsible for replacing and repairing the Permitted Facilities, BP shall not be responsible for any damage to the Permitted Facilities and ROCHELLE releases BP from all costs, losses or damages directly or indirectly arising from BP's removal of portions of the Permitted Facilities.
- 2) As used in this Paragraph 2, "BP" includes other pipeline companies using BP's property at or near the location of the Permitted Facilities and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including BP's officers, agents, and employees, ROCHELLE's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including ROCHELLE's property, damage to the pipeline, pipeline accessories, equipment, or other property of BP, or property in its care or custody).
 - a. **ROCHELLE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BP FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:**
 - b. **THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PERMITTED FACILITIES OR ANY PART THEREOF;**
 - c. **THE PRESENCE, OPERATION, OR USE OF THE PERMITTED FACILITIES; OR**

- d. ROCHELLE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT NEGLIGENCE OF BP, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, BP'S NEGLIGENCE.
- e. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BP SHALL NOT BE LIABLE TO ROCHELLE FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF PRODUCTION OR OTHER DAMAGES ATTRIBUTABLE TO BUSINESS INTERRUPTION) ARISING IN CONNECTION WITH THIS AGREEMENT

- 3) All costs and expenses for constructing, operating, maintaining and removing the Permitted Facilities shall be borne solely by ROCHELLE, its successors and assigns.
- 4) ROCHELLE shall not commence with any excavation or construction on or near the Easement without first contacting the local "One-Call" utility locating service at least 48 hours (two working days) prior to initiating any excavation or construction activities so BP can arrange to have a representative present when ROCHELLE or its contractor are working in close proximity to the Easement.
- 5) BP may, at it's sole discretion, elect to have a representative on site during ROCHELLE's excavation or construction activities in close proximity to BP's Easement and ROCHELLE herein acknowledges that BP's representative shall have full authority to stop any of ROCHELLE's excavation or construction related activities in close proximity to BP's Easement if BP's representative, in his/her sole discretion, feels ROCHELLE's activities could result in damage to BP's pipeline.
- 6) ROCHELLE shall immediately cease work and notify BP if BP's pipeline is struck by any means of earth disturbing equipment so BP can inspect it' pipeline, and if required, make all necessary repairs.
- 7) ROCHELLE shall require its contractor to follow the construction procedures as indicated on the attached Exhibit B when working within the Easement Strip.
- 8) ROCHELLE shall not sublet, in whole or in part, the rights hereby granted and shall not assign this Agreement without written consent of the BP, which shall not be unreasonably withheld. It is agreed that any transfer or assignment of this Agreement or any of the rights hereby granted, whether voluntary, by operation of law, or otherwise, without such consent, in writing, shall be absolutely void and, at the option of the BP, shall terminate this Agreement.

All notices shall be sent by United States registered or certified mail, return receipt requested, and shall be addressed to the parties at the address first mentioned above or at such other address as the parties may direct.

The Easement and the Defining Agreement shall remain in full force and affect except as modified and changed by this Agreement.

If any one or more of the provisions of this Agreement, or the applicability of any such provisions to a specific situation shall be invalid or unenforceable, the validity and enforceability of all other applications of such provisions shall not be affected.

The covenants contained in this Agreement shall constitute covenants running with the land and

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS:
COUNTY OF _____)

Before me, _____, a Notary Public in and for said County and State, on this day personally appeared **DAVID S. PLYMAN**, who is the City Manager of **The City of Rochelle, Illinois**, an Illinois municipal corporation, and **BRUCE McKINNEY**, who is the City Clerk of said City, and acknowledged to me that they executed said instrument for the purposes and consideration therein expressed and as their free act and deed.

Given under my hand and seal of office this _____ day of _____, 2011

By: _____
Notary Public

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS:
COUNTY OF _____)

Before me, _____, a Notary Public in and for said County and State, on this day personally appeared Steve Pankhurst, who is the Attorney-in-Fact for **BP Products North America Inc.**, a Maryland corporation, and acknowledged to me that he/she executed said instrument for the purposes and consideration therein expressed and as the act of said corporation.

Given under my hand and seal of office this _____ day of _____, 2011

By: _____
Notary Public

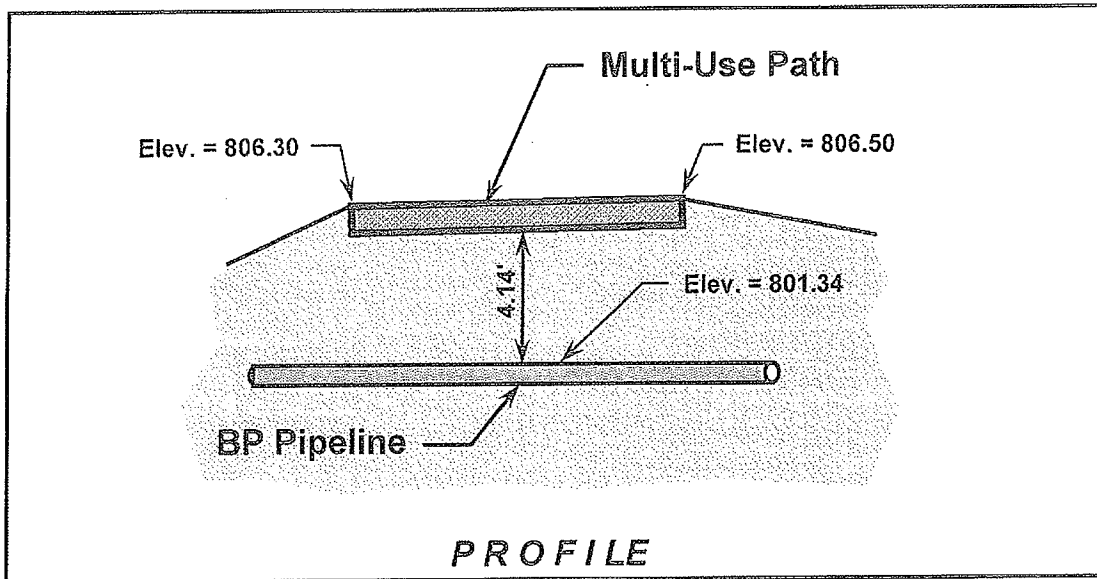
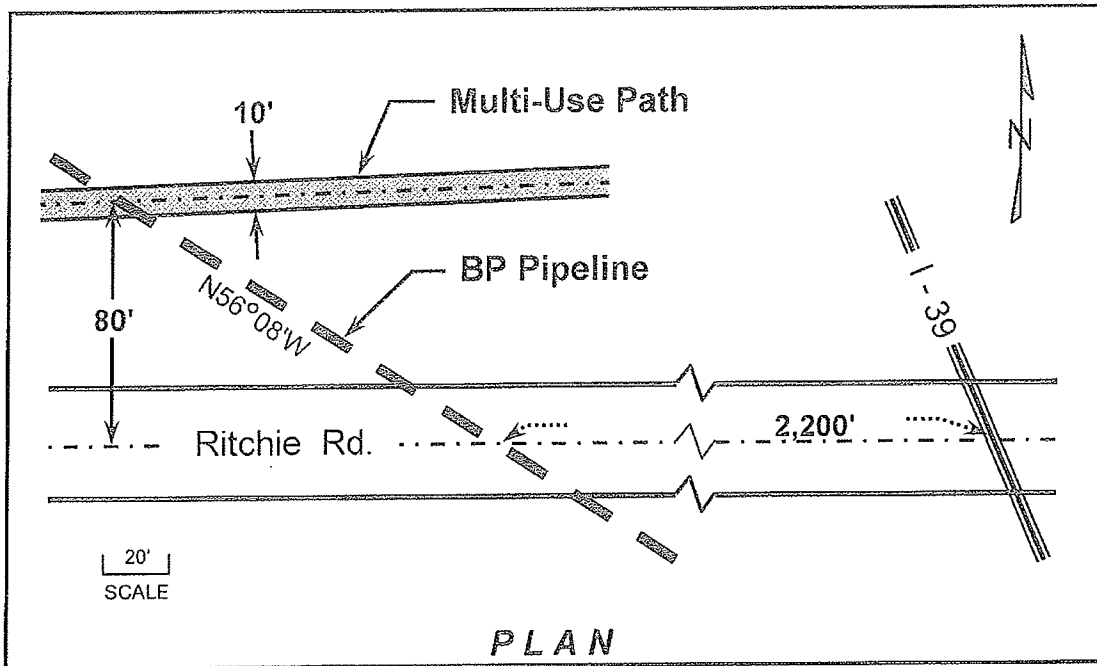


EXHIBIT A

Attached to and becoming a part of this Agreement by an between
 BP Products North America Inc. and the City of Rochelle, Illinois
 NE 1/4 Section 32, T40N, R2E
 Ogle County, Illinois
 BP Ref: 4000 - 438 / Log # 6586

EXHIBIT B

Attached to and becoming a part of this agreement between
BP Products North America Inc. and The City of Rochelle, Illinois

Excavation Specific Requirements

- No excavation or construction activity will be permitted in the vicinity of a pipeline until all appropriate communications have been made with BP's field operations and the Right-of-Way Department. A formal engineering assessment may be required.
- There shall be no excavation or backfilling within the pipeline right-of-way for any reason without a representative of BP on site giving permission.
- In some instances, excavation and other construction activities around certain pipelines can be conducted safely only when the pipeline operating pressure has been reduced. Contractors are therefore cautioned that excavation which exposes or significantly reduces the cover over a pipeline may have to be delayed until the reduced operating pressures are achieved.

General Construction Activities

- The contractor shall not be permitted to transport construction materials or equipment longitudinally over the pipeline.
- Where it is necessary for construction equipment (*i.e.*, tractors, backhoes, dump trucks, etc.) or equipment transporting construction materials to cross the pipeline, the crossing of the pipeline right-of-way shall be at, or as near to, a 90° angle as is feasible.
- To gain access to the job site, the contractor shall submit a plan indicating where construction equipment will cross the pipeline, along with the depth of the pipe at the crossings, any proposed ramping over the pipeline, together with the following specifications for the equipment: type and weight of equipment; for track equipment – track width and length; for wheeled equipment – number of axles (single or tandem axles). BP will perform a stress factor calculation to determine if the equipment can safely cross the pipeline. If crossing of the pipeline is allowed, special measures may need to be taken to ensure the integrity of the pipeline.
- No track type construction equipment shall be permitted to pivot or turn directly over the top of the pipeline.
- A scraper or pan type tractor shall not be used for removal of soil within ten feet (10') of the centerline of the pipeline. Rubber tire or small track type equipment is an acceptable alternative.
- A sheepsfoot roller shall not be used for compaction purposes within five feet (5') or directly above the centerline of the pipeline.
- No vibratory rollers shall be used within three feet (3') of the centerline of the pipeline until the compacted cover over the pipeline has reached a depth of three and one-half feet (3 ½').