

This Document prepared by  
and when recorded return to:  
Alice Johnson (630) 536-2519  
BP Products North America Inc.  
150 W. Warrenville Rd.  
Building 605 – 3<sup>rd</sup> Floor  
Naperville, IL 60563

BP File: 4000 - 441  
Database 7269

## **PERMITTED FACILITIES AGREEMENT**

DATE: September 22, 2014

GRANTOR: BP Products North America Inc.  
150 W. Warrenville Road, Building 605-3<sup>rd</sup> Floor  
Naperville, IL 60563

GRANTEE: The City of Rochelle, Illinois  
420 North 6th Street  
Rochelle, IL 61068

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, **BP Products North America Inc.** a Maryland corporation, (hereinafter called "BP"), is the present owner of a right of way and easement, (hereinafter called the "Easement"), in, over, through, under and across the following described parcel of land in Ogle County, Illinois:

The East  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  (except the North 23.40 rods) of Section 25 in Township 40 North, Range 1 East of the 3rd P.M. and –

The Southwest  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  in Section 30 Township 40 North, Range 2 East of the 3rd P.M.

Also the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , west of Rail Road, in Section 30 Township 40 North, Range 2 East of the 3rd P.M.;

granted by Blanche Wolf and Carl Wolf, to the Standard Oil Company, its successors and assigns, dated July 9, 1946 and recorded September 16, 1946 in Book 15, Page 217 as Document Number 263648 in the Office of the Recorder of Ogle County, Illinois.

WHEREAS, the Easement was amended and limited to a strip of land (hereinafter called the "Easement Strip") 50 feet in width by Document Number 326348 recorded January 13, 1958, in the Office of the Recorder of Ogle County, Illinois.

WHEREAS pursuant to the Easement, BP owns, maintains and operates a pipeline with equipment, appurtenances and apparatus thereto, if any (hereinafter collectively called "Pipeline") within the Easement Strip; and

WHEREAS **The City of Rochelle** (hereinafter called "LANDOWNER") has subsequently acquired title to a tract of land legally described in Exhibit A attached hereto and made a part hereof, being all or a part of the same land covered by the Easement; and

WHEREAS, LANDOWNER has requested BP to consent to certain improvements including the relocation of Wiscold Drive and the removal of the existing Wiscold drive over BP's pipeline (hereinafter called "Permitted Facilities"), as more clearly depicted on Exhibit B, 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 which prohibit such construction within the Easement, 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, 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, LANDOWNER shall be responsible for replacing and repairing the Permitted Facilities, BP shall not be responsible for any damage to the Permitted Facilities and LANDOWNER releases BP from all costs, losses or damages directly or indirectly arising from BP's removal of portions of the Permitted Facilities.
- 2) LANDOWNER shall release, defend, indemnify and hold harmless BP and its affiliates, and its and their agents, employees, officers, directors, insurers, contractors, subcontractors, representatives, successors and assigns (the "BP Parties") from and against any and all actions, claims, settlements, judgments, demands, liens, losses, liabilities, damages, fines, penalties, interest, costs, expenses (including, without limitations, expenses attributable to the defense of any actions or claims), and reasonable attorney's fees and other legal expenses and costs, (collectively "losses") arising out of (a) injury, or death of persons (including any BP Party or any employee, contractor or subcontractor of BP or (b) damage to or loss of any property (including that of any BP Parties or any employee, contractor or subcontractor of BP or (c) harm to the environment, caused by, arising out of, or resulting from, either directly or indirectly, the activities contemplated under this agreement, regardless of whether such losses are caused or contributed to (or allegedly caused or contributed to) by the joint, concurrent or any other form of negligence, strict liability (statutory or otherwise) or other fault of any BP Party, or a preexisting condition, but excluding any losses to the extent caused by the sole, or gross negligence or willful misconduct of any BP Party.
- 3) All costs and expenses for constructing, operating, maintaining and removing the Permitted Facilities shall be borne solely by LANDOWNER, its successors and assigns.

- 4) LANDOWNER 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 LANDOWNER or their contractor are working in close proximity to the Easement.
- 5) BP may, at its sole discretion, elect to have a representative on site during LANDOWNER's excavation or construction activities in close proximity to BP's Easement and LANDOWNER herein acknowledges that BP's representative shall have full authority to stop any of LANDOWNER's excavation or construction related activities in close proximity to BP's Easement if BP's representative, in his/her sole discretion, feels LANDOWNER's activities could result in damage to BP's Pipeline.
- 6) LANDOWNER shall immediately cease work and notify BP if BP's Pipeline is struck by any means of earth disturbing equipment so BP can inspect its Pipeline, and if required, make all necessary repairs.
- 7) LANDOWNER shall require its contractor to follow the general excavation and construction requirements outlined in Exhibit C attached hereto, and the terms outlined in the Approval Letter a copy of which is attached as Exhibit D when working within or in close proximity to the Easement Strip.

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 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 shall be binding upon and insure to the benefit of the parties hereto, their personal representatives, heirs, successors, and assigns.

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IN WITNESS WHEREOF, the parties hereto separately and severally have caused this AGREEMENT to be executed in their respective names by and through their duly authorized representatives, as of the day and year first above written.

**THE CITY OF ROCHELLE**, an Illinois municipal corporation

By: \_\_\_\_\_  
**DAVID S. PLYMAN, City Manager**

Attest: \_\_\_\_\_  
**BRUCE MCKINNEY, City Clerk**

**BP PRODUCTS NORTH AMERICA INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Please Print

Title: \_\_\_\_\_



## EXHIBIT A

### LANDOWNER'S PROPERTY:

Part of the Southwest Quarter of the Southeast Quarter (SW1/4 SE1/4) of Section Thirty (30), Township Forty (40) North, Range Two (2) East of the Third Principal Meridian in the County of Ogle, in the State of Illinois, described as:

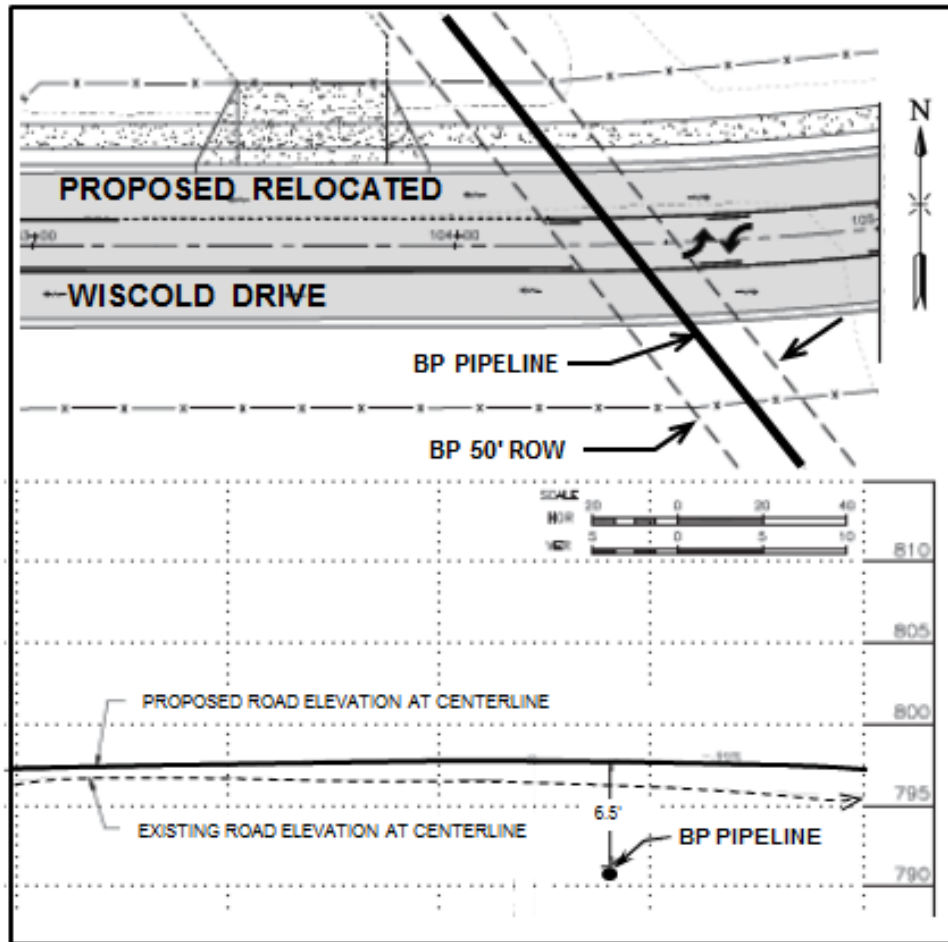
Beginning at the Northeast corner of said Southwest Quarter of the Southeast Quarter (SW1/4 SE1/4) of Section Thirty (30), thence West, on the North line of said Quarter Quarter Section, Nine Hundred Seventy-one and Five Hundredths (971.05) feet to the easterly line of the right of way of the Chicago, Burlington & Quincy Railroad Company; thence southeasterly on said easterly right of way line making an angle of Seventy-two Degrees, Four Minutes (72°04') measured clockwise from the last described course Five Hundred Ninety-seven and Two Hundredths (597.02) feet; thence easterly parallel with the South line of said Section Thirty (30), Seven Hundred Eighty-five and Fifty-five Hundredths (785.55) feet to the East line of said Southwest Quarter of the Southeast Quarter (SW1/4 SE1/4) of Section Thirty (30); thence northerly on the East line of said Quarter Quarter Section Five Hundred Sixty-eight and No Tenths (568.0) feet to the point of beginning, containing an area of Eleven and Forty-five Hundredths (11.45) acres more or less. RESERVING unto the Chicago, Burlington & Quincy Railroad Company, its successors and assigns, the right, privilege and easement to use a strip of land uniformly Fifty (50) feet wide off the westerly side of the above-described premises for roadway purposes and for purposes of ingress and egress from adjacent property or properties, and further right to grant to others the right to use said premises for such purpose.

PARCEL ID: 25-30-400-002

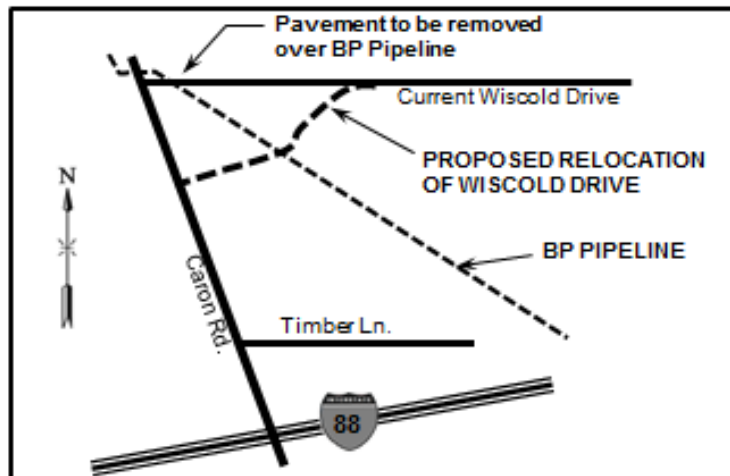
### PROPERTY

ADDRESS: 1015 South Caron Road  
Rochelle, IL

# EXHIBIT B



*PLAN & PROFILE*



*LOCATION*

## EXHIBIT C

### **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').

## EXHIBIT D



**BP Pipelines (North America) Inc.  
150 W Warrenville Road  
Building 605 – 3<sup>rd</sup> Floor  
Naperville, IL 60563**

September 19, 2014

Mr. Sam Tesreau, PE  
Rochelle City Engineer  
417 N. 6<sup>th</sup> Street  
Rochelle, IL 610648

Re: Relocation of Wiscold Drive  
BP File No. 4000 – 441 / BP Ref. No. 7269

Dear Mr. Tesreau:

Issued for Construction drawings dated 12/17/13, revised 4/24/2014, revised 08/13/2014 were reviewed by Emma Wright contract engineer for BP Pipeline. BP facilities were included on pages 10,12,19,24 and 48. BP has approved the drawings subject the following terms:

- An original, fully executed Permitted Facilities Agreement in terms acceptable to BP Products North America Inc. as Grantor and The City of Rochelle, Illinois as Grantee.
- BP's Damage Prevention Specialist (James Wilcox 815-266-1583) must be contacted at least 48 hours prior to any activities within the pipeline R/W. No work over the pipeline or within the pipeline easement shall commence without his presence or prior approval.
- The existing section of Wiscold Road over the pipeline shall be left in place (a minimum 10ft wide section) and covered with 6" of dirt and grass to attain a minimum depth of cover of greater than 3ft over the pipeline and also act as a cap for protection.
- Where the existing Wiscold drive is removed and the proposed top-soiling and reseeding starts, curbing shall be installed at either side in order to deter traffic on this area.
- Permanent fencing shall be installed with the fence posts being placed as far away from the centerline of the pipeline as possible. There shall be no fence posts placed directly over the pipeline. There shall be a utility access to the old Wiscold Road section for BP inspection and maintenance crew.
- The 36ft wide proposed road (10" PCC pavement and 12" of aggregate base) shall attain a minimum of 5.5ft of cover to top of pipeline and cross as close as practical to 90 degrees and not less than 45 degrees. The proposed 6.5ft of cover meets both federal guidelines and BP requirements (5.5ft) and does pass required AP1102 calculations. The existing depth of cover will need to be verified to ensure the minimum cover.
- The temporary removal of grade over the pipeline shall not exceed 6" in order to install the proposed road.

## EXHIBIT D



**BP Pipelines (North America) Inc.  
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Naperville, IL 60563**

- The 3<sup>rd</sup> party has agreed not to remove the top 1ft of cover over the pipeline in order to attain suitable material under the proposed new road. Instead a geogrid material shall be utilized within the pipeline easement.
- The proposed sidewalk (6ft wide with 4" concrete and 4" aggregate base layer) shall attain a minimum of 3ft of cover over the pipeline. The existing depth of cover will need to be verified to ensure the minimum cover.
- Two layers of geotextile material (Johns Manville Spunbond Polyester Type 011/250 or similar) shall be placed beneath any proposed aggregate base layer for both the proposed road and sidewalk extending a distance of 10ft to either side of the pipeline.
- The 3<sup>rd</sup> party has indicated that the street lighting and associated electrical conduit shall be undertaken at a later date but not as part of this IDOT submittal. No utilities shall cross the pipeline or be within the easement without design submittal and prior approval.
- There shall be no permanent road signage within 10ft of the pipeline.
- Construction equipment if possible shall stay on existing road surfaces however if not possible, construction equipment (maximum HS20 loading) shall cross the pipeline at a minimum depth of cover to top of pipeline of 4.5ft utilizing timber matting (6" min.). Medium equipment (max. 50,000lbs) shall cross the pipeline at a minimum depth of cover to top of pipeline of 4.5ft (utilizing timber matting if conditions are muddy). Light equipment shall cross the pipeline at a minimum depth of cover of 3ft and shall be used for site restoration though rutting should be avoided. Areas of crossing shall be defined and kept to a minimum. The pipeline shall be clearly flagged, and safety fence or silt fence shall be utilized to prevent accidental/unauthorized equipment crossings. The equipment shall cross the pipeline as close to 90 degrees as possible and there shall be no pivoting or turning over the pipeline. Also;
  - 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 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')
- Where temporary extra fill, steel plates or timber matting is required for equipment crossings, two layers of geotextile material shall be placed initially on grade for a distance of 10ft to either side of the pipeline.
- There shall be no storage of material (i.e. excavation spoils) over the pipeline or within the pipeline easement.
- All BP signage, test lead stations and vents shall be protected during construction. Should any relocation either temporary or permanent be required, this work shall only be undertaken by or under the supervision of a BP representative.

## EXHIBIT D

bp



**BP Pipelines (North America) Inc.  
150 W Warrenville Road  
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Naperville, IL 60563**

- Should silt fence placement be required close to or over the pipeline, BP Damage Prevention shall be contacted first in order to approve placement and flag the location of the pipeline. No fence posts shall be allowed directly over the pipeline.
- If required, all excavation within 1.5ft (18") of the pipeline shall be done by hand (as per Illinois state regulations).
- As-builts of the 3<sup>rd</sup> party construction within the easement shall be submitted to BP within 12 months after construction is completed.
- The only landscaping allowed within the R/W shall be mulching and reseeding
- All normal BP requirements/guidelines apply.

811, the national One-Call number, must be contacted, per your state requirements prior to any excavation within the pipeline right-of-way.

**James Wilcox (815) 266-1583, BP Pipeline's Damage Prevention specialist must be present prior to commencing work in BP's pipeline right-of-way.**

Should your design require a field change within the BP pipeline right-of-way James Wilcox must be contacted and approve any revisions prior to actuating the changes in the field.

Best regards,



Kate Rendak  
Area Maintenance Engineer