

Received on May 13, 2011 at 9:10 a.m.

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CAUSE NO. 10-UC-001

**IN RE:
TEXAS CITY REFINERY
ULTRACRACKER EMISSION EVENT
LITIGATION**

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**IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
56th JUDICIAL DISTRICT COURT**

11 MAY 13 PM 3:09

10-UC-0001
DCPRNVNF
Protective Order - No Violence - Non Final
196509



AGREED PROTECTIVE ORDER

Upon motion of all the parties for a Protective Order pursuant Texas Rules of Civil Procedure, IT IS HEREBY ORDERED that:

1. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trials of this litigation and for no other purpose and shall not be disclosed to any person except in accordance with the terms of this Protective Order. The purpose of this Protective Order is to ensure the discovery process in this case can proceed efficiently and expeditiously and that the informational needs of the parties can be met. Additionally, this Protective Order is being entered to ensure that the information is afforded proper protection.

2. **Definition of Confidential Information.** "Confidential Information," means any information which is designated as "Confidential" by any of the supplying or receiving parties. Confidential Information may be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or other information. Parties will make these designations in good faith.

3. **Designation of Confidential Information.** "Confidential" as used in this Protective Order includes, but is not limited to: (1) private employee information, including but not limited to, social security numbers, birth dates, or other private, identifying information; (2)

financial, budgetary, economic, or planning information that could reveal the strategic plan or position of any party to this protective order; and (3) technical, proprietary, or other trade-secret-type information that could reveal the business practices or operations of any party to this litigation that could be used to the economic disadvantage of any party to this litigation. Any party to this Protective Order may also designate any other information as "Confidential" if that party believes that information falls within the spirit or purpose of this Protective Order. Information or material which is available to the public, and non-confidential information obtained from sources other than the parties, including but not limited to catalogues, advertising materials, and the like, shall not be classified as "Confidential."

4. **Qualified Persons.** "Qualified Persons," means (a) attorneys of record for the parties in this litigation and employees of those attorneys to whom it is necessary that the material be shown for purposes of this litigation; (b) actual or potential experts or litigation consultants who have been designated in writing with notice to all counsel prior to the disclosure of "Confidential" information to those persons and who have signed an Endorsement of Protective Order (the signed document must be filed with the Clerk of this Court by the attorney retaining the person); (c) the parties to this litigation; (d) attorneys representing a party's insurance carrier, provided that they have signed an Endorsement of Protective Order; (e) Court reporters or other official personnel reasonably required for the preparation of transcripts of testimony; and (f) any other person designated as a Qualified Person by Order of this Court after notice and hearing to all parties.

5. **Marking as Confidential.** Documents produced in this action may be designated by any party as "Confidential" information by marking each page of the document "Confidential." In lieu of marking the original, if the original is not produced, the designating

party may mark the copies that are produced or exchanged. Originals shall be preserved for inspection.

6. **Confidential Information Used in Depositions.** Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by any party as "Confidential" information by indicating on the record at the deposition that the testimony is "Confidential" and is subject to the provisions of this Protective Order. Any party may also designate information disclosed or testimony given at a deposition as "Confidential" by notifying all of the parties in writing within 30 days of receipt of the transcript of the specific pages and lines of the transcript which should be treated as "Confidential" or thereafter. Consequently, all deposition transcripts shall be treated as "Confidential" for a period of 30 days after the receipt of the transcript. To the extent possible, the court reporter shall segregate into separate transcripts information designated as "Confidential" with blank, consecutively numbered pages being provided in the main transcript. The separate transcript containing "Confidential" information shall have page numbers that correspond to the blank pages in the main transcript.

7. **Use of Confidential Information.** "Confidential" information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons. All documents or material containing a "Confidential" designation shall be accorded confidential status unless the Court rules otherwise or the parties reach an agreement concerning the confidentiality of the document or material in question. "Confidential" information may not be provided to any attorneys not representing a client in this litigation, except attorneys representing a parties' insurance carrier (which must sign an Endorsement of Protective Order as provided for in paragraph 4 above). The provisions of this Protective Order shall continue in force beyond the

termination of this litigation, and are binding upon the parties, their attorneys, the parties' experts, and the parties' successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, and employees.

8. **Use of Confidential Information in Court Proceedings.** Nothing contained in this Protective Order shall prevent the use of "Confidential" materials at trial or at a deposition, except as limited by other provisions contained in this Protective Order. Similarly, nothing contained in this Protective Order shall prevent the provision of "Confidential" information to the Court. If, however, documents or materials marked as "Confidential" are filed with the Court, the filing party will file those documents or materials under seal with the clerk of the Court.

9. **Unintentional Production without Confidential Designation.** Documents unintentionally produced without designation as "Confidential" may be retroactively designated in accordance with the procedures in the Order and shall be treated as "Confidential" from the date written notice from the designating party was received.

10. **Inadvertently Produced Documents.** Production of a document does not waive any applicable privilege as to that document or any other privileged documents. Documents may be snapped back whenever the party holding the privilege recognizes the documents are privileged, and there shall be no requirement to show that the production was inadvertent. The party seeking to have privileged documents snapped-back shall send a written request to liaison counsel for the party or parties to whom the privileged documents were produced. This notice may be served any time after the party holding the privilege recognizes that the privileged documents have been produced. Within 20 days of receiving a written request for the return of privileged documents, the party or parties in possession of those documents shall return those documents to the requesting party in the original format served, destroy copies made, delete the

images and metadata from any electronic database and shall provide written certification that any and all copies of those documents have been returned or destroyed. The receiving party reserves the right to challenge the producing party's determination of proper scope of discovery.

11. **Inspected Documents.** Documents to be inspected shall be treated as "Confidential" during inspection. At the time of copying, the inspected documents shall be stamped "Confidential" by the producing party.

12. **Challenges to Designation.** In the event a party disagrees with the "Confidential" designation, the objecting party shall first confer with the designating party to determine whether an agreement to change a designation can be reached. After conferring, and if an agreement cannot be reached, either party may seek appropriate relief from the Court.

13. **Notice of the Order.** All parties to this Protective Order have an obligation to make all individuals to whom "Confidential" information is provided aware of the provisions, rights, and obligations of this Protective Order. The signatory shall require all recipients of "Confidential" information to sign an Endorsement of Protective Order. All parties to this Protective Order shall also make a good-faith effort to return or destroy all "Confidential" documents at the conclusion of this litigation.

14. **Highly Confidential Information.** In addition to using the "Confidential" designation, it is also possible that the parties in this litigation could request the protection of highly sensitive business planning or strategic information that could jeopardize the operations or business of parties to this litigation. This information can be marked as "Highly Confidential." This designation is designed to be used sparingly and only to prevent competitive injury that could result to any party in this litigation in the marketplace. In addition to the protections discussed elsewhere in this Protective Order, information designated as "Highly Confidential" shall be treated as follows:

a "Highly Confidential" information shall be maintained in the offices of lead outside counsel for Plaintiff(s) and Defendant(s). Any documents containing the "Highly Confidential" designation must be controlled by the receiving party. Prior to reviewing or obtaining "Highly Confidential" information, a party (other than lead counsel) must sign an Endorsement of Protective Order.

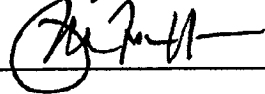
b Each party's lead outside counsel shall maintain a log of all copies of "Highly Confidential" documents that are received. This log must also list all Qualified Persons who receive copies of "Highly Confidential" information. The party who produced "Highly Confidential" information may request a copy of the log provided for in this paragraph at reasonable intervals to ensure that "Highly Confidential" information is being properly protected.

15. Within 120 days after the conclusion of this litigation, any party who has received information or documents designated as "Confidential" or "Highly Confidential" must return to the producing party that information or compilations of that information in the original format served, destroy copies made, delete the images and metadata from any electronic database t.

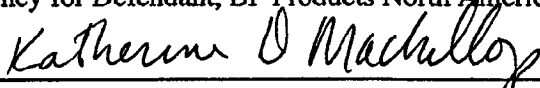
16. The parties to this Protective Order may amend, supplement, or make an agreement concerning this Protective Order as necessary as this case continues.

AGREED:

Attorney for Plaintiffs

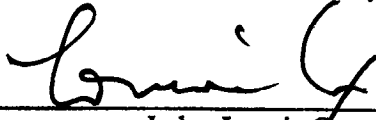


Attorney for Defendant, BP Products North America Inc.



SIGNED this the 13 day of May, 2011

Received on May 13, 2011 at 9:10 a.m.



Judge Lonnie Cox

MASTER FILE NO. 10-UC-001

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TEXAS CITY REFINERY	§	
ULTRACRACKER EMISSION EVENT	§	GALVESTON COUNTY,
LITIGATION	§	TEXAS
	§	
	§	56TH JUDICIAL DISTRICT

ENDORSEMENT OF PROTECTIVE ORDER

I have been provided access, by counsel for one of the parties to the above MDL proceeding, to information marked "Confidential Information." I understand that this designation was made subject to the terms of the Protective Order in this proceeding, and I have been provided a copy of that Order.

I agree that I will be bound by and abide by the terms of the Protective Order entered in this case.

[Signature]

[Printed Name]