

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Civil Action No. 2:13-cv-262</b>
v.	)	
	)	<b>Judge Nannette Jolivette Brown</b>
<b>ATP OIL &amp; GAS CORPORATION;</b>	)	
<b>ATP INFRASTRUCTURE PARTNERS, LP,</b>	)	<b>Mag. Karen Wells Roby</b>
	)	
<b>Defendants.</b>	)	
	)	

**SETTLEMENT AGREEMENT AND FINAL JUDGMENT ON CONSENT**

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency (“EPA”) and the Department of the Interior’s “(DOI”) Bureau of Safety and Environmental Enforcement (“BSEE”), filed a civil environmental enforcement action against ATP Oil & Gas Corporation (“ATP”) and ATP Infrastructure Partners, LP (“ATP-IP”) in the federal District Court for the Eastern District of Louisiana on February 11, 2013. The Complaint alleges the unlawful discharges of oil and an unpermitted chemical dispersant, as well as permit violations, from the offshore oil and gas production platform known as the “ATP Innovator” into the Gulf of Mexico, and seeks civil penalties and injunctive relief pursuant to the Clean Water Act (“CWA”) and injunctive relief pursuant to the Outer Continental Shelf Lands Act (“OCSLA”);

WHEREAS, ATP’s alleged unlawful discharges of pollutants and related violations were discovered by BSEE during an unannounced inspection in March 2012. BSEE issued citations, known as Incidents of Non-Compliance (“INCs”), to ATP for violations of OCSLA regulations

in March 2012. The alleged violations relate to the discharges identified above and failure to properly maintain equipment. The administrative adjudication of the citations is pending in the Department of the Interior's Interior Board of Land Appeals ("IBLA"), Docket No. 2012-205;

WHEREAS, ATP filed with the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") a voluntary petition for relief under Title 11 of the United States Code (the "Bankruptcy Code") on August 17, 2012, which has been administered as *In re: ATP Oil & Gas Corp.*, Case No. 12-36187 (the "Bankruptcy Case");

WHEREAS on June 26, 2014, ATP's bankruptcy case was converted to a case under Chapter 7 of the Bankruptcy Code. Rodney Tow was appointed as the Chapter 7 Trustee and is the representative of the real party in interest in this Settlement Agreement, ATP;

WHEREAS, at all relevant times, ATP was the operator of the ATP Innovator. ATP departed from the ATP Innovator in June 2013 and is no longer in business. The ATP Innovator has ceased operations, and thus also ceased wastewater discharges, and has been removed from activity in the Gulf of Mexico;

WHEREAS, on May 8, 2015, the District Court approved and entered a Partial Consent Decree between the United States and ATP-IP that addressed all causes of action against ATP-IP. As part of the Consent Decree, ATP-IP agreed to pay a civil penalty and perform injunctive relief related to the ATP Innovator and any future operation of the facility;

WHEREAS, on June 22, 2015, the District Court entered a discovery and trial schedule to address the remaining causes of action against ATP;

WHEREAS, the Parties agree that this judicial environmental enforcement action and entry of this judgment in accordance with this Settlement Agreement are exempt from the

Bankruptcy Code's automatic stay provision in 11 U.S.C. § 362(a)(1) based on the police and regulatory exception in 11 U.S.C. § 362(b)(4);

WHEREAS, the United States, on behalf of EPA and BSEE, timely filed a proof of claim (Claim No. 557, the "U.S. Proof of Claim") contending that ATP is liable under the Clean Water Act for judicial civil penalties as alleged in the Complaint filed in the District Court and under OCSLA for administrative penalties for the alleged violations pending at the IBLA;

WHEREAS, the U.S. Proof of Claim asserts the aforementioned judicial and administrative penalty liabilities as general unsecured claims;

WHEREAS, the Trustee does not admit liability to the United States for the violations alleged in the Complaint, the INCs, or the U.S. Proof of Claim;

WHEREAS, the Trustee disagrees with the United States' contentions and, but for this Settlement Agreement, would dispute, in whole or in part, the judicial and administrative enforcement actions and the U.S. Proof of Claim;

WHEREAS, the United States and ATP, through ATP's Chapter 7 Trustee, have engaged in arms-length and good-faith negotiations to resolve the claims against ATP;

WHEREAS, ATP, through ATP's Chapter 7 Trustee and upon approval of the Bankruptcy Court, has agreed to an allowed unsecured claim for BSEE's administrative penalty action that is pending at the IBLA, in the amount of \$3.85 million.

WHEREAS, the Trustee and the United States wish to resolve their remaining differences with respect to this judicial action, as provided herein;

WHEREAS, the Trustee's consent to enter into this Settlement Agreement on behalf of ATP was conditioned on approval of the Bankruptcy Court, and the Trustee promptly sought

approval to enter into this Settlement Agreement. After due consideration, the Bankruptcy Court authorized the Trustee to enter into this Settlement Agreement with the United States.

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving this case;

WHEREAS, the Parties, and the District Court by approving it, recognize that this Settlement Agreement is fair, adequate, reasonable, and consistent with applicable law;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the Parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

#### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of the United States' action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Sections 309(b) and 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. §§ 1319(b), 1321(b)(7)(E) and (n); and 43 U.S.C. § 1350(a) (OCSLA). The Court has personal jurisdiction over the Parties to this Consent Decree.

2. Venue lies in this judicial district pursuant Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); 43 U.S.C. § 1350(a) (OCSLA); and 28 U.S.C. §§ 1391 and 1395.

3. For purposes of this Settlement Agreement, or any action to enforce this Agreement, the Parties consent to the Court's jurisdiction over this Agreement or such action and over ATP and consent to venue in this judicial district.

#### **II. DEFINITIONS**

4. Terms used in this Settlement Agreement that are defined in the CWA, or in

regulations promulgated thereunder, shall have the meanings assigned to them therein, unless otherwise provided in this Settlement Agreement. Whenever the terms set forth below are used in this Settlement Agreement, the following definitions shall apply:

- a. “Allowed” shall mean a claim that is not subject to objection and is being allowed in accordance with the provisions of the Bankruptcy Code on a final basis.
- b. “ATP” shall mean defendant ATP Oil & Gas Corporation.
- c. “BSEE” shall mean the United States Department of the Interior’s Bureau of Safety and Environmental Enforcement and any of its successor bureaus or agencies.
- d. “Complaint” shall mean the complaint filed by the United States in this action.
- e. “Settlement Agreement” or “Agreement” shall mean this document.
- f. “CWA” shall mean the Clean Water Act.
- g. “DOI” shall mean the United States Department of the Interior.
- h. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- i. “Facility” shall mean the floating oil and gas production platform known as the “ATP Innovator.”
- j. “OCSLA” shall mean the Outer Continental Shelf Lands Act.
- k. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- l. “Parties” shall mean the United States, on behalf of EPA, BSEE, and DOI, and the Trustee on behalf of ATP.

m. “Plaintiff” shall mean the United States, on behalf of EPA and DOI.

n. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

o. “Trustee” shall mean ATP’s Chapter 7 Trustee, Rodney Tow, or any successor Trustee.

p. “United States” shall mean the United States of America.

### **III. JUDICIAL CIVIL PENALTY JUDGMENT AND CLAIM**

5. A final judicial civil penalty judgment (the “Civil Penalty Judgment”) is entered for the United States against ATP in the amount of thirty-eight million dollars (\$38,000,000.00) for the alleged Clean Water Act violations asserted by the United States in the Complaint. The United States will seek recovery of the Civil Penalty Judgment solely through the U.S. Proof of Claim in the Bankruptcy Case, in compliance with Section 362(b)(4) of the Bankruptcy Code, 11 U.S.C. § 362(b)(4). The full amount of the Civil Penalty Judgment shall be treated in the Bankruptcy Case as an Allowed unsecured claim for penalties with respect to the alleged Clean Water Act violations asserted by the United States in the Complaint and set forth in the U.S. Proof of Claim, subject, however, to the provisions of Section 726(a)(4) of the Bankruptcy Code, 11 U.S.C. § 726(a)(4).

6. Forty-seven percent of any distributions in the Bankruptcy Case in respect of the United States’ Allowed claim for the Civil Penalty Judgment, up to eighteen million dollars (\$18,000,000.00), shall be attributable to Count Three of the Complaint, alleging violations of Section 311(b)(3) of the Clean Water Act, and shall be deposited in the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

7. The rest of the distributions in the Bankruptcy Case in respect of the United States' Allowed claim for the Civil Penalty Judgment shall be attributable to Counts One and Two of the Complaint, alleging violations of Sections 301 and 309 of the Clean Water Act and ATP's discharge permit, and shall be deposited in the United States Treasury.

**IV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

8. This Settlement Agreement, upon entry, resolves the judicial civil penalty and injunctive relief causes of action of the United States against ATP for the violations alleged in the Complaint filed in this action. This Agreement shall constitute a final judgment of the Court as to the United States and ATP for the causes of action alleged in the Complaint. This is an agreed consent judgment, and the Court has made no findings of liability against ATP.

9. This Settlement Agreement constitutes a final judgment under Federal Rules of Civil Procedure 54 and 58, and it shall constitute an enforceable judgment in accordance with Rule 69 of the Federal Rules of Civil Procedure and the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable authority.

10. The United States reserves all legal and equitable claims for, including but not limited to, criminal liability, other claims filed in the Bankruptcy Case, and other appropriate relief. This Settlement Agreement shall not be construed to limit the rights of the United States to obtain additional relief under any federal law, state law, implementing regulations of federal or State law, or permit conditions, except as expressly specified in this Agreement.

11. This Settlement Agreement does not limit or affect the rights of the Trustee or of the United States against any third parties that are not party to this Agreement, including the Trustee's and/or ATP's claims against BP Exploration & Production, Inc., BP America

Production Company, BP p.l.c., Halliburton Energy Services, Inc., Sperry Drilling Services, Transocean Ltd., Triton Asset Leasing GmbH, and/or any other party that is alleged to have caused damages as alleged by the Trustee and/or ATP in Civil Action No. 13-cv-01962, *ATP Oil & Gas Corporation v. BP Exploration & Production, Inc., et al.*, in the United States District Court for the Eastern District of Louisiana. Nor does this Settlement Agreement limit or affect the rights of third parties that are not party to this Agreement against ATP or the Trustee, except as otherwise provided by law.

12. The Trustee hereby covenants not to sue and agrees not to assert any claims related to the violations alleged in the Complaint against the United States pursuant to the CWA, the Oil Pollution Act, or any other federal law, state law, or regulation including, but not limited to, any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund, or pursuant to any other provision of law.

13. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action or defenses to, any third party not party to this Settlement Agreement.

14. The Parties shall bear their own costs related to this action, including attorneys' fees.

15. The District Court shall retain jurisdiction over the subject matter of this Settlement Agreement and the Parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

16. The Trustee's consent to enter into this Settlement Agreement on behalf of ATP was conditioned on approval of the Bankruptcy Court. The Trustee promptly sought approval to enter into this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code. After due consideration, the Bankruptcy Court authorized the Trustee to enter into this Settlement Agreement.

#### **VI. PUBLIC PARTICIPATION**

17. Upon approval of the Bankruptcy Court for the Trustee to enter into this Settlement Agreement, this Settlement Agreement shall be lodged with the District Court and shall thereafter be subject to a 30-day period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the District Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is improper or not in the public interest.

18. The Trustee agrees not to oppose entry of this Settlement Agreement by the District Court or to challenge any provision of the Agreement, unless the United States has notified the Trustee in writing that it no longer supports entry of the Agreement. The Trustee consents to final approval and entry of this Settlement Agreement without further notice.

19. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 17, or (b) the Bankruptcy Court does not authorize the Trustee to enter

into the Agreement: (i) this Settlement Agreement shall be null and void, and the Parties hereto shall not be bound under the Settlement Agreement or under any documents executed in connection herewith; (ii) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (iii) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

**VII. INTEGRATION**

20. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to this settlement and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Settlement Agreement or the settlement it represents, nor shall it be used in construing the terms of this Agreement.

21. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

22. This Settlement Agreement may not be amended except by a writing signed by all the Parties and approved by the District Court.

AS AGREED AND STIPULATED TO BY THE PARTIES, IT IS SO ORDERED ON THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

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UNITED STATES DISTRICT JUDGE

The undersigned party hereby enters into this Settlement Agreement in *United States v. ATP Oil & Gas Corp. et al.*, Case No. 2:13-cv-262 (E.D. La.).

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

  
JOHN C. CRUDEN  
Assistant Attorney General  
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Environment and Natural Resources Division

  
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**FOR PLAINTIFF UNITED STATES OF AMERICA (continued):**



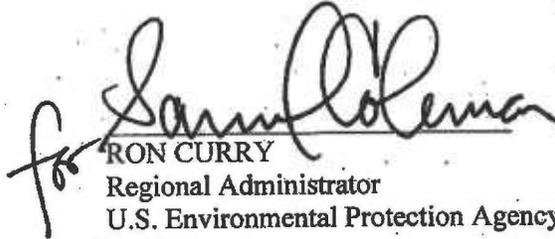
K. JACK HAUGRUD  
Acting Principal Deputy Solicitor  
United States Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240



BRIAN SALERNO  
Director  
Bureau of Safety and Environmental Enforcement  
United States Department of the Interior  
1849 C Street, N.W.  
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**FOR PLAINTIFF UNITED STATES OF AMERICA (continued):**

A handwritten signature in black ink, appearing to read "Ron Curry", written over a horizontal line. To the left of the signature, the word "for" is written vertically in a cursive style.

RON CURRY  
Regional Administrator  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

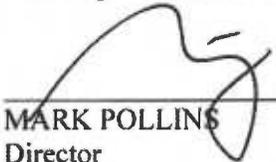
A handwritten signature in black ink, appearing to read "Tucker Henson", written over a horizontal line.

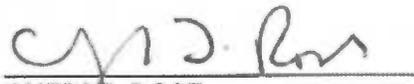
TUCKER HENSON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200, 6RC-S  
Dallas, Texas 75202-2733

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**FOR PLAINTIFF UNITED STATES OF AMERICA (continued):**

  
\_\_\_\_\_  
SUSAN SHINKMAN  
Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
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\_\_\_\_\_  
MARK POLLINS  
Director  
Water Enforcement Division  
Office of Civil Enforcement  
United States Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
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\_\_\_\_\_  
CHERYL ROSE  
Senior Attorney  
Water Enforcement Division  
Office of Civil Enforcement  
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1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

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**FOR DEFENDANT ATP OIL & GAS CORP.:**

By:



Rodney Tow  
Chapter 7 Trustee for the Bankruptcy Estate of ATP Oil & Gas Corporation  
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