

Khatri, Paresh, Env. Health

From: Carmel, Charles [charles.carmel@bp.com]
Sent: Wednesday, May 05, 2010 2:26 PM
To: Khatri, Paresh, Env. Health
Cc: Goldberg, Lori A.; Reinhart, Douglas S
Subject: RE: ARCO station at 899 Rincon Avenue, Livermore: Access Agreement for #771, Livermore, CA

Thanks Paresh for your quick response. We will let the property own know.

Chuck Carmel
Environmental Business Manager

Atlantic Richfield Company
(a BP affiliated company)
P.O. Box 1257
San Ramon, CA 94583
Phone: 925.275.3803
Fax: 925.275.3815
Email: carmecp@bp.com

From: Khatri, Paresh, Env. Health [mailto:paresh.khatri@acgov.org]
Sent: Wednesday, May 05, 2010 2:13 PM
To: Carmel, Charles
Cc: Goldberg, Lori A.; Reinhart, Douglas S
Subject: RE: ARCO station at 899 Rincon Avenue, Livermore: Access Agreement for #771, Livermore, CA

Hello Chuck,

I am quite certain that I did not state that the wells would only be needed until 12/1/2010. I stated that there is no way to determine the length of time because site conditions are unknown until data is collected. Once data is collected, there could be at least two scenarios; the worst case scenario being that additional characterization/cleanup may be necessary; or best case scenario that no additional characterization or cleanup is needed. I did not mean to imply that the best case scenario will prevail and no additional site characterization including monitoring will be necessary.

I hope that this clarifies my conversation with Ms. Noma (the adjacent property owner's attorney).

Sincerely,

Paresh C. Khatri
Hazardous Materials Specialist
Alameda County Environmental Health
Local Oversight Program
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

Phone: (510) 777-2478
Fax: (510) 337-9335

E-mail: Paresh.Khatri@acgov.org

<http://www.acgov.org/aceh/lop/lop.htm>

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From: Carmel, Charles [mailto:charles.carmel@bp.com]
Sent: Wednesday, May 05, 2010 1:43 PM
To: Khatri, Paresh, Env. Health
Cc: Goldberg, Lori A.; Reinhart, Douglas S; Carmel, Charles
Subject: FW: ARCO station at 899 Rincon Avenue, Livermore: Access Agreement for #771, Livermore, CA

Hi Paresh:

We are still having a difficult time with the property owner, specifically the time period. As stated below, did you tell this attorney that we should be done with the wells by 12/1/2010? It will take 3 months just to drill the site and then prepare a report. Basically, the wells need to be on the property until the county or lead agency allows the wells to be destroyed. Can you let me know or feel free to contact the attorney/property owner about clarifying this issue?

We are providing additional access fee to \$2500. We can not move forward when we know it will take more time to comply then what is being offered by the property owner.

Thanks for your time in this matter.

Chuck Carmel
Environmental Business Manager

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(a BP affiliated company)
P.O. Box 1257
San Ramon, CA 94583
Phone: 925.275.3803
Fax: 925.275.3815
Email: carmecp@bp.com

From: Christine Noma [mailto:CNoma@wendel.com]
Sent: Tuesday, May 04, 2010 6:11 PM
To: Goldberg, Lori A.
Cc: Carmel, Charles ; Reinhart, Douglas S
Subject: RE: ARCO station at 899 Rincon Avenue, Livermore: Access Agreement for #771, Livermore, CA

Lori,

I believe my client is out of town since I haven't been able to reach him. So as to keep this moving ahead, attached is the revised agreement. The only changes that I made to your draft were some minor typos and to reject the indefinite term and limit this to a right of access until December 1, 2010. Based upon my discussions with Paresh Khatri, he expects that ARCO would be done with its investigation work by then. If ARCO need to remediate or conduct long term monitoring, we would need to separately negotiate an amendment to this access agreement. Therefore, from a practical perspective and the perspective of the people doing the field work, this limited term should work.

Chris

From: Goldberg, Lori A. [mailto:Lori.Goldberg@bp.com]
Sent: Thursday, April 29, 2010 10:00 AM
To: Christine Noma
Cc: Carmel, Charles ; Reinhart, Douglas S
Subject: RE: ARCO station at 899 Rincon Avenue, Livermore: Access Agreement for #771, Livermore, CA

Chris:

Section 4(b) of the Agreement states that ARCO will be responsible for clean up of any contamination on the Livermore property that is as a result of its operations at the nearby service station site. Should Livermore Center commence refinancing, ARCO would be amenable to providing the lender a written assurance of its obligations.

*Lori Goldberg
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BP America Inc.
4101 Winfield Road
Mail Code 4 West
Warrenville, IL 60555
(630) 821-2434
(630) 821-3406 (fax)
e-mail: lori.goldberg@bp.com*

From: Christine Noma [mailto:CNoma@wendel.com]
Sent: Wednesday, April 28, 2010 4:34 PM
To: Goldberg, Lori A.
Cc: Carmel, Charles ; Reinhart, Douglas S
Subject: RE: ARCO station at 899 Rincon Avenue, Livermore: Access Agreement for #771, Livermore, CA

Lori,

The revisions are for the most part acceptable. However, the Access Agreement can not be for an "unlimited" or "unspecified term". Since last year, we have been advising ARCO of the need to resolve this issue quickly since the Livermore Center will need to commence re-financing of its property. I will be discussing with the owners what is the "longest" length of access that can be provided. If wells are installed, it is not uncommon for groundwater monitoring to extend for years. If that happens in this case, we will need ARCO to work with the Livermore Center in providing appropriate assurances to its lender that ARCO will be responsible for its contamination on the property. At such time, a separate or supplemental agreement may be required. Of course, its our mutual hope that "nothing" will be found on the Livermore Center so we can avoid that problem

I have asked the property owner to let me know when the refinancing application will be submitted and what would be his estimate for when the investigation work would need to be completed.

Chris

Christine K. Noma
Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607

Direct: (510) 622-7634
Fax: (510) 808-4679
Email: cnoma@wendel.com

From: Goldberg, Lori A. [mailto:Lori.Goldberg@bp.com]
Sent: Wednesday, April 28, 2010 9:52 AM
To: Christine Noma
Cc: Carmel, Charles ; Reinhart, Douglas S
Subject: FW: ARCO station at 899 Rincon Avenue, Livermore: Access Agreement for #771, Livermore, CA

Chris:

In response to your e-mail below, attached is a revised Access Agreement wherein BP agrees to pay a one-time fee of \$2500. If the Agreement meets with your approval, please have your client execute two (2) originals and forward both to me for signature by BP.

Thank you--

Lori Goldberg
Senior Paralegal - Health, Safety, Security & Environment
BP America Inc.
4101 Winfield Road
Mail Code 4 West
Warrenville, IL 60555
(630) 821-2434
(630) 821-3406 (fax)
e-mail: lori.goldberg@bp.com

From: Christine Noma [mailto:CNoma@wendel.com]
Sent: Friday, April 16, 2010 12:29 PM
To: dehloptoxic, Env. Health; Khatri, Paresh, Env. Health
Cc: MCassa@waterboards.ca.gov; Dizon, Cherylanne, Zone 7; Drogos, Donna, Env. Health; Carmel, Charles ; rich@rathbunproperties.com
Subject: RE: ACEH Correspondence for RO200

Dear Paresh,

A quick response, the County has misunderstood the monetary request: Mr. Rathbun has requested EITHER a \$2,500 flat access fee (for the term of the reasonable monitoring/investigation work, up to a year) OR \$2,500 as reimbursement of actual legal costs. NOT BOTH. So, the total requested is only \$2,500.

The format for the right of access will follow that used with ExxonMobil, Shell, and other oil companies.

Thank you for your assistance in getting ARCO/BP to the table to move this forward.

Regards,
Chris Noma

Christine K. Noma
Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607
Direct: (510) 622-7634

Fax: (510) 808-4679
Email: cnoma@wendel.com

From: dehloptoxic, Env. Health [mailto:deh.loptoxic@acgov.org]
Sent: Friday, April 16, 2010 9:02 AM
To: 'charles.carmel@bp.com'; 'rich@rathbunproperties.com'
Cc: Christine Noma; 'MCassa@waterboards.ca.gov'; Dizon, Cherylanne, Zone 7; Drogos, Donna, Env. Health; Khatri, Paresh, Env. Health
Subject: ACEH Correspondence for RO200

Dear Responsible Parties,

Attached is Alameda County Environmental Health's (ACEH) correspondence for your case, RO0000200.

Please add our e-mail address to your address book to prevent future e-mails from being filtered as spam.

Sincerely,

ACEH

This e-mail message is confidential, is intended only for the named recipient(s) above, and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you have received this message in error, or are not a named recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this message in error, please immediately notify the sender by return e-mail and delete this e-mail message from your computer. Thank you.

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 Please consider the environment before printing this e-mail, thank you.

AGREEMENT FOR RIGHT OF ENTRY AND INDEMNIFICATION

LIVERMORE CENTER, LLC. (“Grantor”) hereby authorizes Atlantic Richfield Company (a BP affiliated company) (“ARCO”) and its environmental consultant, Broadbent & Associates, Inc. (an independent contractor hired by ARCO) to enter the property located at 783 Rincon Avenue, Livermore, California, to perform Environmental Investigation Activities, as described below.

RECITALS

A. Grantor is the owner of that certain real property located at 783 Rincon Avenue, Livermore, California (hereinafter referred to as the “Property”);

B. Petroleum hydrocarbons and other pollutants and contamination (“Contamination”) may be present on or under the Property which ARCO is desirous of investigating by drilling monitoring wells and conducting periodic sampling of the ground water within the monitoring wells and installing borings as described in the Initial Site Conceptual Model and Soil and Ground-Water Investigation Work Plan, Atlantic Richfield Station #771, dated February 2009, and the Addendum Soil and Ground-Water Investigation Work Plan, Atlantic Richfield Station #771, dated April 29, 2009 (“Environmental Investigation Activities”);

C. It is the parties’ intentions that ARCO will be responsible for cleaning up the Contamination on the Property, provided Contamination resulted from spills, leaks, or was discharged as a result of ARCO’s operations (“ARCO Operations”) at the nearby parcel located at 899 Rincon Avenue, Livermore, California (the “Station Site”) or caused by ARCO, its agents or employees in engaging in any Environmental Investigation Activities;

D. The performance of the Environmental Investigation Activities will be at no cost or expense to Grantor, or to their licensees, assignees, or agents, and it is recognized that all work will be performed by ARCO or ARCO’s agent;

E. It will be necessary for ARCO personnel, or persons performing under contract for ARCO, to enter the Property for the purpose of conducting the Environmental Investigation Activities; and

F. It is the desire and intention of ARCO and Grantor to make this mutual agreement with respect to the Environmental Investigation Activities (“Agreement”).

1. GRANT OF LICENSE. Grantor, and their licensees, assignees or agents of Grantor, hereby grant to ARCO, its contractors, subcontractors, and their employees and agents, a temporary license to enter the Property for the purposes necessary for the performance of the Environmental Investigation Activities described herein, and the right to perform all acts necessary in connection therewith (“Grant”). Such license to enter shall continue in force until the Environmental Investigation Activities are completed to the satisfaction of ARCO and any applicable governmental agencies; provided, however, in no event shall the term of the license herein granted extend later December 1, 2010, unless Grantor, agrees in writing and such

approval shall not be unreasonably withheld to extend the term of the license (the "Term"). Upon the expiration of the Term, ARCO shall have no further right to enter the Property for any purpose whatsoever and the license herein granted automatically shall be deemed to be revoked without the necessity of any action or notice by Grantor.

2. NO INTERFERENCE. No entry onto the Property shall unreasonably interfere with the Grantor's business and operations on the Property. All entries onto the Property and uses thereon shall be conducted only at reasonable times. All parties entering the Property pursuant to the Terms of this license shall exercise due care in performing their work on the Property and shall comply with all applicable local, state and federal laws, ordinances, rules and regulations.

3. REPAIR AND REPLACEMENT OF PROPERTY. Upon completion of the Environmental Investigation Activities and all acts necessary in connection therewith, ARCO agrees to promptly restore the Property, including without limitation, surface, subsurface, and any improvements, to the same condition existing immediately prior to the commencement of any such actions by ARCO or those acting on ARCO's behalf. ARCO shall be liable to Grantor for any loss, claim, damage or liability for Property damage which arises or occurs directly out of Environmental Investigation Activities and all acts necessary in connection therewith performed by ARCO on the Property. To the extent that Grantor incurs any costs to repair, replace or restore the Property, ARCO and its contractors shall be given at least ten days, following written notice, to repair or cure the damages caused as a result of the Environmental Investigation Activities and all acts necessary in connection therewith ~~Work~~. If ARCO fails to cure any damage to the Property caused by its Environmental Investigation Activities and all acts necessary in connection therewith, ~~Work~~ then ARCO agrees to reimburse such costs within 30 days after receipt of an invoice for such costs. The covenants and agreements contained in this Section 3 shall survive the expiration or termination of the Term.

4. INDEMNIFICATION. As a condition to granting ARCO this license to enter onto the Property, ARCO hereby agrees to protect, defend, indemnify and hold Grantor harmless from and against any and all claims brought by a third party or governmental entity for physical injuries to the Property or related losses, claims (including third party claims), demands, causes of action, costs, damages, penalties, fines, judgments, reasonable consultants' and experts' fees and costs, expenses (including reasonable attorneys' fees), losses or liabilities, whenever made or incurred, resulting from any damage or injury to persons or property arising out of or in connection with the sole acts or omissions of ARCO or those of its authorized representatives in performing the Environmental Investigation Activities on the Property or resulting from spills, leaks, or discharges related to ARCO Operations at the Station Site. Where claims result from the joint negligence or willful misconduct of Grantor and any other party including ARCO and its environmental consultant, ARCO's duty of indemnification shall be in proportion of ARCO's and its environmental consultant's allocable share of joint negligence or willful misconduct.

(a) At no time shall ARCO, or any of its authorized representatives, incur any indebtedness or any expense which may be chargeable to Grantor and/or become an encumbrance or lien on the Property and ARCO hereby agrees to protect, defend, indemnify and hold Grantor harmless therefrom. The covenants and agreements contained in this Section 4 shall survive the expiration or termination of the Term

(b) ARCO shall be responsible for the Clean Up of Contamination that arises from and is related to ARCO Operations and is required or ordered by a federal, state or local court, governmental entity, unit department, or agency including the RWQCB ("Agency"). ARCO will Clean Up in accordance with standards prescribed by such Agency. The term "Clean Up" shall include, but not be limited to, the investigation of Contamination, the remediation of Contamination, and the restoration of areas damaged by removal of Contamination. ~~ARCO shall also pay the actual expenses incurred by Grantor as a result of residual soil or groundwater Contamination which are allowed to remain on the Property by the Agency after the Clean Up.~~

5. MONTHLY ACCESS FEE: In further consideration of this Grant, ARCO agrees to pay Grantor a one-time fee of \$2,500.00 for the right to enter the Property and perform the Environmental Investigation Activities and all acts necessary in connection therewith for the period of the Term. ~~install up to two monitoring wells and to conduct groundwater monitoring for a period of 6 months, but in no event beyond the Term. In the event that the Agency requires additional work, including but not limited to remediation work on the Property, the monthly access fee shall be renegotiated and shall be based upon the extent of the Property to be used and/or occupied by ARCO and the extent of interference with the use of the Property for such things as parking, ingress and egress, noise, and traffic.~~

6. LICENSE PERSONAL. The license herein granted is personal to ARCO and to its environmental consultant, Broadbent, and the privileges appurtenant thereto shall not inure to ARCO's transferees, successors or assigns and any purported transfer or assignment of the license hereby granted shall be void.

7. INSURANCE. ARCO provides a program of insurance which will insure ARCO's obligations and liabilities under this Agreement.

8. INDEPENDENT PARTY; REPORTING INFORMATION. In performing the Environmental Investigation Activities and all acts necessary in connection therewith ~~Work~~ contemplated by this Agreement, it is understood and agreed that ARCO will act as an independent party and not as an agent or authorized representative of Grantor. ARCO shall have the obligation to disclose or report to Grantor any information to and from the governmental agencies concerning or relating to the Environmental Investigation Activities, and Grantor shall have the right to request, in writing, any of the information or reports resulting from the Environmental Investigation Activities that are performed on the Property. The covenants and agreements contained in this Section shall survive the expiration or termination of the Term.

9. NO FURTHER RIGHTS. Nothing in this Agreement shall be construed as giving ARCO any right in or to the Property except as specifically provided herein. ARCO agrees that such entry onto the Property shall be limited to the extent necessary for the performance of the Environmental Investigation Activities and all acts necessary in connection therewith ~~Work~~ undertaken by ARCO for the purposes expressed herein.

10. SURVIVAL. The expiration or termination of this Agreement shall not affect any rights, claims or causes of action (in whole or in part) based on this Agreement, all of which shall survive the expiration or termination of this Agreement.

11. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, except that this Agreement shall be given fair and reasonable construction in accordance with the intention of the parties and without regard to or aid of Section 1654 of the California Civil Code.

12. AMENDMENTS. This Agreement shall not be modified or amended except in writing and signed by the parties hereto.

13. TEMPORARY LICENSE. This Agreement is intended and shall be construed only as a temporary license to enter and conduct the Environmental Investigation Activities upon the Property and not as a grant of easement or any other interest in the property.

14. SUCCESSORS. This Agreement shall be binding upon the parties hereof and their respective successors, transferees, representatives, executors, heirs, and assigns; provided, however, that nothing herein shall be construed as authorizing ARCO to transfer or assign its rights hereunder in violation of Section 6 hereof.

15. RECITALS; CAPTIONS. The recitals contained above are by this reference incorporated herein and made a part hereof. The captions used in this Agreement are for reference purposes and shall not be used in interpreting the provisions of this Agreement.

16. AUTHORITY. Each person executing this Agreement on behalf of a party to this Agreement hereby represents and warrants that he or she has authority to execute this Agreement on behalf of such party and the terms, covenants and obligations contained in this Agreement, whether express or by reference, are binding upon such party.

17. ATTORNEY'S FEES. Should litigation, arbitration or any other legal proceeding be commenced between the parties to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable sums as attorney's fees and costs in such proceeding, including, but not limited to, expert witness fees, the attorneys' fees and costs of any appeal, and collection costs, as determined by the court, arbitrator, hearing officer or other applicable tribunal.

18. RIGHTS NO EXCLUSIVE. The rights and remedies granted to Grantor and hereunder by ARCO are in addition to any and all other rights and remedies available to Grantor or at law or in equity, and shall not in any way whatsoever be interpreted as a limitation on any such legal and/or equitable rights and remedies that Grantor or otherwise possesses.

19. EFFECTIVE DATE. This Agreement is effective on the date of the ~~Work~~ commencement of the Environmental Investigation Activities.

20. COUNTERPART. This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed an original. In the execution of this Agreement, faxed or "pdf" electronic signatures shall be considered original signatures.

21. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties with respect to the matters contained in it, and no prior agreement or understanding pertaining to any such matters shall be effective for any purpose.

IN WITNESS WHEREOF, ARCO and Grantor have executed two (2) original copies of this Agreement on the dates specified immediately adjacent to their respective signatures.

Executed on:

ATLANTIC RICHFIELD COMPANY (a BP affiliated company)

Date

By: _____
Name:
Its:
Title:

“Grantor”

LIVERMORE CENTER, LLC.

Date

By: _____
Richard Rathbun
Managing Partner