

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Seattle Public Utilities Real Property Services  
Post Office Box 34018  
Seattle, WA 98124-4018

**EASEMENT AGREEMENT No. 15-087-A**

Reference No. of Document Released:	None
Grantor:	BP West Coast Products, LLC
Grantee:	City of Seattle
Legal Description (abbreviated):	Portion of Lot 49, Block 398, Plat of Seattle Tidelands
Assessor's Tax Parcel ID No.	7666701680

This Easement Agreement ("Easement Agreement") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2015 by and between **BP West Coast Products LLC ("BP")**, a Delaware corporation ("Grantor"), the Port of Seattle, a Washington municipal corporation ("Port"), and the City of Seattle, a Washington municipal corporation, acting by and through its Seattle Public Utilities ("Grantee").

**RECITALS**

WHEREAS, construction for the Port's Terminal 18 Redevelopment Project (City of Seattle Master Use Permit Number 9700752) included construction, reconstruction and relocation of various Seattle Public Utilities municipal utility facilities throughout Terminal 18; and

WHEREAS, in conjunction with the Terminal 18 Redevelopment Project, the Port petitioned the City of Seattle to vacate portions of 11<sup>th</sup> Avenue SW, 13<sup>th</sup> Avenue SW, SW Florida Street, and SW Hanford Street ("Streets"), as more particularly described in the vacation petition to the City of Seattle Clerk File No. 301929; and

WHEREAS, Grantor owns King County Assessor's Tax Parcel Number 7666701680, the real property abutting a portion of 11<sup>th</sup> Avenue SW, which was realigned during the Terminal 18 Redevelopment Project ("Grantor's Property"); and

WHEREAS, Grantee owns and operates municipal water and stormwater drainage utility facilities, as more particularly shown on the construction record drawings ("Sheets OW-

C38, OS-C-37, OS-C-38 of Vault Plan No. 880-20), including all necessary and convenient appurtenances ("Facilities"), which were relocated along the boundary between the realigned right-of-way of 11<sup>th</sup> Ave SW and Grantor's Property; and

WHEREAS, Grantee's vacation of the Streets is conditioned, in part, on the Grantee being granted a satisfactory utility easement for the Facilities through a portion of Grantor's Property; and

WHEREAS, Grantor desires to fulfill the above-stated conditions to complete the vacation of Streets on Terminal 18.

NOW, THEREFORE, the parties agree as follows:

### **EASEMENT**

In consideration of the Grantee's vacation of the Streets and other good and valuable consideration, receipt of which are hereby acknowledged, Grantor hereby conveys and grants, to Grantee, a nonexclusive permanent easement for the construction, operation and maintenance of the Facilities over, under, through, across and upon the portion of Grantor's Property, as shown on Sheet No. 1 and as legally described on Sheet No. 2 of **Exhibit A**, attached hereto and incorporated herein ("Easement Area").

This Easement Agreement shall include only such rights in the Easement Area as shall be necessary for the inspection, construction, reconstruction, alteration, operation, improvement, maintenance, repair and replacement of, and additions to the Facilities, and access thereto ("Purposes"). Grantor, its successors and assigns, shall have the right to use the Easement Area in any way and for all purposes which do not unreasonably interfere with the easement rights for the Purposes herein granted to Grantee and which are consistent with the terms and conditions of this Easement Agreement.

Grantor's Property is encumbered by that certain Consent Decree, Civil Action No. C95-1495-Z as entered in the United States District Court Western District of Washington, Seattle Division, and recorded on August 21, 1996 at Recording Number 9608211528, in the Recorder's Office of King County, State of Washington, and is subject to the access obligations referenced in Paragraph V.E.25 of the Consent Decree.

Grantor's Property is additionally encumbered by a Consent Decree entered in the Superior Court of the State of Washington in and for King County, Case No. 00-2-05714-8SEA on March 24, 2000, and is subject to the terms, conditions, restrictions, and access obligations referenced therein, as disclosed by that certain Restrictive Covenant recorded on June 15, 2000 at Recording Number 20000615001337, in the Recorder's Office of King County, State of Washington. To the extent there are terms, restrictions, or obligations, other than the restrictions in Section 1 of the Restrictive Covenant, related to this Consent Decree or Restrictive Covenant that are applicable to this Easement Agreement or Grantee, the parties agree to the environmental protocols attached and incorporated herein as **Exhibit B**.

Except as stated above, this Easement Agreement does not convey any obligations of either Consent Decree or the Restrictive Covenant to Grantee and Grantor shall continue meeting all obligations under each Consent Decree and the Restrictive Covenant at no expense to Grantee.

**A. Grantee's Purposes, Uses and Obligations**

1. Grantee, and its employees, contractors and consultants shall have the right to enter upon and use the Easement Area at all times for the Purposes herein.
2. Grantee's rights shall include the right to temporarily limit or eliminate any parking or storage of vehicles, containers, equipment and similar items or personal property (collectively "Grantor's Equipment") within the Easement Area, when in its discretion, such temporary limit is necessary for the Purposes under this Easement Agreement. To the extent practicable, Grantee will endeavor to minimize the impact to Grantor's operations and provide Grantor reasonable advance notice of the temporary limits, including the estimated length of time the limit will be required. Except in Emergency circumstances, the notice provided to Grantor will be at least ten (10) days before equipment removal is required. Grantor will remove any Grantor's Equipment from within the affected portion of the Easement Area, at Grantor's expense. If the Grantor has not removed Grantor's Equipment by the effective date included in the notice, the Grantee shall have the right, but not the obligation, to remove Grantor's Equipment from within the Easement Area. Grantor agrees to reimburse Grantee for any reasonable costs incurred to remove Grantor's Equipment from the Easement Area under this section within 30 days of receiving an invoice. Grantee will provide notices or invoices to the Grantor pursuant to this section as follows, or as may be changed in writing from time to time:

Grantor: BP West Coast Products, LLC  
600 SW 9<sup>th</sup> Street, Suite 275  
Renton, WA 98059

with copy to:

BP West Coast Products, LLC  
Terminal Manager  
1652 SW Lander St.  
Seattle, WA 98134

3. In the event that Grantee determines that damage to or destruction of Grantee's Facilities has occurred or is about to occur, requiring immediate access to the Easement Area or Facilities ("Emergency"), Grantee may take such action as is reasonable under the circumstances to protect the public's health, safety and welfare, including immediate removal of Grantor's Equipment. Grantee will endeavor to notify Grantor of the Emergency and necessary actions as soon as

practicable. Grantor shall cooperate with the reasonable requests of Grantee in Emergency situations. Grantor shall ensure Grantee with unrestricted Emergency access to any portions of the Easement Area that may be inaccessible to the public. Emergency notices shall be made to Grantor in the same manner as section A.2 above.

4. Grantee, at its own expense, shall have the right to replace and improve any Facilities within the Easement Area with utility facilities of the same or larger diameter and capacity, or functionality; provided that, upon completion, any new Facilities will not unreasonably block, obstruct, hinder or otherwise prevent access over and across the Grantor's Property.
5. Grantee agrees to restore the Easement Area following any activity by Grantee that disturbs the Easement Area, to the condition it was in immediately prior to Grantee's work being commenced, except that in the event Grantee must remove or otherwise damage the retaining wall and handrail along the west edge of the sidewalk within the Easement Area, restoring that portion of the Easement Area will be at the Port's expense.

**B. Grantor's Obligations and Activities in Easement Area**

1. Except for purposes of maintenance, improvement and/or replacement of pre-existing facilities, Grantor agrees that, it will not knowingly permit any other utility facility, including without limitation, conduits, cable, pipelines, vaults, poles, posts, whether public or private, to be installed within five (5) horizontal feet of the Facilities or any crossings over the Easement Area that are not perpendicular or do not maintain a minimum vertical clearance of eighteen (18) inches from all of the Facilities.
2. Grantor and its employees, agents, lessees, licensees or invitees may temporarily place or store Grantor's Equipment in, or move such items across, any part of the Easement Area; provided that the combined weight of Grantor's Equipment does not exceed American Association of State Highway and Transportation Officials ("AASHTO") H-20 or HS-20 weight loading.
3. Grantor shall not, and shall not permit its employees, agents, tenants, licensees or invitees to make any excavation, boring, or tunneling within the Easement Area without the prior written permission of Grantee, which shall not be unreasonably withheld, conditioned or delayed.
4. Except for purposes of maintenance, improvement and/or replacement of pre-existing facilities, Grantor shall not, and shall not permit its employees, agents, lessees or tenants to (a) erect, plant, or allow to remain any buildings, improvements, structures, walls, rockeries, trees, shrubbery, or obstruction of any kind or (b) place any fill material, or obstruction of any kind within the Easement Area, without the prior written permission and approval of Grantee.

### **C. Port's Obligations in the Easement Area**

1. Port will reimburse Grantee for any costs incurred to restore the handrail or retaining wall in accordance with section A.5 above within 60 days of receipt of an invoice from Grantee.
2. Port will perform any work or reimburse Grantee for any costs as provided in the environmental protocols in Exhibit B.

### **D. Indemnification**

To the extent permitted by law, Grantor and Grantee shall protect, defend, indemnify, and save harmless the other party, and its officers, officials, employees, and agents from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property (each, a "Claim"), to the extent caused by the negligent acts, omissions or willful misconduct of the indemnifying party. Each party agrees that its obligations under this Section D.1 extend to any claim, demand, or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event of any claims, demands, actions or lawsuits filed against Grantor or Grantee giving rise to an indemnity obligation, the indemnifying party upon prompt notice from the other party shall assume all costs of defense thereof, including legal fees incurred by the other party, and of all resulting judgments that may be obtained against the other party. In the event of litigation between Grantor and Grantee as to the applicability of the indemnification obligation hereunder, the prevailing party shall be entitled to recover its reasonable costs and expenses (including reasonable attorneys' fees) incurred in the indemnification action. .

Grantor shall indemnify, defend and hold harmless Grantee, its officers, employees and agents from any and all liabilities, losses, damages, costs, expenses or claims of any kind or nature (including, without limitation, reasonable attorneys' fees and any liability for costs of investigation, abatement, remediation, cleanup, fines, penalties, or other damages arising under any environmental laws) arising out of or in connection with the disposal, release or discharge, migration, handling, or transportation of hazardous materials or substances, as that term may be defined by applicable local, state or federal law on or from any portion of Grantor's Property, including the Easement Area, except to the extent caused by Grantee's operations for the Purposes herein.

### **E. Compliance with Laws**

Grantee and Grantor in the exercise of their respective rights under this Easement Agreement shall comply with all applicable federal, state and local laws, ordinances, and regulations, including environmental laws and regulations.

**F. Runs with Land**

This Easement Agreement and each of the terms, provisions, conditions and covenants herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns and successors-in-title.

Grantor, Port and Grantee hereby represent and warrant to each other that it has necessary authorization to enter into this Easement Agreement and that it has been executed by a duly authorized officer of Grantor, Port and Grantee respectively.

**Grantor:**  
**BP West Coast Products, LLC:**

By Brian Miller

Name, title BRIAN MILLER, POE

Date MAY 1, 2015

**Grantee:**  
**The City of Seattle**  
**Seattle Public Utilities:**

By Ray Hoffman

Ray Hoffman, Director

Date 12/16/15, 2015

**Port of Seattle:**

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

Name, title \_\_\_\_\_

Date \_\_\_\_\_, 2015

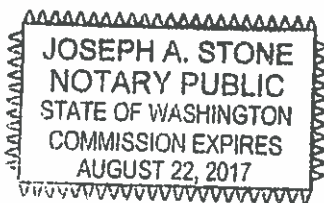
**Exhibits:**

1. Exhibit A – Easement Area
2. Exhibit B – Environmental Protocols

STATE OF Washington )  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Brian R. Miller is the person who appeared before me and signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Attorney-in-fact BP West Coast Products LLC, to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 1<sup>st</sup> day of May 2015

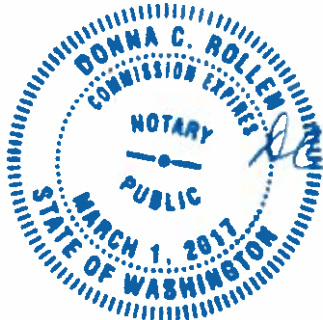


NAME Joseph A. Stone  
(Print name) Joseph A. Stone  
NOTARY PUBLIC in and for the State of  
Washington  
Residing at Seattle  
My appointment expires: 8-22, 20 17

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.

I certify that I know or have satisfactory evidence that Rav Hoffman is the person who appeared before me and signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as Director of Seattle Public Utilities of the City of Seattle, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 16 day of December 2015



NAME Donna C. Rollem  
(Print name) DONNA ROLLEM  
NOTARY PUBLIC in and for the State of  
Washington  
Residing at Seattle  
My appointment expires: March 1, 20 17

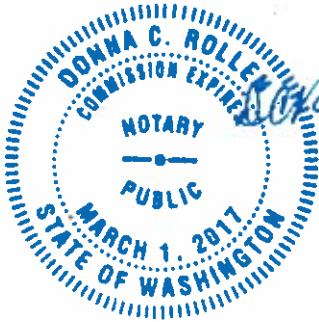
STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that RAY HOFFMAN is the person who appeared before me and signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as of Port of Seattle, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

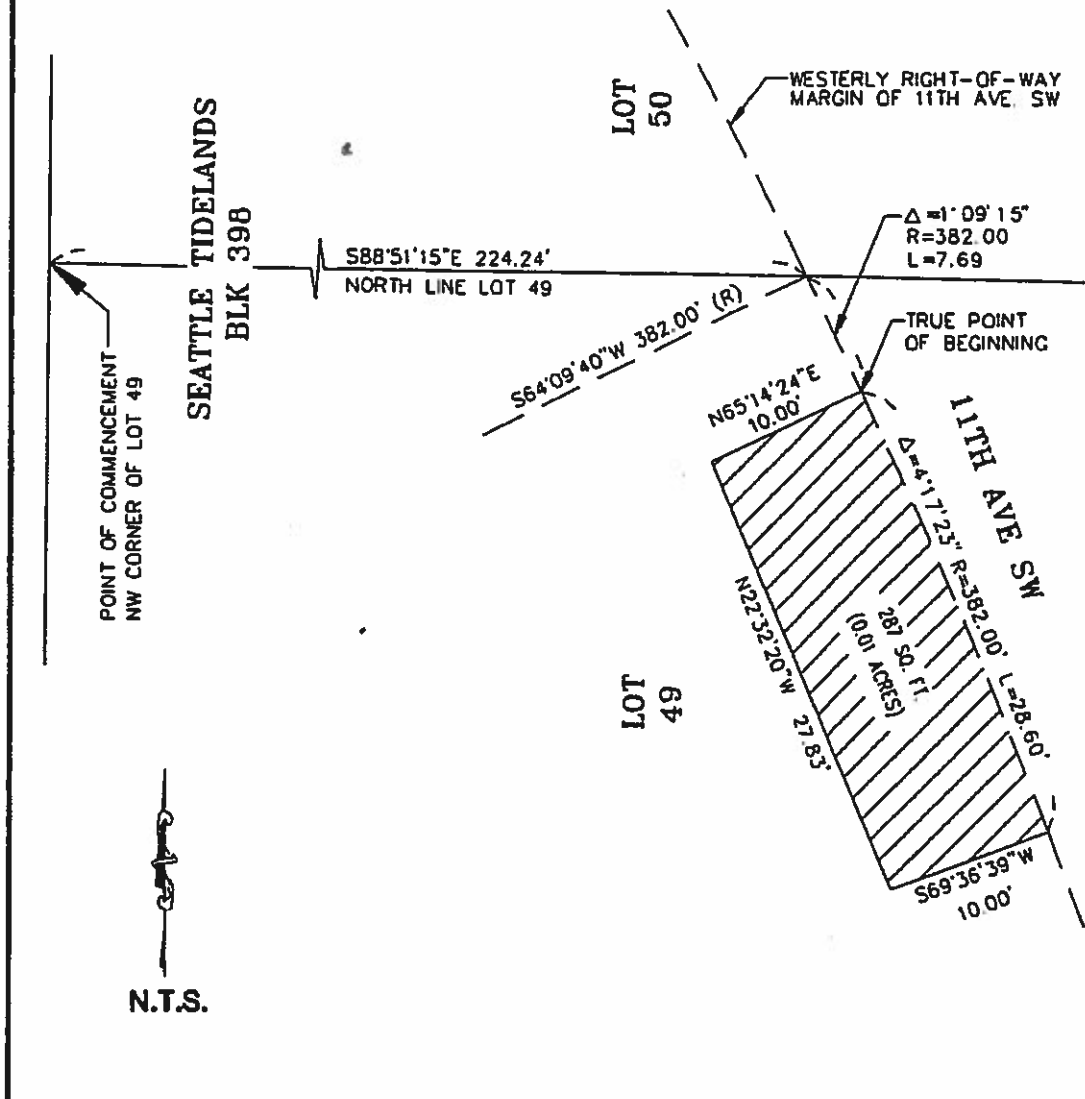
SUBSCRIBED AND SWORN to before me this 16 day of December 2015.

NAME Donna Rolten  
(Print name) DONNA ROLLEN  
NOTARY PUBLIC in and for the State of  
Washington \_\_\_\_\_  
Residing at Seattle \_\_\_\_\_

My appointment expires: March, 20 17



PORTION OF THE NW 1/4 OF SECTION 07,  
TOWNSHIP 24 NORTH, RANGE 04 EAST, W.M.  
KING COUNTY, WASHINGTON



Port  
of Seattle

UTILITY EASEMENT  
11TH AVE SW AND SW FLORIDA ST  
TAX PARCEL NO. 7666701680

EXHIBIT A

DATE  
OCT. 21, 2010

SHEET NO.

01 OF 02

**EXHIBIT A  
SHEET 2  
UTILITY EASEMENT  
11<sup>TH</sup> AVE. SW AND SW FLORIDA ST  
TAX PARCEL NO. 7666701680**

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 49, BLOCK 398, PLAT OF SEATTLE TIDELANDS, ACCORDING TO THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS, OLYMPIA, WASHINGTON;  
THENCE SOUTH 88°51'15" EAST, ALONG THE NORTH LINE OF SAID LOT, A DISTANCE OF 224.24 FEET TO THE WESTERLY RIGHT-OF-WAY MARGIN OF 11<sup>TH</sup> AVENUE SOUTHWEST AND AN INTERSECTION WITH A NON-TANGENT 382.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST WHICH ITS CENTER BEARS SOUTH 64°09'40" WEST, 382.00 FEET DISTANT;  
THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND SAID WESTERLY MARGIN THROUGH A CENTRAL ANGLE OF 01°09'15", A DISTANCE OF 7.69 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND SAID WESTERLY MARGIN THROUGH A CENTRAL ANGLE OF 04°17'23", A DISTANCE OF 28.60 FEET;  
THENCE SOUTH 69°36'39" WEST, A DISTANCE OF 10.00 FEET;  
THENCE NORTH 22°32'20" WEST, A DISTANCE OF 27.83 FEET;  
THENCE NORTH 65°14'24" EAST, A DISTANCE OF 10.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 287 SQUARE FEET OR 0.01 ACRES MORE OR LESS.



## EXHIBIT B

### ENVIRONMENTAL PROTOCOL FOR BP-SPU EASEMENT

<i>Issue</i>	<i>Protocol</i>
<b>Basic Premise</b>	Seattle Public Utilities (SPU) will pay for its normal operating costs; Port will perform work or pay for extraordinary costs incurred due to contamination or Superfund site status.
<b>Soil</b>	<ul style="list-style-type: none"> <li>Solely for work on BP's property, SPU will excavate and dispose of excavated soil, at SPU's cost.</li> </ul>
<b>Health &amp; Safety</b>	<ul style="list-style-type: none"> <li>SPU will provide HASP, PPE equipment for its workers, monitoring &amp; decontamination equipment, and HAZWOPER training.</li> <li>Port will reimburse SPU for costs of the above that are more than SPU's normal practice in parts of the City that are not known to be contaminated.</li> </ul>
<b>Notice for work that breaks ground</b>	<ul style="list-style-type: none"> <li>For planned work, SPU gives at least 45 days advance notice of work and 3 business days advance notice of entry to perform the work to both Port and BP.</li> <li>For emergency work, SPU gives as much notice as practicable to both Port and BP prior to mobilizing the site.</li> </ul>
<b>Water</b>	<ul style="list-style-type: none"> <li><u>Planned Construction work</u>: SPU will make reasonable efforts to avoid removing groundwater and to keep surface water out of the excavated area, provided, however, that SPU is not required to do so if doing so would increase SPU's costs, unless the Port is willing to reimburse SPU for the cost increases.</li> <li><u>Storage and Sampling</u>: SPU will temporarily store all groundwater removed from the excavation in a cost efficient manner (e.g., Baker Tanks). The Port will reimburse SPU for the direct cost of the storage. The Port will perform and pay for any sampling and analysis of the groundwater that the Port deems appropriate.  SPU does not normally store or sample water for contamination prior to disposal when water is removed during SPU's maintenance or repair projects. If SPU's normal practice changes in the future and the new practice includes storage and/or sampling of water removed during maintenance or repair of SPU's facilities, then SPU will not charge the Port for storage and/or sampling.</li> <li><u>Groundwater Management</u>: If, the Port and SPU determine that any contamination in groundwater is in conformance with applicable state and federal regulatory standards, and otherwise acceptable for infiltration, SPU will determine whether it is feasible to infiltrate groundwater that was removed and stored back into the excavated area without adverse effects on SPU's infrastructure and increased costs. If it is feasible, SPU will do so at</li> </ul>

## EXHIBIT B

	<p>no charge to the Port. If SPU determines that infiltration is not feasible without increasing costs, then the Port either will agree to reimburse SPU for the increased costs associated with infiltrating the groundwater or the Port may manage the groundwater in another fashion, as it deems appropriate.</p> <p>(a) If the Port has sampled and analyzed the groundwater, then the Port will provide the full data package for the sampling results to SPU and will request SPU's review and determination whether the groundwater is acceptable for discharge into SPU's stormwater drainage system. If SPU determines the groundwater is acceptable, then the Port may elect to discharge the water into SPU-owned stormwater infrastructure, at the location and in the manner approved by SPU, at no charge to the Port.</p> <p>(b) If the Port elects to discharge the groundwater to King County Wastewater Treatment facilities, then SPU will reimburse the Port for any fee charged by King County; except and unless King County imposes a surcharge due to the contaminated nature of the water, in which case the Port will bear the cost of the surcharge.</p> <p>(c) The Port also may elect to manage the disposal of the groundwater through other means at its cost.</p> <ul style="list-style-type: none"><li>• <u>Emergency work</u>: SPU will follow the protocol for planned work when it engages in emergency work, provided that SPU will not be deemed to have been negligent or to have failed to meet its obligations under this agreement for not containing or storing water immediately, as long as SPU follows industry best management practices to limit the quantity of water exposed to contaminants.</li></ul>
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