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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH and BRENT
EVERETT in his official capacity as
DIRECTOR OF THE UTAH DIVISION
OF ENVIRONMENTAL RESPONSE
AND REMEDIATION

Plaintiffs,

v.

BP plc, BP HOLDINGS NORTH
AMERICA LIMITED, BP PRODUCTS
NORTH AMERICAN, INC., BP WEST
COAST PRODUCTS LLC, and its
predecessor companies, successor
companies and subsidiaries, including but
not limited to Standard Oil of Ohio
(SOHIO), Standard Oil (Indiana), Amoco
Corporation, Amoco Oil Company,
Atlantic Richfield Company (ARCO) and
BP Amoco, plc

Defendants.

COMPLAINT
(Jury Trial Demanded)

Case No: _____

Judge: _____

TIER 3

Plaintiffs, the State of Utah and Brent Everett in his official capacity as the Director of the Utah Division of Environmental Response and Remediation (collectively referred to herein as “the State of Utah” or “Plaintiff”), by and through their attorneys of record, bring this action against Defendant BP Amoco, its predecessor companies, successor companies and subsidiaries (collectively referred to herein as “BP Amoco” or “Defendant”) and for their claims for relief state and allege as follows:

JURISDICTION, AND VENUE

This Court has jurisdiction over the parties in this matter pursuant to UTAH CODE ANN. § 78B-5-102.

1. Venue of the Court is proper pursuant to UTAH CODE ANN. § 78B-3-307(1) (a).

PARTIES

2. Plaintiff the State of Utah is a sovereign state of the United States of America.

3. Plaintiff Brent Everett, in his official capacity as Director of the Utah Division of Environmental Response and Remediation (DERR), administers the claims and manages the revenue collected for the Utah Petroleum Storage Tank Trust Fund pursuant to UTAH CODE ANN. §§ 19-6-404 through 19-6-429.

BP DEFENDANTS

4. Defendant BP plc. is a corporation organized under the laws of England and Wales with its principal offices at One St. James Square in London, England. Defendant BP Holdings North America Limited is a corporation organized under the laws

of England and Wales with its principal offices in England. In December 2006, Defendant BP plc. transferred all of its stock, assets and holdings in Defendant BP America Inc. to Defendant BP Holdings North America Limited. Defendant BP plc. is the owner of all of the stock, assets and holdings of Defendant BP Holdings North America Limited.

5. Defendant BP America Inc. is a corporation organized under the laws of the State of Delaware with its principal offices at 501 Westlake Park Boulevard in Houston, Texas 77079. Defendant BP America Inc. owns and controls all of the stock, assets and holdings of BP's North American companies. Defendant BP plc. is the parent corporation for Defendants BP Holdings North America Limited and BP America Inc.

6. Defendant BP plc. is a British global energy company that is also the third largest global energy and the fourth largest company in the world.

7. Defendant BP Products North America Inc. is a Maryland corporation having its principal place of business in Illinois. BP Products North America Inc. is a subsidiary of BP America Inc. that manages, owns and operates the refining and retail marketing assets of BP America Inc. in the United States. Defendant BP West Coast Products LLC is a subsidiary of BP Products North America Inc., which owns, operates and supplies the former ARCO (Atlantic Richfield Company) petroleum marketing facilities throughout the United States, primarily on the West Coast.

BP NORTH AMERICA/SOHIO

8. With the breakup of Standard Oil Trust in 1911, the Standard Oil of Ohio (SOHIO) was formed. SOHIO announced a merger with British Petroleum in 1969. The merger involved the exploration and development business areas at that time,

focusing on SOHIO and BP's new Alaska interests. Clauses in the merger allowed BP to purchase an increasing interest in SOHIO over time. In 1987, BP acquired the remaining shares of SOHIO which became BP America Inc.

STANDARD OIL (INDIANA)/AMOCO CORPORATION

9. In 1911, Standard Oil (Indiana) was formed. In 1923, Standard Oil (Indiana) acquired a controlling interest in the American Oil Company (Amoco). In 1952, Standard Oil (Indiana) was the nation's largest oil company. In 1965, Standard Oil (Indiana) owned, operated, leased and supplied a high of 355 service stations and convenience stores in Utah. In 1985, Standard Oil (Indiana) changed its name to the Amoco Corporation. The Amoco Oil Company operated as the refining, transportation and marketing subsidiary of the Amoco Corporation. In 1986, Amoco had 40 service stations and convenience stores in Utah.

10. In 2001, BP Amoco sold and transferred to Tesoro Petroleum Corporation its Salt Lake City refinery as well as its retail gasoline station and supply/distribution contracts for its branded dealers and jobbers in Utah.

ARCO (ATLANTIC RICHFIELD COMPANY)

11. In 1966, Atlantic Richfield Company (ARCO) was formed from the merger of the Atlantic Refining Company and the Richfield Oil Corporation. In 1969, the Atlantic Richfield Company (ARCO) merged with the Sinclair Oil Corporation. In 1970, ARCO had a high of 114 service stations and convenience stores in Utah. In 1972, the Atlantic Richfield Company (ARCO) sold the former Sinclair Oil Corporation assets to Pasco Inc. Between 1969 and 1972, the Atlantic Richfield Company (ARCO) owned,

operated, leased and supplied Sinclair branded service stations and convenience stores in Utah.

12. In 1982, ARCO had 14 service stations and convenience stores in Utah. In 1984, the Atlantic Richfield Company (ARCO) began a divestiture program aimed at selling its assets and properties east of the Rockies including Utah.

Mergers: BP, Amoco Corporation and Atlantic Richfield Company (ARCO)

13. In 1998, BP plc merged with the Amoco Corporation to form BP Amoco plc. In 1999, BP Amoco plc merged with the Atlantic Richfield Company (ARCO). In 2000, BP Amoco plc changed its name back to BP plc.

14. As the result of the numerous mergers and acquisitions by BP in the United States, BP plc through its U.S. subsidiaries, BP America Inc. and BP Products North America Inc. and its predecessor companies and subsidiaries owned, operated and supplied petroleum marketing facilities that distributed and sold petroleum fuels throughout the State of Utah. Its Utah fuel stations were known historically by the BP, Amoco, ARCO, Sinclair, Richfield, Atlantic, Vico, Utoco, Pan American and American brands.

15. Defendant BP plc and its wholly owned subsidiary BP Holdings North America Limited succeeded to the retail marketing assets and liabilities of BP America Inc., BP Products North America Inc., BP West Coast Products LLC, Standard Oil of Ohio (SOHIO), Standard Oil (Indiana), BP Amoco plc, Amoco Corporation, Amoco Oil Company and the Atlantic Richfield Company (ARCO) in the United States. In addition, Defendant BP succeeded to the assets and liabilities of a number of joint marketing

ventures which owned, operated and supplied petroleum marketing facilities that distributed and sold petroleum fuels throughout the State of Utah.

16. In 1987, BP plc. acquired the former Standard Oil of Ohio (SOHIO) and made it the cornerstone of a new United States operation, BP America Inc. BP plc. merged with Amoco Corporation (formerly Standard Oil of Indiana) in December 1998 becoming BP Amoco plc. until 2000 when it was renamed BP plc. In 1999, BP Amoco plc. acquired the Atlantic Richfield Company (ARCO).

17. In sum, Defendants BP plc., BP Holdings North America Limited, BP America Inc., BP Products North America Inc., BP West Coast Products LLC and their predecessor companies' and subsidiaries' including but not limited to entities known as Standard Oil of Ohio (SOHIO), Standard Oil (Indiana), Amoco Corporation, Amoco Oil Company, Atlantic Richfield Company (ARCO) and BP Amoco plc. have owned, operated, leased, distributed and supplied motor-fuel terminals and dispensing facilities, service stations and convenience stores throughout the State of Utah.

18. Upon information and belief, as the result of numerous acquisitions and mergers, Defendant stations are or have been known in Utah under the Rainbo Oil and Tri-Mart names. At all times material to this Complaint, Defendant transacted business in Utah based upon its ownership, operation, leasing and supply of petroleum marketing facilities that distributed and sold petroleum fuels throughout Utah.

19. This matter is subject to Tier 3 discovery provisions under UTAH R. CIV. P. 26(c), as there is more than \$300,000 at issue.

20. All allegations contained herein are based on information and belief from information now available to Plaintiffs. Plaintiffs will seek further information regarding Defendant's conduct through discovery.

INTRODUCTION

21. For most of its history, Defendant owned, operated, leased and supplied gasoline stations and convenience stores in the State of Utah.

22. Defendant's service stations and convenience stores distribute and sell petroleum products from underground storage tanks ("USTs"). UST means "... a petroleum storage tank; underground pipes and lines connected to a storage tank; and any underground ancillary equipment and containment system." UTAH CODE ANN. § 19-6-402(29).

23. USTs, like the ones Defendant has operated and continues to operate in Utah, may leak petroleum fuels which contaminate soils and seep into groundwater thus creating significant public health and environmental concerns.

24. In response to the need to regulate the state's USTs and to conform to corresponding federal mandates, in 1989 the Utah Legislature enacted the Underground Storage Tank Act, UTAH CODE ANN. § 19-6-401 et seq.

25. Under Utah law, owners and operators are responsible for leaks or releases from the USTs at its gasoline stations and convenience stores. UTAH CODE ANN. § 19-6-402(27)(a).

26. In response to the need to address the leaking UST problem and the difficulty for UST owners and operators to meet financial responsibility requirements, the Utah Legislature created the PST Fund to provide a mechanism for petroleum storage

tank owners to meet the federal financial responsibility requirements for underground storage tanks. UTAH CODE ANN. §§ 19-6-409 through 429.

27. The PST Fund is not an insurance program. UTAH CODE ANN. § 19-6-426(1).

28. To be eligible to participate in the PST Fund, UST System owners and operators are required to obtain a certificate of compliance for each covered UST system. UTAH CODE ANN. § 19-6-412.

29. Among the requirements to obtain a certificate of compliance is a certification statement from the UST system owner or operator indicating whether they have independent or self-insurance, or are relying on fund participation to ensure adequate funds are available to pay for third-party liabilities and remediation of any petroleum released from UST systems. UST Act and UTAH ADMIN. CODE R. 311-206.

30. Once certificates of compliance are issued, to qualify for participation on the PST Fund for a particular release, owners or operators must submit an eligibility application to the DERR. The potential PST Fund claim must declare whether the release is covered by liability insurance. If coverage exists, the PST Fund would be subrogated to any other insurance coverage, i.e., the liability insurance would be primary and the PST Fund would be secondary. UTAH CODE ANN. § 19-6-426. If a PST Fund claimant received money from both private insurance and the PST Fund, the claimant would be required to pay money back the PST Fund.

31. PST Fund participants may then submit vouchers for reimbursement or payment of costs incurred during the discovery, investigation, characterization, or

remediation of contamination resulting from the release of petroleum from covered UST systems.

32. The State of Utah has a strong public-policy interest in preserving the PST Fund and in ensuring its appropriate and proper use so the PST Fund remains financially sound.

33. Over the years, Defendant has requested money from the PST Fund to pay for costs to clean up contamination caused by UST leaks at its service stations in Utah.

34. The PST Fund has reimbursed Defendant in the amount of \$1,492,185 for corrective action of leaks from its USTs at nineteen (19) service station sites in Utah, hereinafter referred to as "Direct Reimbursement Sites." A list of Direct Reimbursement Sites is attached hereto as Exhibit A.

35. Defendant is also affiliated with four (4) sites for which the PST Fund has reimbursed a subsequent owner for corrective action costs in the amount of \$772,084 hereinafter referred to as "Subsequent Owner Reimbursement Sites." A list of Subsequent Owner Reimbursement Sites is attached hereto as Exhibit B.

36. Plaintiff's claims against Defendant are based on Defendant's deceptive acts and omissions in connection with its procurement and use of certain public-benefit funds which Defendant improperly obtained from Utah's Petroleum Storage Tank Trust Fund (the "PST Fund").

DEFENDANT'S WRONGFUL CONDUCT
Defendant Had Independent Environmental Liability Insurance

37. For most of its history, Defendant owned, operated, leased and supplied gasoline stations and convenience stores in the State of Utah. Under Utah law, Defendant is responsible for leaks or releases from the USTs at its gasoline stations and convenience

stores during the time it owned and operated the USTs. Under Utah law, liability is also attached to historical ownership and operation.

38. Starting in the 1980s, Defendant became aware of new federal and state regulations that required substantial upgrades or replacements to the USTs it owned and operated at its service stations and convenience stores throughout the United States, including Utah.

39. As part of its divestiture strategy, Defendant sold or leased many of its owned and operated service stations and convenience stores, transferred property leases primarily to former dealers and jobbers, or sold its USTs to former branded dealers or jobbers under contracts without the need for environmental site assessments.

40. It was not uncommon for Defendant, under its dealer, distributor and jobber agreements, to require the dealer, distributor or jobber to obtain comprehensive general liability (CGL) insurance and environmental liability insurance coverage (ELI) that covered pollution claims for leaks and releases from USTs at retail marketing facilities, naming Defendant as an additional insured.

41. Defendant would monitor the dealers', operators', and jobbers' maintenance of proper insurance coverage under its dealer/franchise agreements, and was provided with certificates of insurance naming Defendant as an additional insured.

42. Defendant never disclosed to the Plaintiff the fact it was named as an additional insured in any of its dealer or jobber policies while benefitting from PST Fund payments made to subsequent owners.

43. Between 1995 and 2007, Defendant applied for PST Fund coverage by submitting numerous PST Fund eligibility applications for its USTs in Utah.

44. On those Applications, Defendant answered the questions about its insurance coverage as follows:

Is this release covered under independent insurance? Yes No X

An example of one of Defendant's PST Fund eligibility applications forms is attached hereto as Exhibit C.

45. In addition to its applications, as costs were incurred, Defendant submitted numerous vouchers for reimbursement with the PST Fund and obtained PST Funds to finance payments for the remediation of the Direct Reimbursement Sites.

46. Defendant or Defendant's contractors submitted at numerous Vouchers with the State for payments for corrective action of the Direct Reimbursement Sites.

47. Plaintiff recently learned that during the period it was applying for eligibility to participate in the PST Fund, Defendant had its own pollution liability policies issued by independent, mutual and captive insurers on its Utah UST facilities.

48. Plaintiff also recently learned that during the early 1990s when Defendant was applying for and being paid by the PST Fund and representing the releases were not covered under independent insurance, that it was making pollution claims from leaking USTs against its own insurance policies and was receiving reimbursement for many of these claims.

49. Defendant initiated formal and informal legal proceedings to enforce its rights under hundreds of insurance policies for reimbursement of corrective action of leaking USTs at its current and former Utah service stations.

50. Defendant filed insurance coverage litigation in the following:

Arco et al. v. Aetna Casualty & Surety Co. et al.
Superior Court of California, County of Los Angeles
Case # BC015575

Amoco Oil Co. et al. v. Accident Casualty Insurance et al.
Circuit Court of Cook County, Illinois, Illinois-Law Division
Case # 1993-L-008484

51. In the above-reference litigation, Defendant sought to hold its insurers responsible for paying for the investigation and corrective action of environmental contamination, including contamination caused by leaking USTs, throughout the United States, including Utah.

52. Upon information and belief, Defendant entered into private settlement agreements with some of the insurers and settled any and all claims for potential UST liability in exchange for hundreds of millions of dollars.

53. Defendant never disclosed its ownership of insurance obtained from independent, mutual, and captive insurers; never told Plaintiff it made claims against its insurers; never told Plaintiff it sued against its policies; never told Plaintiff it received reimbursement of its environmental claims from independent, mutual and captive insurers; never told Plaintiff it settled environmental claims; and never subrogated to the PST Fund with the proceeds.

54. In sum, Defendant sued its insurers for the corrective action of UST leaks at its service stations at locations across the United States and for the corrective

action of UST leaks at its current and former service stations in Utah for which Defendant, or a subsequent owner of Defendant's sites, was paid by the PST Fund.

55. Defendant never disclosed the terms of its insurance policies, never told Plaintiff that it had sued its insurers, never told Plaintiff it had settled with its insurers, and never repaid the money claimed against the PST Fund.

56. Plaintiff has learned that from the 1950s to the present, hundreds of insurance companies issued multiple insurance policies to Defendant including garage-liability policies, comprehensive general-liability policies, all-risk policies, property-damage policies, pollution-liability policies and excess-insurance policies. These policies provided coverage for the investigation and remediation of environmental contamination caused by leaking USTs at Defendant's petroleum marketing facilities including service stations and convenience stores in Utah, as well as at locations throughout the United States.

57. In 1961, Standard Oil (Indiana) purchased its own liability insurance company, Imperial Casualty & Indemnity Company, which provided comprehensive liability insurance.

58. In addition, wholly-owned captive insurers, including but not limited to Oil Insurance Limited, Oil Casualty Insurance Ltd., Jupiter Insurance Ltd., Jupiter Assurance Ltd., Monitor Insurance Company Ltd., Northern Resources Insurance Company Ltd., North Resources Assurance Inc., and Greater Pacific Limited, issued Defendant multiple insurance policies that provided coverage for the investigation and remediation of environmental contamination caused by leaking USTs at Defendant's service stations and convenience stores.

59. Defendant was a shareholder and insured with other major oil companies in a mutual-liability insurer known as Oil Insurance Limited (Bermuda) and its related excess carrier, Oil Casualty Insurance Limited (Bermuda), which provided pollution liability coverage for Defendant's petroleum marketing facilities, including service stations and convenience stores.

60. Although its sites were covered by insurance, Defendant allowed the PST Fund to pay for or reimburse over \$1 million known to date for corrective action undertaken to clean up petroleum contamination from USTs at its service stations and convenience stores.

61. As a result of its wrongful action, Defendant was unjustly enriched by the PST Fund and is not entitled to retain the State of Utah's funds, and the PST Fund is entitled to be subrogated and made whole. Defendant's misrepresentations about its insurance policies violate Utah law and Utah Solid and Hazardous Waste Control Board regulations.

Post-Litigation Misrepresentations and Breaches

62. Defendant filed the ARCO complaint in December of 1990.

63. In the *ARCO* Action, Defendant claimed it had insurance coverage for the corrective action of environmental contamination at its service station locations in Utah.

64. Defendant benefitted from the payments from the PST Fund for each site listed in Exhibits A and B.

65. Defendant filed eligibility applications after it filed the *ARCO* Action.

66. In every one of those eligibility applications Defendant filed with the State after it filed the *ARCO* Action, Defendant stated that the release was not covered under independent insurance.

67. Defendant submitted numerous vouchers with the State seeking payment from the PST Fund for corrective action of its Utah sites after it filed the *ARCO* Action.

68. In the vouchers Defendant filed with the State after it had filed the *ARCO* Action, Defendant sought reimbursement for sites included in the complaints against its insurers.

Post-Settlement Misrepresentations and Breaches

69. Upon information and belief, Defendant settled with some of its insurers as early as 1995.

70. Defendant filed numerous PST Fund applications for coverage of corrective action at its Utah sites after it had settled with its insurers for the corrective action of UST leaks at its Utah service stations.

71. On every one of those eligibility applications Defendant filed with the State after it had begun settling with its insurers, Defendant stated that the release was not covered under independent insurance.

72. Defendant submitted numerous vouchers seeking payment from the PST Fund for corrective action at its Utah sites after it begun settling with its insurers.

73. Defendant has never repaid any of the \$1,492,185 the PST Fund paid for the corrective action of its UST leaks at the nineteen (19) Direct Reimbursement Sites.

74. Defendant has never repaid any of the \$772,084 the PST Fund paid to subsequent owners of Defendant's sites for the corrective action of the four (4) Subsequent Owner Reimbursement Sites.

75. To date, Defendant has not repaid any PST Fund money.

76. The PST Fund has made and will continue to make reimbursements for corrective action and environmental remediation costs to Defendant or third parties for remediation of petroleum contamination from releases from USTs at Defendant's Direct Reimbursement Sites and Subsequent Owner Reimbursement Sites in Utah.

77. This investigation is ongoing by the State of Utah and additional "Direct Reimbursement" and "Subsequent Owner Reimbursement Sites" may be identified during the course of this lawsuit.

78. As a responsible party under the Utah UST Act, Defendant is liable for its proportionate share of the cost to remediate petroleum contamination at any sites it has a current or historical interest in which are not specifically listed in this Complaint but were discovered during the course of this litigation.

79. Plaintiff brings this action under its statutory authority, as well as under principles of equity and common law to protect important public-policy concerns, and the health, safety and general welfare of the State for the following purposes:

a) To obtain reimbursement for all money paid and all overpayments for the expenditures made to Defendant, or directly to third-party contractors on behalf of Defendant, by the PST Fund for the costs associated with the environmental remediation of leaking USTs at facilities in Utah which Defendant currently or previously owned, operated, leased and supplied;

b) To obtain reimbursement through the statutory and common law rights to subrogation for all expenditures paid to third-party facilities for the costs associated with the environmental remediation of leaking USTs at facilities in Utah which Defendant previously owned, operated, leased and supplied; and

c) To seek all other appropriate relief available under the circumstances.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Defendant was Ineligible to Claim PST Fund Money)

80. Plaintiff hereby incorporates herein by this reference the foregoing paragraphs of the Complaint as if fully set forth herein.

81. Defendant made false statements, misrepresented, omitted, and concealed material facts in its PST Fund applications to obtain certificates of compliance, so it would remain eligible to collect money from both the PST Fund and its own insurance.

82. Defendant knowingly and intentionally concealed from the Plaintiff it had pollution liability policies under which it was eligible for reimbursement for environmental corrective action costs from private, independent, mutual and captive insurers.

83. Plaintiff was unaware from Defendant's actions, inactions, and omissions that Defendant was ineligible for reimbursement from the PST Fund.

84. Defendant sought payment for site clean-up from many of its insurance companies and the PST Fund.

85. Defendant knowingly and intentionally concealed from the PST Fund it received payments from many of its insurers for which it also claimed PST Fund reimbursements.

86. Defendant's conduct, including, but not limited to its knowing and intentional falsification of its PST Fund Applications, as previously set forth herein, violates the UST Act.

87. As the result of Defendant's actions, inactions, omissions, and fraudulent conduct, Plaintiff has suffered substantial damages and is entitled to recover any and all PST Fund money paid to Defendant to which Defendant was not entitled, as well as any punitive damages as this Court deems appropriate.

SECOND CAUSE OF ACTION
(Defendant Violated and Prejudged the PST Fund Subrogation Rights)

88. Plaintiff hereby incorporates herein by this reference the foregoing paragraphs of the Complaint as if fully set forth herein.

89. Defendant submitted claims to the PST Fund either before, concurrently, or after asserting its rights to have the same claims paid by many of its insurance carriers for the same environmental liability. Defendant similarly asserted its rights against the independent insurance carriers by initiating litigation or through informal legal proceedings, receiving millions of dollars as a result thereof.

90. Defendant failed to abide by the conditions of participating in the PST Fund because it failed to provide correct and accurate information about its insurance coverage.

91. Defendant's failure to abide by the conditions of participating in the PST Fund prevented Plaintiff from prosecuting its subrogation claims for corrective action and

environmental remediation costs incurred by the PST Fund against Defendant's independent, mutual and captive insurers that provided pollution liability coverage.

92. The PST Fund has made, and will continue to make reimbursements for corrective action and environmental remediation costs to third parties (*i.e.*, former and current independent owners and operators as well as adjacent property owners) for remediation at Defendant's formerly owned, operated and supplied contaminated petroleum fuel dispensing facilities in Utah.

93. Under the UST Act and Utah common law, the PST Fund has the right to be subrogated to all of Defendant's rights of recovery against any person or organization. Accordingly, the PST Fund is (a) entitled to recover monies paid on behalf of Defendant for its environmental liability; (b) entitled to recover monies paid to third parties for reimbursement of environmental remediation corrective action costs against Defendant for its environmental pollution that either exists at its formerly owned, operated or supplied petroleum fuel dispensing facilities or third-party properties in Utah; and (c) entitled to recover against Defendant all monies from any and all Defendant-owned pollution liability insurance contracts.

THIRD CAUSE OF ACTION
(Plaintiff Has a Right to Recover Costs from Defendant)

94. Plaintiff hereby incorporates herein by this reference the foregoing paragraphs of the Complaint as if fully set forth herein.

95. Plaintiff, through the PST Fund, has made and will continue to make reimbursement for corrective action and environmental remediation costs to third parties (*i.e.*, former and current independent owners, operators, lessees, and suppliers as well as adjacent property owners whose properties were contaminated) for the remediation of

petroleum contamination caused or attributed to Defendant as a responsible party at Defendant's formerly owned, operated and supplied convenience stores and service stations in Utah.

96. Under the UST Act, responsible parties are liable for any costs associated with any release from a UST. UTAH CODE ANN. § 19-6-426. Defendant is a responsible party for all releases that have ever occurred at any of its current or previously owned, operated, operated, lease, and supplied service stations and convenience stores in Utah.

97. Under the UST Act, Plaintiff, through the PST Fund, has the right to recover and is seeking recovery of all corrective action and environmental remediation costs paid by the PST Fund to third parties for contamination caused by and attributed to Defendant at its formerly owned, operated, leased, or supplied UST sites, including but not limited to service stations and convenience stores in Utah.

98. As a result of Defendant's actions, inactions, omissions, and fraudulent conduct in causing and contributing to environmental contamination at third party properties, Plaintiff is entitled to recover from Defendant all proportionate reimbursement costs payable to third parties, as well as punitive damages as this Court deems appropriate.

FOURTH CAUSE OF ACTION
(Defendant Has Been Unjustly Enriched)

99. Plaintiff hereby incorporates herein by this reference the foregoing paragraphs of the Complaint as if fully set forth herein.

100. The doctrine of unjust enrichment exists to prevent the wrongful retention of a benefit in violation of good conscience and fundamental principles of

justice and equity. The PST Fund conferred a benefit on Defendant when it made payments for the costs of corrective action resulting from discharges emanating from Defendant's former and current petroleum-fuel dispensing facilities.

101. Defendant was aware it was receiving a benefit because it filled out and submitted the vouchers requesting reimbursement or payments to third parties for costs associated with the cleanup of petroleum contaminated media resulting from releases from its USTs.

102. Defendant voluntarily accepted payments for the cost of the corrective action resulting from discharges emanating from Defendant's petroleum-fuel dispensing facilities, and has retained the PST Fund payments.

103. It would be inequitable and manifestly unjust to allow Defendant to retain monies paid to it for corrective action and environmental remediation costs to clean up its Utah facilities where Defendant has already collected or will collect from many of its insurance carriers for its environmental liabilities.

104. This Court should require Defendant to disgorge the unjust benefit it received, turn the funds back over to the PST Fund from which it should never have been paid, and award punitive damages as appropriate.

FIFTH CAUSE OF ACTION
(Defendant Caused Utah Unjust Detriment)

105. Plaintiff hereby incorporates herein by this reference the foregoing paragraphs of the Complaint as if fully set forth herein.

106. By making payment for the costs of corrective actions resulting from environmental contamination caused by and emanating from Defendant's former and present petroleum marketing facilities, Utah has conferred a benefit on Defendant.

107. By avoiding its own duties to stand financially responsible through its insurance coverage for the environmental contamination it caused, Defendant has wrongfully requested the PST Fund to reimburse it for environmental remediation and corrective action costs in violation of the rules and regulations of the PST Fund.

108. As a result, Plaintiff has suffered an unjust detriment to the extent that the PST Fund has had to pay substantial disbursements to Defendant from the PST Fund's limited resources to which Defendant was not entitled.

109. As the result of Defendant's actions, inactions, omissions, concealment, misrepresentations, obstruction, negligence and fraudulent conduct, Plaintiff has suffered injury and damage and is entitled to pursue reimbursement, damages and other compensation under the doctrine of unjust detriment.

SIXTH CAUSE OF ACTION
(Defendant Fraudulently Concealed Information)

110. Plaintiff hereby incorporates herein by this reference the foregoing paragraphs of the Complaint.

111. Defendant had a duty to disclose it had insurance coverage to the PST Fund as indicated on the application forms.

112. Defendant fraudulently and knowingly concealed, and intentionally omitted it was covered by numerous independent, mutual, captive, wholly-owned and third-party insurance policies for the remediation of environmental contamination at its Utah facilities.

113. Because Defendant knowingly, intentionally, and fraudulently concealed its insurance coverage, and represented to the PST Fund it had no insurance or was self-

insured, the PST Fund disbursed money for the cleanup of environmental contamination when Defendant requested it.

114. The monetary disbursements to Defendant based on the fraudulently concealed insurance policies deprived the Plaintiff of properly distributing these resources to clean up other contaminated facilities throughout Utah.

115. Because the PST Fund and other applicants were denied the use of millions of dollars distributed to Defendant due to its fraudulent concealment, the fraudulent concealment is a substantial cause of damage to the PST Fund and the citizens of Utah.

116. Based upon the fraudulent concealment of material facts as previously set forth, the PST Fund seeks punitive damages, and to recover all monies paid by the PST Fund to Defendant and third parties to remediate environmental contamination resulting from petroleum releases at Defendant's present and former facilities and adjacent properties.

SEVENTH CAUSE OF ACTION
(Defendant Committed Fraud)

117. Plaintiff hereby incorporates herein by this reference the foregoing paragraphs of the Complaint.

118. Defendant knowingly, intentionally, and without concern for the PST Fund, made statements of fact which were untrue, and known to be untrue when it made them, as alleged hereinabove.

119. The statements were material because if Defendant had been truthful about its insurance coverage, the PST Fund would have known to prosecute its subrogation rights against Defendant's insurance carriers.

120. The representations and omissions Defendant made that it was self-insured or did not have independent insurance coverage were in fact false.

121. When Defendant made said representations, it knew those representations to be false and it willfully, wantonly, and recklessly disregarded the truth.

122. These representations were made by Defendant with the intent of defrauding and deceiving the Plaintiff into reimbursing Defendant from the PST Fund for the expenses associated with the environmental remediation of leaking UST systems at its Utah facilities which evinced a callous, reckless, and willful indifference to the citizens of Utah and other eligible applicants to the PST Fund.

123. As a result, Plaintiff disbursed millions of dollars from the PST Fund to Defendant thereby materially affecting the availability of PST Funds to other eligible parties and adversely impacting the manner in which the program's ability to protect Utah's environment.

124. Defendant committed fraud and should be held liable for punitive damages as well as required to disgorge itself of any and all PST Funds it impermissibly received.

EIGHTH CAUSE OF ACTION

(Defendant Violated the UST Act and is Subject to Civil Penalties)

125. Plaintiff hereby incorporates herein by this reference the foregoing paragraphs of the Complaint.

126. Plaintiff violated the UST Act when it knowingly made false statements about its eligibility on its applications to the PST Fund.

127. Because Defendant's false statements constituted a violation of the UST Act, this Court should impose statutory civil penalties on Defendant pursuant to UTAH CODE ANN. § 19-6-425.

WHEREFORE, based upon the allegations contained herein in the First through Eighth Causes of Action, Utah prays against Defendant as follows:

- A. For judgment in favor of the State of Utah, and against Defendant for all compensatory and actual damages resulting from Defendant's fraudulent misrepresentations, acts, or omissions, and for prejudgment interest upon such amount;
- B. For judgment in favor of the Plaintiff, and against Defendant for reimbursement to the PST Fund for any future expenses that may be reasonably incurred by the PST Fund to remediate petroleum contamination at Defendant's formerly owned, operated and supplied petroleum fuel dispensing facilities;
- C. For judgment in favor of the Plaintiff, and against Defendant for up to \$10,000 per day for each day Defendant violated the UST Act pursuant to UTAH CODE ANN. §19-6-425;
- D. For judgment in favor of the Plaintiff, and against Defendant for punitive damages under UTAH CODE ANN. § 78B-8-201 in an amount to be determined at trial;
- E. For judgment in favor of the Plaintiff, and against Defendant for Utah's reasonable attorney fees and costs in pursuing recovery against Defendant pursuant to UTAH CODE ANN. § 19-6-418;

- F. For statutory pre-judgment interest at a rate of 10% pursuant to UTAH CODE ANN. § 15-1-1(2); and
- G. For any and all other relief to which the Plaintiff may be entitled at law or in equity.

JURY DEMAND

Plaintiffs demand a jury trial in this matter.

DATED this 3rd day of December, 2012.

MARK L. SHURTLEFF
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EXHIBIT A

Exhibit A to Complaint and Jury Demand: Direct Owner Reimbursement Sites

Facility ID	Address	City
1200342	4186 S HARRISON BLVD	OGDEN
3000384	329 N MAIN ST	CLEARFIELD
4000757	2095 E 9400 S	SANDY
4000758	3535 W 6200 S	TAYLORSVILLE
4000760	151 W 10600 S	SANDY
4000761	9022 S REDWOOD RD	WEST JORDAN
4000768	3270 S STATE ST	SOUTH SALT LAKE
4000769	2570 W 4700 S	SALT LAKE CITY
4000774	3618 W 5400 S	SALT LAKE CITY
4000775	1344 FORT UNION BLVD	SALT LAKE CITY
4000779	4770 S HIGHLAND DR	SALT LAKE CITY
4000782	3041 E 3300 S	SALT LAKE CITY
4001358	475 W 900 N	SALT LAKE CITY
4001382	510 E 3900 S	SALT LAKE CITY
4001439	2112 E 2100 S	SALT LAKE CITY
4001469	502 E 2100 S	SALT LAKE CITY
4001842	12592 S 1300 W	RIVERTON
6000017	1100 N 130 W	PAROWAN
8000044	8836 N HWY 40	LAKE POINT JUNCTION
1200078	5598 S HARRISON BLVD	SOUTH OGDEN
4001076	2690 S 700 E	SALT LAKE CITY
5000240	10 E MAIN ST	CASTLE DALE
6000329	815 E ST GEORGE BLVD	SAINT GEORGE

EXHIBIT B

Exhibit B to Complaint and Jury Demand: Subsequent Owner Reimbursement Sites

Facility ID	Address	City
8000044	8836 N HWY 40	LAKE POINT JUNCTION
4000757	2095 E 9400 S	SANDY
4000760	151 W 10600 S	SANDY
4000761	9022 S REDWOOD RD	WEST JORDAN
4000775	1344 FORT UNION BLVD	SALT LAKE CITY
4000779	4770 S HIGHLAND DR	SALT LAKE CITY
4000782	3041 E 3300 S	SALT LAKE CITY
4001382	510 E 3900 S	SALT LAKE CITY
4001439	2112 E 2100 S	SALT LAKE CITY
4001469	502 E 2100 S	SALT LAKE CITY
4001842	12592 S 1300 W	RIVERTON

EXHIBIT C

UTAH STATE PETROLEUM STORAGE TANK FUND
Division of Environmental Response and Remediation
Initial Claim Form

Facility Identification Number: 1200342 Lost Identification Number: EIUD

Name of person initiating the claim: Ray Farr - Amoco Oil Company

Mailing address: 474 West 900 North, Salt Lake City, UT 84103-1494

Telephone Number: (801) 339-4566

Claimant is: Tank system owner Tank system operator Facility owner
 Land owner Environmental Consultant Contractor

LIMITS REQUESTED

Has claimant sent all documentation of expenditures for the first \$10,000 of the clean-up costs to the Division of Environmental Response and Remediation (DERR)? Yes No

If No, please submit documentation with claim.

Which phase of work outlined in the Reporting and Remediation Schedule does this claim apply to?

- Abatement and initial site characterization Free Product Removal
- Subsurface Investigation Corrective Action
- Other (explain) _____

Is this the first request for payment in response to this release? Yes No

If No, please submit Invoices with MONTHLY CLAIM FORM.

If Yes,:

1. Attach complete copies of the work plan and an itemized budget plan for this phase to DERR for approval.
2. Attach complete copies of contracts/agreements between the owner/operator and his consultant/contractor. The contracts/agreements must be reviewed by DERR.
3. Attach copies of all original invoices related to this claim.
4. Provide an estimate for the total cost of the project, if known.
5. Provide the name, mailing address, and telephone number of consultant/contractor for this phase.
6. Provide a copy to DERR of all reports and information collected to date concerning this release.

If this claim is for payment of corrective action work performed at the site, has the corrective action plan been approved by DERR?
If no, contact your DERR project manager.

If this claim is reimbursement to the owner/operator for payments over \$10,000 made to his consultant/contractor, submit proof of payment. This must include:

- Original invoices indicating payment in full
- Canceled checks for work performed

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I understand that by filing this claim with the Division of Environmental Response and Remediation I agree to return to the DERR, upon its demand the entire award if: (a) I knowingly misrepresented or omitted any fact relevant to the determinations made by the DERR or the Executive Secretary.

Responsible Party's Signature: *R. Farr*

Name (Please Print): Ray Farr - Amoco Oil Company

Date: 7/25/95

Preparer's Signature: *J. Rabideau*

Name (Please Print): John Rabideau - Wasatch Environmental, Inc.

Title: Project Geologist

Date: 7/25/95

For DERR Use Only:

The work plan and budget plan have been reviewed for verification that this claim is for reasonable, customary expenses.

Signed: _____

Date: _____

Documentation of the owner/operator's obligation of \$10,000 has been reviewed for eligible expenditures.

Signed: _____

Date: _____

PST SITE CLAIM

As reported by FINET

RAY FARR AMOCO OIL - RAINBO #37 /

Leak Id # IUD

LAST

CK'D

4/12/96

Account Number	Account / Item Description	State YTD FY 91	State YTD FY 92	State YTD FY 93	State YTD FY 94	State YTD FY 95	State YTD FY 96	Extended Totals
5101	Salaries and Wages		0.00	0.00	0.00	0.00	37.32	37.32
5300	Compensatory Time Paid	0.00	0.00	0.00	0.00	0.00	14.88	14.88
TOTAL LABOR & ADDITIVES EXPENSE		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$52.20	\$52.20
6002	In-State Travel	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL IN-STATE TRAVEL EXPENSE		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
6132	Communication Services	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6134	Investigations	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6137	Professional and Technical Services	0.00	0.00	0.00	0.00	0.00	43,992.87	43,992.87
6138	Attorney's Fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6139	Testing / Inspecting	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6161	Rent	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6499	Current Expense Cost Allocation	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL CURRENT EXPENSE		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$43,992.87	\$43,992.87
6530	ITS LAN Administration Capital	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL DATA PROCESSING CURRENT		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
7523	Transfer of Indirect Costs	0.00	0.00		0.00	0.00	0.00	0.00
GRAND TOTAL		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$44,045.07	\$44,045.07

Project Mgt - Jim Martin

Facility # 1200342

Let Claim	Status	Date Paid	Submitted	Less amt disallowed	Less deductible	Total reimbursed
Payment	PAID FY 96		14,006.58	-591.03	-10,000.00	3,415.55
Payment	PAID FY 96	9/30/95	34,803.93	-1,798.20	--	33,005.73
Payment	PAID FY 96		7,669.09	-97.50	--	7,571.59
YTD TOTAL:			\$56,479.60	(\$2,486.73)	(\$10,000.00)	\$43,992.87

Submitted to Bill Moore for
review on 3/15/95. JM

UTAH STATE PETROLEUM STORAGE TANK FUND
Division of Environmental Response and Remediation
Eligibility Application

Certificate of Compliance Number: C43826-2 Exp. Date: 1/96
Last Identification Number (if issued): EIUD
Facility Identification Number: 1200342

GENERAL

1. Name of Applicant: Amoco Oil Company
Mailing Address: 474 West 900 North
Telephone Number: 366-2039

a. Applicant is a:
 Corporation Individual
 Partnership Other _____

b. Applicant is the:
 Tank system owner Tank system operator
 Facility owner Land owner

2. If the tank system owner or operator, the facility owner, or owner of the land on which the tank system is located is different than the applicant shown above, complete the appropriate spaces listed below:

Tank system owner: _____
Mailing address: _____
Telephone: _____
Dates of ownership: _____

Tank system operator: _____
Mailing address: _____
Telephone: _____
Dates of operation: _____

Facility owner: _____
Mailing address: _____
Telephone: _____

Land owner: _____
Mailing address: _____
Telephone: _____
Dates of ownership: _____

FACILITY INFORMATION

3. Name of facility at release site: Rainbo #37
4. Site address: 4186 Harrison Boulevard, Ogden, Utah
5. Contact person at site: Ray Farr
Telephone: 366-2039
6. Date release occurred or was discovered: November 15, 1995
7. Date release was reported to DERR: November 1995
To whom: Utah DERR

TANK INFORMATION

8. How many tank systems contributed to the release at the site: 3 tanks on site

TANK #	TANK VOLUME	PRODUCT	INSTALLATION DATE
<u>1</u>	<u>10,152</u>	<u>unleaded gasoline</u>	<u>1988</u>
<u>2</u>	<u>10,152</u>	<u>unleaded gasoline</u>	<u>1988</u>
<u>3</u>	<u>10,152</u>	<u>unleaded gasoline</u>	<u>1988</u>

9. Is this release covered under independent insurance? Yes No
If Yes, please submit insurance information.
10. How many tank systems were or will be removed during the course of cleaning up this site:
None

RELEASE INFORMATION

11. How was the release confirmed? Please submit a summary which includes: laboratory analysis, field instrument readings, visual observations, tank tightness test results.
A subsurface investigation was performed for a property transaction evaluation.
(see Subsurface Investigation Report dated January 10, 1995)
12. Briefly describe how the release occurred or was detected? Please submit documentation.
The release was detected during the investigation.
13. Is there evidence of a previous release? Please describe how the release was determined.
No.
14. Were the tanks in compliance with leak detection requirements? Please submit documentation.
Yes.