

CHANGES TO THE CONSENT DECREE AS A RESULT OF BOARD AND PUBLIC INPUT
In order of how they appear in the 2016 Decree modification
June 2016

ISSUE	Disposition
<p>ARTICLE III DEFINITIONS There should be a definition for “Company” (used in section 7.1 (f)) that explicitly states that this refers to Atlantic Richfield (AR).</p>	<p>Change Made Definition added to Consent Decree.</p>
<p>4.5 Disposal of Excavated Soil BP ARCO should rely on barges and rail as the mechanism for transporting fill to the site or debris and excavated materials from the site. Language should be strengthened to indicate that barges and rail should be the preferred approach.</p>	<p>Not Necessary BP’s remedial design requires Village review and BP consideration of any comments. BP agrees that barges or rail should be the primary mechanism for adding/removing fill. We can enforce this via that review mechanism once the remedial design is complete on a showing that BP did not make “all reasonable efforts” to utilize barges.</p>
<p>4.6 Installation of a Bulkhead and Sloped Shoreline The Village is about to engage a consultant and a working group of residents to come up with a shore design concept to indicate location of water uses, the esplanade path, and other public uses. Language in this section should emphasize cooperation on shore design, including flexibility on location of water uses.</p>	<p>Changes Made BP understands the context for this request. Language was added to the Decree stating that BP will work with Village to allow our volunteer Shoreline group to provide input to the remedial design, with the caveat that the primary driver on the site is the remedial actions in the Record of Decision issued by the NYS Department of Environmental Conservation and tempered by the realities of the expense involved.</p>
<p>4.6 Installation of a Bulkhead and Sloped Shoreline There was a request to include modification to clause (d) to allow for flexibility as to location of concrete ramp and water access.</p>	<p>Changes made The Consent Decree was modified to allow for discussions over the precise location of the boat ramp.</p>
<p>4.9 Contact Barrier and Cover The Consent Decree states that the Developable Portion of the Site is to be raised to a minimum of 11 feet above Local Mean Sea Level (LMS) and this is a material condition for the Village. If it is not allowed by any agency or entity this is a cause for renegotiation of the Consent Decree.</p>	<p>Changes Made BP agreed to a change to the Consent Decree language to this effect.</p>

<p>4.9 Fill may be a problem for the DEC and FEMA A village resident indicated that the remediation approach of several feet of fill may be an issue for the DEC or FEMA and may prevent development.</p>	<p>No Change Made BP and Village environmental attorneys and engineers do not believe this is an issue. As noted above, if filling up to 11 feet above LMS is not allowed, that would be cause for renegotiation of the Consent Decree.</p>
<p>4.10 Remedial Monitoring The public and Board are concerned that the \$300,000 fund for engineering is insufficient if the remedial effort extends beyond 3 or 4 years. It was suggested that we add a clause that requires additional money if the clean-up goes for some period of time.</p>	<p>Changes made. The Consent Decree will specify that BP will replenish funds if they are depleted after five years from its approval by the court. Legal expenses can also be drawn from these funds.</p>
<p>4.13 Payment of ...Costs Associated with Consent Decree There was concern regarding whether \$40,000 was sufficient money for our environmental attorney fee.</p>	<p>Not necessary BP agreed that \$300,000 fund can also cover legal expenses incurred on Consent Decree renegotiation. (see above)</p>
<p>7.1 Deed Restrictions A number of parties brought up a general objection to what was perceived as zoning language in clause (a): Two options were offered: 1) Eliminate the 65-foot limit entirely; or 2) Set it to the equivalent absolute height that it was at in the original Consent Decree. Previously, the elevation was 65 feet above the original grade. Set it to the equivalent now – so if the overall height is 3 feet higher, set it to 62 feet above the proposed 11-foot grade.</p>	<p>No Change Made Riverkeeper objected to removal of restriction on height. An examination of the original Consent Decree revealed that the 65 foot cap was against a base height of 10 feet above Mean Sea Level. We have modified the Consent Decree so that it raises the site to 11 feet above Mean Sea Level. The difference between the original Consent Decree and the proposed modified decree in regards to the baseline for the 65 foot building is one foot. This was not enough to justify a change.</p>
<p>Additionally, language should be included to make it clear that the Village has the right to set a lower height.</p>	<p>Change Made Language was added to make explicit that the Village preserves its zoning right.</p>
<p>7.4 Continued Cooperation with Respect to Remediation and... Eliminate mention of non-industrial use in clause (b). Given costs of energy and local labor, there is no likelihood that heavy industry will return to the waterfront. But, we did not want language that might be construed to restrict a crafts space, makers space, solar farm or other uses which could be considered light industry.</p>	<p>Changes Made Language was deleted referring to non-industrial uses.</p>

10.1 Force Majeure clause

Drop approval by the Army Corps of Engineers and Fish & Wildlife as a “force majeure” item.

No change made

We could not rationalize a modification that would make sense here. Any rejection by the DEC or Army Corps of Engineers would result in a review of the ROD and a likely renegotiation of any modified Consent Decree as a result.