

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU

AOD No. 08-026

In the Matter of the Investigation by ANDREW M. CUOMO,  
Attorney General of the State of New York,  
of Hess Corporation

ASSURANCE OF  
DISCONTINUANCE  
PURSUANT TO  
EXECUTIVE LAW §63(15)

WHEREAS, pursuant to the provisions of Section 63(12) of the New York Executive Law, Andrew M. Cuomo, Attorney General of the State of New York, has made an investigation into the policies, procedures, and practices of Hess Corporation, regarding allegations or issues of discrimination and retaliation against employees because of race and national origin;

WHEREAS, the Office of the Attorney General (“OAG”) and Hess Corporation share the common goal of assuring that all employees receive equal opportunities regardless of their race and national origin;

WHEREAS, the parties herein desire to obviate further investigation or potential litigation, and it is expressly understood that, with respect to the OAG’s investigation, this is a compromise settlement entered into solely for the purposes of avoiding the expense and inconvenience of further investigation and potential litigation;

IT NOW APPEARING THAT Hess Corporation desires to settle and resolve the investigation without admitting or denying the OAG’s findings, the OAG and Hess Corporation, in consideration of the covenants and understandings set forth herein and intending to be legally bound thereby, hereby enter into this Assurance of Discontinuance pursuant to Executive Law §63(15) and agree as follows:

I.  
DEFINITIONS

- 1.1 “Assurance” means this Assurance of Discontinuance.
- 1.2 “Hess Corporation” includes Hess Corporation (f/k/a Amerada Hess Corporation) and all of their owners, executives, officers, directors, managers, representatives, employees and all individuals who act on their behalf.
- 1.3 “Hess Retail Outlets” means Hess Corporation’s owned and managed gasoline stations or convenience stores located within New York State, including, but not limited to, Hess Express stores.
- 1.4 “Employee” means any person performing work for and compensated by Hess Corporation, including, but not limited to, executives, officers, directors, management officials including managers and assistant managers, supervisors and sales associates.

1.5 “EEOC Negotiated Settlement Agreements” means the Negotiated Settlement Agreements among the Equal Employment Opportunity Commission (“EEOC”), Hess Corporation, and charging parties Jose Hernandez, Olympia Reyes, Herminia Rivera, Mercedes DeJesus, Yolanda Rivera, Kregg Frey and Pablo Figueroa and others dated May \_\_, 2008.

1.6 “Effective Date” means the date this Assurance is executed by the parties hereto.

1.7 The use of the singular form of any word includes the plural and vice versa.

1.8 “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.

## II.

### ATTORNEY GENERAL’S INVESTIGATION AND FINDINGS

2.1 In 2007, the OAG received complaints from current and former employees of Hess Retail Outlets alleging that Hess Corporation discriminates, harasses and retaliates against employees because of race and national origin by prohibiting employees from speaking Spanish in the workplace and threatening to take adverse employment action against those employees that did speak Spanish, including retaliating against and discharging employees. These allegations, if sustained, would constitute violations of Section 296(1) of the New York Executive Law and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as well as Section 63(12) of the New York Executive Law as repeated and persistent violations of these statutes.

2.2 The OAG conducted an investigation into these complaints. The OAG interviewed complainants and witnesses on a confidential basis, reviewed pertinent policies, procedures and practices of Hess Corporation, and analyzed employment records, as well as other relevant data regarding Hess Corporation’s employment practices. The OAG found what it believes to be credible evidence that would be sufficient to sustain the allegations.

2.3 During the investigation, the parties have determined to resolve and settle the allegations set forth above on the terms contained in this Assurance. By entering into this Assurance, Hess Corporation neither admits nor denies the allegations of discrimination, harassment, and retaliation.

## III.

### COMPLIANCE WITH THE LAW

3.1 Hess Corporation agrees to comply fully with the obligations, terms, and conditions of, and that it is the company’s policy not to discriminate on the basis of national origin in violation of, Section 296(1) of the New York Executive Law and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

## IV.

## ANTI-DISCRIMINATION POLICIES AND PROCEDURES

4.1 Within fifteen (15) business days from the Effective Date, Hess Corporation agrees to incorporate in its Diversity/EEO Policy the language set forth in Exhibit B attached hereto, which has been approved by the OAG. Hess Corporation shall adhere to such policy, notify employees who work in Hess Retail Outlets (as defined herein) of such policy and will not make changes to that portion of the policy containing the language set forth in Exhibit B without prior written approval by the OAG.

4.2 Hess Corporation agrees to comply fully with the terms and conditions of the EEOC Negotiated Settlement Agreements and to compensate the charging parties and others in the total amount of \$94,000,00 plus attorneys' fees, in accordance therewith.

4.3 Within thirty (30) days from the Effective Date, Hess Corporation shall train all District Managers, Site Managers, and Marketing Representatives in Hess Retail Outlets in the Rochester, New York Metropolitan Area on the requirements of the policy described in ¶4.1 above, the applicable law, and this Assurance, and shall inform them that any retaliatory action by them is grounds for disciplinary action. Hess Corporation shall incorporate a presentation on the language set forth in Exhibit B in the next scheduled training programs for all District Managers, Site Managers, and Marketing Representatives in New York State, which shall be completed during the next twelve months.

4.4 Within ten (10) days of the Effective Date, Hess Corporation agrees to post the notice attached as Exhibit A in a prominent place accessible to all employees at Hess Retail Outlets as defined herein pursuant to this Assurance, and to keep such notice posted for a period of 3 years. Hess Corporation also will provide all of its District Managers in New York State with a copy of this Assurance and copies of it will be made available upon request to employees.

## V. RECORD-KEEPING

5.1 In addition to any records required under the EEOC Settlement Agreements, Hess Corporation agrees to maintain the following for the duration of this Assurance, with respect to its Retail Outlets as defined herein:

- (a) Records sufficient to identify all complaints of discrimination, harassment or retaliation on the basis of race and national origin;
- (b) Records sufficient to identify all complaints involving any employee speaking a language other than English, as well as any related investigation or employment action taken as a result of the complaint; and
- (c) Records sufficient to show compliance with all employment policies and procedures relating to Hess Corporation's policy set forth in ¶4.1 above, all obligations, promises and requirements set forth in the EEOC Settlement

Agreements and this Assurance, and any other records required for monitoring purposes under the EEOC Negotiated Settlement Agreements or this Assurance.

VI.  
REPORTING

6.1 Hess Corporation will submit simultaneously to the OAG copies of all monitoring reports and records required to be submitted to the EEOC under the EEOC Negotiated Settlement Agreements.

6.2 Within 180 days of the Effective Date and every six months thereafter for the duration of this Assurance, Hess Corporation shall prepare and submit a report to the OAG, which shall include the following with respect to Hess Retail Outlets (as defined herein):

- (a) Copies of every complaint and any supporting documentation received during the previous six months, alleging harassment, illegal discrimination and/or retaliation on the basis of national origin, including allegations relating to an employee's not being allowed to speak his or her primary language if other than English. In addition, a report on each complaint shall be prepared which shall include: (1) the date the complaint was received and the manner in which it was received; (2) the identification and contact information for the complainant at issue; (3) a written report of the investigation conducted; and (4) any remedial action taken as a result of the investigation of the complaint.
- (b) Copies of the acknowledgment form attached hereto as Exhibit C showing employees' attendance at any seminars and/or training sessions regarding illegal discrimination, harassment and retaliation in the workplace, and the policy set forth in ¶4.1 above.
- (c) Records sufficient to show compliance with all employment policies and procedures relating to Hess Corporation's policy set forth in ¶4.1 above, all obligations, promises and requirements set forth in the EEOC Negotiated Settlement Agreements and this Assurance, and any other records required for monitoring purposes under the EEOC Settlement Agreements or this Assurance.

6.3 Upon reasonable notice to Hess Corporation, the OAG shall have access, at a reasonable time and place, to any documents Hess Corporation is required to maintain under the terms of this Assurance and/or the EEOC Settlement Agreements, and any documents the OAG believes relate to compliance with this Assurance and/or the EEOC Settlement Agreements. This Assurance does not in any way impair or affect the right of the OAG to obtain documents from Hess Corporation pursuant to subpoena.

VII.  
PAYMENT OF INVESTIGATION AND MONITORING COSTS

7.1 Hess Corporation agrees to pay the sum of \$35,000 to cover a portion of the costs of the OAG's investigation and monitoring.

7.2 Payment shall be made within 30 days of the Effective Date in the form of a certified or bank check made out to the New York State Department of Law and forwarded to the Office of Attorney General, Civil Rights Bureau, 120 Broadway, New York, New York 10271, Attention: Jenny Rivera, Special Deputy Attorney General for Civil Rights. Any payments and all correspondence related to this Assurance must reference AOD No. 08-026.

VIII.  
JURISDICTION AND OTHER PROVISIONS

8.1 This Assurance will expire 3 years after the Effective Date, except that the OAG may, in its sole discretion, extend the reporting period upon a good-faith determination that Hess Corporation has not complied with this Assurance, which non-compliance the OAG will discuss and attempt to resolve with Hess Corporation before making such determination.

8.2 The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Assurance to effectuate its terms.

8.3 The parties may seek to enforce this Assurance through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Assurance. However, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention. Pursuant to New York Executive Law §63(15), evidence of a violation of this Assurance will constitute prima facie proof of a violation of the applicable statutes in any civil action or proceeding hereafter commenced by the OAG.

8.4 The failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.

8.5 If any provisions, terms, or clauses of this Assurance are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the parties.

8.6 This Assurance constitutes the entire agreement between Hess Corporation and the OAG on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party that is not contained in this Assurance shall be enforceable.

8.7 Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory or compliance review powers otherwise provided by law or this Assurance.

8.8 This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

8.9 This Assurance is final and binding on the parties including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. No assignment by any party hereto shall operate to relieve such party of its obligations herewith.

8.10 Hess Corporation shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, assisted, cooperated, or participated in any manner in the investigation of the matter addressed in this Assurance. Hess Corporation agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects Hess Corporation's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

8.11 All communications and notices regarding this Assurance shall be sent by first class mail and facsimile, if twenty-five (25) pages or less in length, to:

OAG

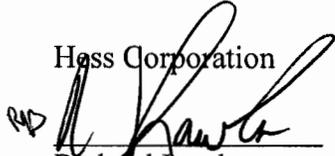
Jenny Rivera, Esq.  
Special Deputy Attorney General  
for Civil Rights  
Office of the New York State  
Attorney General  
120 Broadway, 3rd Floor  
New York, New York 10271  
Tel. (212) 416-8250  
Fax (212) 416-8074

Hess Corporation

Lawrence R. Sandak, Esq.  
Proskauer Rose LLP  
One Newark Center  
Newark, New Jersey 07102  
Tel. (973) 274-3200  
Fax (973) 274-3299  
Attorneys for Hess Corporation

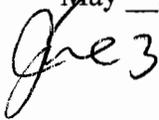
IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York  
May 14, 2008

Hess Corporation  
  
By: Richard Lawlor  
Vice President, Retail Sales  
& Marketing

CONSENTED TO:

Dated: New York, New York  
May 13, 2008



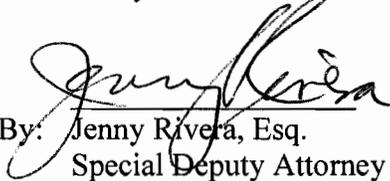
ANDREW M. CUOMO  
Attorney General of the State of New York  
  
By: Jenny Rivera, Esq.  
Special Deputy Attorney General  
for Civil Rights  
120 Broadway, 3rd Floor  
New York, New York 10271  
Tel. (212) 416-8250  
Fax (212) 416-8074

EXHIBIT A

**NOTICE TO EMPLOYEES OF HESS CORPORATION**

This notice is posted and provided as part of an Assurance of Discontinuance with the New York State Attorney General and Settlement Agreements with the U.S. Equal Employment Opportunity Commission (“EEOC”), as the result of an investigation by the Attorney General and the EEOC of allegations of discrimination against employees because of race and national origin, as well as allegations that employees were prohibited from speaking their primary language in the workplace.

Federal and State law prohibits employers from discriminating against applicants and employees based on their race, color, national origin, sex, age, disability status and religion. Hess Corporation complies with all laws prohibiting discrimination in the workplace and it is Hess’s policy that employees are not required to speak English except if there is a legitimate business or safety need. An employee who believes that Hess has violated this policy should immediately call the Hess hotline at 800-353-2790. Hess will not take any retaliatory action against any employee who asserts his or her rights under, or complains of violations of, these laws or its equal employment opportunity policy by filing a complaint with the EEOC or the Office of the Attorney General.

Should you have any complaint of discrimination, you may contact the:

Equal Employment Opportunity Commission  
New York District Office  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, New York 10004  
Telephone: 1-800-669-4000  
www.eeoc.gov

Buffalo Local Office  
6 Fountain Plaza, Suite #350  
Buffalo, New York 14202  
Telephone: 1-800-669-4000

and

Office of the New York State Attorney General  
Civil Rights Bureau  
120 Broadway  
New York, New York 10271  
Telephone: (212) 416-8250 or (800) 771-7755  
Fax: (212) 416-8074  
www.oag.state.ny.us

Rochester Regional Office  
144 Exchange Boulevard, 2nd Floor  
Rochester, New York 14614  
Telephone (585) 546-7430  
Fax (585) 546-7514

**THIS IS AN OFFICIAL NOTICE**

This is an Official Notice and must remain posted for three years from the date of posting and may not be altered, defaced or covered by any other material, until April \_\_, 2011.

Signed:

\_\_\_\_\_  
Manager, Hess Corporation

## EXHIBIT B

### Language to be Incorporated in Hess Corporation's Diversity/EEO Policy

Generally, employees may speak whatever language they choose in the workplace. Employees may, however, be required to speak English in certain situations only if there is a legitimate business need for communications with employees or customers who speak only English, or if there is a legitimate safety need in an emergency situation where employees or customers must speak the same language to promote safety and understanding.

EXHIBIT C

ACKNOWLEDGMENT FORM

Hess Corporation

On \_\_\_\_\_, 200\_, I attended a training seminar with respect to my responsibilities under the New York State Human Rights Law (New York Executive Law § 296) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. I was also instructed as to the equal employment opportunity policy of Hess Corporation, which prohibits discrimination on the basis of national origin, does not require employees to speak only English at work, does not prohibit employees from speaking a language other than English at work, and also prohibits discrimination on the basis of race, color, sex, age, disability status and religion. I have received copies of and have read Hess's Diversity/EEO Policy. I understand my legal responsibilities and will comply with those responsibilities.

I have been informed by my employer that I will not be retaliated against by my employer for providing information to any law enforcement agency (including the New York State Office of the Attorney General, Civil Rights Bureau, 120 Broadway, 3rd Floor, New York, NY 10271, telephone (800) 771-7755 or (212) 416-8250; Rochester Regional Office, 144 Exchange Boulevard, 2nd Floor, Rochester, NY 14614, telephone (585) 546-7430) or official regarding my employer's compliance with the New York State Human Rights Law (New York Executive Law § 296) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_