



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 25, 2020

VIA E-MAIL
DELIVERY RECEIPT REQUESTED

Jessica Gonzalez, Counsel
BP Products North America Inc.
Email: Jessica.Gonzalez@bp.com

150 West Warrenville Road
Naperville, IL 60563

Dear Ms. Gonzalez:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves BP Products North America (BP), docket no. CAA-05-2020-0034. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 25, 2020.

Pursuant to paragraph 30 of the CAFO, BP must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Mary McAuliffe, Associate Regional Counsel, (312) 886-4360.

Sincerely,

SARAH
MARSHALL

Digitally signed by
SARAH MARSHALL
Date: 2020.09.23
13:56:19 -05'00'

Sarah G. Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Mary McAuliffe, EPA Associate Regional Counsel/via electronic mail
Phil Perry, Indiana DEM, via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2020-0034
)	
BP Products North America Inc.)	Proceeding to Assess a Civil Penalty
Whiting, Indiana)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is BP Products North America Inc., a Maryland corporation that owns and operates a petroleum refinery in Whiting, Indiana (Whiting Refinery).

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interests and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 111 of the CAA, 42 U.S.C. § 7411, authorizes EPA to promulgate regulations establishing New Source Performance Standards.

10. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), states that after the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

11. EPA promulgated Standards of Performance for Equipment Leaks of Volatile Organic Compounds (VOC) in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006, codified at 40 C.F.R. Part 60, Subpart GGGa (Subpart GGGa) on November 16, 2007. *See 72 Fed. Reg. 64896.*

12. Subpart GGGa at 40 C.F.R. § 60.590a(a)(1) states that the provisions of this subpart apply to affected facilities in petroleum refineries.

13. Subpart GGGa at 40 C.F.R. § 60.592a(a) states that each owner or operator subject to the provisions of this subpart shall comply with the requirements of §§ 60.482-1a to 60.482-10a as soon as practicable, but no later than 180 days after initial startup.

14. EPA promulgated Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction,

or Modification Commenced After November 7, 2006, codified at 40 C.F.R. Part 60, Subpart VVa (Subpart VVa) on November 16, 2007. *See 72 Fed. Reg.* 64883.

15. Subpart VVa at 40 C.F.R. § 60.482-1a(a) states “[e]ach owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 60.482-1a through 60.482-10a or § 60.480a(e) for all equipment within 180 days of initial startup.”

16. Subpart VVa at 40 C.F.R. § 60.482-6a(a)(1) states that “each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 60.482-1a(c) and paragraphs (d) and (e) of this section.”

17. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), it is unlawful for any person to, among other things, operate a major source subject to Title V except in compliance with a Title V operating permit after the effective date of any permit program approved or promulgated under Title V of the CAA. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See 57 Fed. Reg.* 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the federal operating permit program on July 1, 1996. *See 61 Fed. Reg.* 34228; 40 C.F.R. Part 70.

18. EPA promulgated interim approval of the Indiana Title V program on November 14, 1995. *See 60 Fed. Reg.* 57188 (effective on December 14, 1995). EPA fully approved the Indiana Title V program on December 4, 2001. *See 66 Fed. Reg.* 62969 (effective on November 30, 2001). The Indiana regulations governing the Title V permit program are codified at 326 Indiana Administrative Code 2-7, and are federally enforceable pursuant to Section 113(a)(3) of the CAA.

19. The State of Indiana issued the following Title V operating permit Administrative Amendments (AA), Significant Permit Modifications (SPM), and Minor Permit Modifications (MPM) to BP for its Whiting Refinery: September 16, 2015 SPM 089-35729-00453; June 14, 2016 SPM 089-36656-00453; June 15, 2016 AA 089-36920-00453; December 28, 2016 SPM 089-37390-00453; May 15, 2017 AA 089-38381-00453; October 4, 2017 SPM 089-38641-00453; January 29, 2018 SPM 089-38868-00453; August 27, 2018 MPM 089-39973-00453; and September 2, 2018 AA 089-40242-00453 (collectively, Title V Permits).

20. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

21. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

22. Respondent owns and operates a petroleum refinery at 2815 Indianapolis Boulevard, Whiting, Indiana 46394.

23. Respondent's Whiting Refinery is subject to requirements at Subpart GGGa, and by reference Subpart VVa.

24. Respondent has incorporated the applicability of Subparts GGGa and VVa into its Title V Permits, Condition F.9.

25. Condition F.9.3(7) of Respondent's Title V Permits states that Respondent shall comply with the applicable provisions of Subpart VVa, which specifically includes 40 C.F.R. § 60.482-6a.

26. Respondent is subject to the terms of the consent decree, United States of America and the State of Indiana, et al., v. BP Products North America, Inc., Civil Action No. 2:12-cv-00207-PPS-APR (2012 Consent Decree).

27. As required by the 2012 Consent Decree reporting requirements, for the period of January 1, 2016 through June 30, 2019, Respondent identified open-ended lines or valves that were missing a cap, plug, second valve, or blind flange as follows:

Calendar Year 2016 – 115
Calendar Year 2017 – 31
Calendar Year 2018 – 38
January 1, 2019 through June 30, 2019 – 7
Total - 191

28. From January 1, 2016 through June 30, 2019, and as described in paragraph 27 above, Respondent identified a total of 191 open-ended lines or valves that Respondent failed to cap, plug, second valve, or blind flange, in violation of 40 C.F.R. § 60.482-6a(a)(1) and its Title V Permits, Condition F.9.3(7).

Civil Penalty

29. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$286,500.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$286,500 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, Respondent shall state Respondent’s name and the docket number of this CAFO. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

William Wagner and Mary McAuliffe (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
wagner.william@epa.gov
mcauliffe.mary@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

31. This civil penalty is not deductible for federal tax purposes.
32. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
33. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established

by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

34. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: wagner.william@epa.gov and mcauliffe.mary@epa.gov (for Complainant), and jessica.gonzalez@bp.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

35. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

36. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

37. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 35 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

38. Respondent certifies that it is complying fully with 40 C.F.R. § 60.482-6a(a)(1) and its current September 9, 2020 Title V permit, MSM 089-42328-00453, Condition F.9.3(7), except to the extent any deviations are reported by Respondent as required in its Title V deviation reports.

39. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

40. The terms of this CAFO bind Respondent, its successors and assigns.

41. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


42. Each party agrees to bear its own costs and attorney’s fees in this action.

43. This CAFO constitutes the entire agreement between the parties.

In the Matter of: BP Products North America Inc.

BP Products North America Inc., Respondent

9/23/2020
Date


Dave Kurt, Attorney-In-Fact
BP Products North America Inc.

In the Matter of: BP Products North America Inc.

United States Environmental Protection Agency, Complainant

Date

**MICHAEL
HARRIS** Digitally signed by
MICHAEL HARRIS
Date: 2020.09.24
08:08:17 -05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: BP Products North America Inc.
Docket No. CAA-05-2020-0034

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.09.24
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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: BP Products North America Inc.
Docket Number: **CAA-05-2020-0034**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2020-0034, which was filed on September 25, 2020, in the following manner to the following addressees:

Copy by E-mail to Respondent: Jessica Gonzalez
Jessica.Gonzalez@bp.com

Copy by E-mail to Attorney for Complainant: Mary McAuliffe
McAuliffe.Mary@epa.gov

Copy by E-mail to Attorney for State: Phil Perry
PPERRY@idem.IN.gov

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 25, 2020

LADAWN WHITEHEAD Digitally signed by LADAWN WHITEHEAD
Date: 2020.09.25 05:09:31 -05'00'

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5