

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In The Matter Of:)
)
BP Products North America Inc.)
Whiting, Indiana,)
)
Respondent.)

Docket No. CWA-05-2016-0014
Proceeding to Assess a Class II Civil
Penalty Under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), 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* (the Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Water Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is BP Products North America Inc. (Respondent), a corporation doing business in the State of Indiana.
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 interest 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 and alleged violations in this matter.

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, its right to appeal this CAFO and its right to judicial review of this CAFO provided at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

Statutory and Regulatory Background

9. To restore and maintain the integrity of the nation's water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA approved a program authorizing the State of Indiana, through the Indiana Department of Environmental Management (IDEM), to issue and administer NPDES permits as set forth in the CWA.

11. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 define the term "pollutant" to mean, among other things, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

12. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2 define the term "discharge of a pollutant" to mean, among other things, any addition of any pollutant to navigable waters from any point source.

13. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean the waters of the United States, including the territorial seas.

14. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

15. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator of EPA (Administrator) to, after consultation with the State in which the violation occurs, assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), when the Administrator finds on the basis of any information available that any person has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any condition or limitation of a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

16. The Administrator may assess a Class II civil penalty of up to \$16,000 per day of violation up to a total of \$177,500 for CWA violations that occurred after January 12, 2009 through December 6, 2013 and may assess a civil penalty of up to \$16,000 per day of violation up to a total of \$187,500 for CWA violations that occurred after December 6, 2013 under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and 40 C.F.R. Part 19.

General Allegations and Alleged Violations

17. Respondent is the owner and operator of a petroleum refinery located at 2815 Indianapolis Boulevard, Whiting, Indiana (the Facility). At the Facility, Respondent operates a wastewater treatment plant (WWTP).

18. Respondent is a corporation, and is therefore a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19. At all times relevant to this CAFO, Respondent operated the Facility subject to a NPDES permit (Permit) issued by IDEM pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Permit authorized Respondent to, among other things, discharge pollutants through outfalls 002, 003, 004, and 005 from the Facility to Lake Michigan and the Lake George Branch of the Indiana Harbor Ship Canal (Lake George Canal) subject to the terms and conditions set forth in the Permit.

20. Respondent discharges wastewater from its Facility through outfalls 002 and 005 to Lake Michigan and through outfalls 003 and 004 to the Lake George Canal.

21. Lake Michigan and the Lake George Canal are each a “navigable water” and “water of the United States,” as those terms are defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

22. The effluent discharged by Respondent through outfalls 002, 003, 004 and 005 may contain, among other things, total suspended solids, biochemical oxygen demand, oil and grease, and phosphorus which are “pollutants” as that term is defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6).

23. Outfalls 002, 003, 004, and 005 are each a “point source” that discharges “pollutants” into waters of the United States, as defined in Sections 502(14) and 502(12) of the CWA, 33 U.S.C. §§ 1362(14) and 1362(12), respectively.

24. From May 5, 2014 to May 9, 2014, EPA conducted an inspection of the Facility.

25. Based on Respondent's discharge monitoring reports (DMRs), EPA alleges that Respondent violated the Permit effluent limits in the manner described in Table 1 below:

Table 1: Discharge Monitoring Effluent Limit Violations

Monitoring Period	Outfall	Parameter	Permit Limit	Time Period Limit	Reported DMR Value	Days of Violation
7/1/2010 through 7/31/2010	001 ¹	Total Suspended Solids (TSS)	5694 lbs/day	Daily Maximum	7050 lbs/day	1
4/1/2011 through 4/30/2011	005	Biochemical Oxygen Demand (BOD)	8164 lbs/day	Daily Maximum	14116 lbs/day	1
4/1/2011 through 4/30/2011	005	TSS	7723 lbs/day	Daily Maximum	8324 lbs/day - 66362 lbs/day	8
4/1/2011 through 4/30/2011	005	TSS	4925 lbs/day	Monthly Average	14174 lbs/day	30
4/1/2011 through 4/30/2011	005	Oil and Grease	2600 lbs/day	Daily Maximum	3263 lbs/day	1
11/1/2011 through 11/30/2011	005	Phosphorus	1 mg/l	Daily Maximum	1.25 mg/l	1

¹ Outfall 001 existed under Respondent's previous NPDES Permit. Effluent that previously flowed through outfall 001 flows through outfall 005 under Respondent's current NPDES Permit.

26. Respondent operates a once-through cooling water system at the Facility. After use in the Facility, once-through cooling water is sent to the number six separator (six separator) at the Facility's WWTP to remove any oil present prior to discharging through outfall 002 to Lake Michigan. Six separator is a multiple cell retention basin with concrete underflow dams that separate each of the cells. Six separator works by allowing time for oil droplets to float to the surface based on the difference in density between the water and oil. Once at the surface, oil is manually captured and removed through the use of, among other things, booms and/or vacuum trucks. The flow through the six separator ranges from 55 to 85 million gallons per day and the residence time of water in the separator varies from 50 to 90 minutes.

27. Outfall 002 is subject to, among other things, an oil and grease daily maximum permit limit of 5 milligrams per liter (mg/l).

28. During the inspection, EPA inspectors observed oil sheen throughout the six separator on each day of the inspection, including sheen in the final cell prior to discharge to Lake Michigan. At the time of the inspection, six separator contained adsorbent boom and pads to collect oil for removal using vacuum trucks. EPA inspectors further observed sediment accumulation in the six separator that was approximately two feet below the water's surface in several locations.

29. In general, sediment accumulation reduces the capacity and residence time of the six separator, which affects the separator's ability to work effectively.

30. EPA alleges that Respondent failed to properly maintain and efficiently operate six separator in good working order, in violation of Respondent's Permit which requires Respondent to maintain in good working order and efficiently operate all facilities and systems for the collection and treatment which are installed or used by Respondent and which are necessary for achieving compliance with the terms and conditions of this permit. *See* Part II, Section B, Number 1, Management Requirements, Proper Operation and Maintenance.

31. During the inspection, EPA inspectors observed a discharge from the Facility to Indianapolis Boulevard and to the City of East Chicago's storm sewer. The storm sewer travels south along Indianapolis Boulevard and discharges to the Lake George Canal. Respondent informed the inspectors that the discharge was emanating groundwater that was near a nonoperational hydraulic groundwater gradient control system. EPA inspectors observed that the discharge was orange/brown in color and had an oily sheen, and the area smelled strongly of oil and hydrocarbons. EPA alleges that Respondent's discharge of pollutants to the storm sewer is not authorized under the Permit, and is a violation under Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

32. Respondent's Industrial Storm Water Pollution Prevention Plan (SWPPP), Section 5.2.2: Stock and Spoil Piles, states that on-going working piles require the installation of sediment barrier measures along the down-slope side of all soil stockpiles/borrow areas and that unvegetated areas likely to be left inactive for fifteen (15) days or more are temporarily or permanently stabilized with measures appropriate for the season to minimize erosion potential. Additionally, SWPPP Section 5.4.2: Structural Best Management Practices, states that piles are covered and/or surrounded with an impervious structure such as silt fencing on the down gradient side of the pile.

33. During the inspection, EPA inspectors observed large piles of excavated dirt and other materials that Respondent stored in a manner that allowed contact with storm water and a subsequent discharge through erosional pathways to the Lake George Canal. During the inspection, the storm water controls surrounding the piles included silt fencing that was dilapidated and allowed storm water to bypass the controls. EPA alleges that Respondent's discharge of pollutants from the dirt piles to Lake George Canal is not authorized under the SWPPP or Permit, and is a violation under Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Civil Penalty

34. Based on analysis of the factors specified in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), the facts of this case and Respondent's cooperation, Complainant determined that an appropriate civil penalty to settle this action is \$74,212.

35. Within 30 days after the effective date of this CAFO, Respondent must pay the \$74,212 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

36. 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:

Regional Hearing Clerk
Mail Code (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Kasey Barton
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Donald R Schwer III
Water Enforcement & Compliance Assurance Branch (WC-15J)
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

37. This civil penalty is not deductible for federal tax purposes.

38. If Respondent does not timely pay 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 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue 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 attorney 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. The 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

40. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: barton.kasey@epa.gov (for Complainant); and Whiting.cd.tracker@bp.com (for Respondent).

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

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

43. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws. Except as provided in paragraph 41, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

44. Respondent certifies that to the best of its knowledge and belief after reasonable inquiry it is complying with the requirements of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the NPDES Permit and SWPPP for the Facility.

45. This CAFO may be considered in determining Respondent's "prior history of such violations" under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

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

47. 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.

48. Each party agrees to bear its own costs and attorney fees in this action.


49. Pursuant to 40 C.F.R. § 22.38(b), Complainant provided the State of Indiana an opportunity to consult with Complainant about this action.

50. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO in accordance with Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45(b).

BP Products North America Inc., Respondent

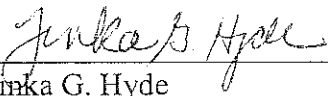
CWA-05-2016-0014

May 12, 2016
Date


Donald Porter
Whiting Refinery Manager
BP Products North America Inc.

United States Environmental Protection Agency, Complainant

May 31, 2016
Date


Tinka G. Hyde
Director, Water Division
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: BP Products North America Inc.
Docket No. [Docket Number] CWA-05-2016-0014

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

Robert A. Kaplan
Acting Regional Administrator
United States Environmental Protection Agency
Region 5