



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 25 2007

VIA CERTIFIED MAIL

Mr. Alan Au
Senior Attorney
BP America Inc.
4101 Winfield Road
Mail Code 4 West
Warrenville, Illinois 60555

RE: Final Consent Agreement and Final Order for BP Pipelines (North America), Inc.
Docket Number CWA-04-2007-5172(b)

Dear Mr. Au:

Please find enclosed a copy of the final, file-stamped Consent Agreement memorializing the settlement reached between the U.S. Environmental Protection Agency and BP Pipelines (North America), Inc. regarding violations of the Clean Water Act, as amended by the Oil Pollution Act (OPA).

Thank you for your assistance and cooperation in this matter. If you have any questions, please call me at 404-562-9685.

Sincerely,

A handwritten signature in cursive script that reads "Colleen E. Michuda".

Colleen E. Michuda
Associate Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:)
)
BP Pipelines (North America), Inc.)
28100 Torch Parkway)
Warrenville, IL 60555,)
)
Respondent.)
_____)

Docket No.: CWA-04-2007-5172(b)
CLEAN WATER ACT
SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 C.F.R. § 22.13(b)

HEARING CLERK

2007 SEP 25 AM 9:25

RECEIVED
EPA REGION IV

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region 4 who in turn has delegated these authorities to the Division Director of the RCRA Division of EPA Region 4, pursuant to EPA Region 4 Clean Water Act Delegation 2-52-A ("Complainant").

CONSENT AGREEMENT

I. Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent is a corporation organized under the laws of Maine and operates an interstate pipeline through the Commonwealth of Kentucky. The Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

2. The Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of an interstate pipeline (facility) that runs approximately one mile north of the intersection of State Highway 189 and Rattlesnake Road in Allegheny, Todd County, Kentucky.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Buck Fork, which flows to the Pond River, is a navigable water subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 116.3.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of hazardous substances into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or the environment are defined in 40 C.F.R. § 117.1 to include those discharges that exceed reportable quantities as set forth in 40 C.F.R. § 117.3.

7. Respondent admits the jurisdictional statements contained herein.

II. Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

8. On November 23, 2005, an unaffiliated third party contractor performing work for a local property owner ruptured Respondent's facility at Milepost 349.71 in Alleghre, Todd County, Kentucky, causing an accidental discharge of 10,500 gallons of Xylol from Respondent's facility into or upon Buck Fork and its adjoining shorelines. Xylol is a mixture of 85% mixed xylenes and 0-15% ethylbenzene, both of which are hazardous substances as defined in Section 311(a)(14) of the Act, 33 U.S.C. § 1321(a)(14), and 40 C.F.R. § 116.4.

9. The November 23, 2005, discharge of mixed xylenes and ethylbenzene from the above-referenced facility into or upon Buck Fork and its adjoining shorelines exceeded the respective reportable quantities and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 117.1 and 117.3, in violation of Section 311(b)(3) of the Act.

III. Waiver of Rights

10. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or

communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

IV. Penalty

12. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$80,133.

V. Payment Terms

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

13. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$80,133 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF B 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

Mellon Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001

If paying by EFT, the Respondent shall transfer \$80,133 to:

Mellon Bank
ABA 043000261
Account 9109125

22 Morrow Drive
Pittsburgh, PA 15235

In the case of an international transfer of funds, the Respondent shall use SWIFT address MELNUS3P.

14. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303

Douglas McCurry, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303

15. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

VI. General Provisions

16. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a

Commenter=s petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

17. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

18. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

19. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.


VII. Effective Date

20. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

In the Matter of BP Pipelines (North America), Inc., Docket No. CWA-04-2007-5172(b):

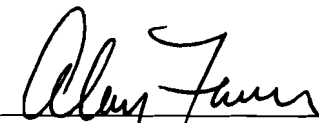
BP PIPELINES (NORTH AMERICA), INC.

Date: 8/2/07

Signature:  (AA)
Name: GERALD SCHAU
Title: MANAGER, HSSE & INTEGRITY

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/8/07

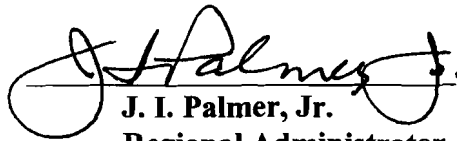
Signature: 
G. Alan Farmer
Division Director
RCRA Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: SEP 24 2007


J. I. Palmer, Jr.
Regional Administrator

CERTIFICATE OF SERVICE

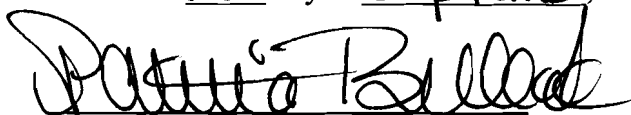
I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the Matter of BP Pipelines (North America), Inc., Docket No. CWA-04-2007-5172(b), on the parties listed below in the manner indicated:

Colleen Michuda (Via EPA Internal Mail)
Office of Environmental Accountability
U.S. Environmental Protection Agency – Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

Alan Au (Via Certified Mail,
Return Receipt Requested)
Senior Attorney
BP America Inc.
4101 Winfield Road
Mail Code 4 West
Warrenville, IL 60555

Douglas McCurry, Chief (Via EPA Internal Mail)
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
U.S. Environmental Protection Agency – Region 4
61 Forsyth Street, S.W.
Atlanta GA 30303-8960

Dated this 25 day of September, 2007.



Ms. Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303