



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

DEC 06 2006

REPLY TO THE ATTENTION OF:

SC-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Stanley W. Sorrels, Manager  
Health, Safety, Security, and the Environment  
BP Products North America, Inc.  
2815 Indianapolis Boulevard  
Whiting, Indiana 46394

Re: BP Products North America, Inc., Whiting, Indiana  
Docket Number CERCLA-05-2007-0004<sup>22</sup>

Dear Mr. Sorrels:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on December 6, 2006. Please pay the civil penalty in the amount of \$13,203 in the manner prescribed in paragraphs 25 and 26 and reference your check with the number BD 27507308003<sup>22</sup> and docket number CERCLA-05-2007-0004<sup>22</sup>. Your payment is due on January 6, 2007.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Charles Mikalian, Associate Regional Counsel at (312) 886-2242. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

**IN THE MATTER OF:** ) Docket No. CERCLA -05-2007-0004 <sup>22</sup>  
)  
BP Products North )  
America Inc. ) Proceeding to Assess a Civil  
2815 Indianapolis Blvd. ) Penalty under Section 109 of  
Whiting, Indiana 46394 ) the Comprehensive  
 ) Environmental Response,  
 ) Compensation, and Liability  
Respondent. ) Act

RECEIVED  
US EPA REGION 5  
DEC - 6 AM 10:06

**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609, and Sections 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 (2004).

2. Complainant is the Chief of the Chemical Emergency Preparedness and Prevention Section, Superfund Division, United States Environmental Protection Agency, Region 5 ("Complainant" or "U.S. EPA").

3. Respondent is BP Products North America Inc. (BP), a corporation doing business in 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) (2004).

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

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

8. BP 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the U.S. EPA Administrator may assess a civil penalty of up to

\$25,000 per day of violation of CERCLA Section 103. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

### **Factual Allegations and Violations**

11. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

12. Respondent's facility located at 2815 Indianapolis Boulevard, Whiting, Indiana, (Facility) consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

13. The Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. At all time relevant to this CAFO, Respondent was in charge of the Facility.

15. Ammonia, CAS #7664-41-7, is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. Ammonia, CAS #7664-41-7, has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

17. On December 8, 2004, at or about 2240 Central Time, a release occurred from the Facility of approximately 660 pounds of ammonia (Release).

18. In a 24 hour time period, the Release of ammonia exceeded the 100 pound reportable quantity for ammonia.

19. The Release is a "release" as that term is defined under Section 101(22) of CERCLA 42 U.S.C. §9601(22).

20. Respondent had knowledge of the release on December 8, 2004, at approximately 2240 Central Time.

21. Respondent notified the NRC of the Release on December 9, 2004, at 0908 Central Time.

22. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

23. Respondent's failure to notify immediately the NRC of the Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

#### **Civil Penalty**

24. In consideration of Respondents attitude, cooperation, and willingness to quickly settle this matter U.S. EPA has determined that an appropriate civil penalty to settle this action is \$13,203.

25. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,203 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA, Region 5  
ATTN: Superfund Receivables  
P.O. Box 371099M  
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: BP Products North America, Inc, the docket number of this CAFO and the billing document number 2750730B003<sup>20</sup>.

26. A transmittal letter, stating the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Ruth McNamara, (SC-6J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Charles Mikalian, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

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

28. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

29. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

#### **General Provisions**

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

53. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

54. This CAFO does not affect Respondent's responsibility to comply with CERCLA and other applicable federal, state and local laws, and regulations.

55. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 304 of EPCRA and Section 103 of CERCLA.

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

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

58. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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



U.S. Environmental Protection  
Agency, Complainant

Date: 11/24/06 By: [Signature]  
Mark Horwitz, Chief  
Chemical Emergency Preparedness  
and Prevention Section  
Superfund Division  
Region 5

Date: 11-28-06 By: [Signature]  
Richard C. Karl, Director  
Superfund Division  
U.S. EPA, Region 5 Division  
Region 5

Respondent


Date: 11/7/06 By: [Signature]  
David J. Szepkowski , White Business  
Printed Name Unit Leader  
Title

In the Matter of:  
BP Products North America, Inc.  
2815 Indianapolis Boulevard  
Whiting, Indiana  
Docket No. CERCLA-05-2007-0004 *20*

**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. IT IS SO ORDERED.

Date: 11-28-06

By:   
\_\_\_\_\_  
Mary A. Gade  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

In the Matter of:  
BP Products North America, Inc.  
2815 Indianapolis Boulevard  
Whiting, Indiana  
Docket No. CERCLA-05-2007-0004 *20*.

2006 DEC -6 AM 10:06  
REGIONAL HEARING CLERK

CERTIFICATE OF SERVICE

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number \_\_\_\_\_ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed a correct copy by first class, postage prepaid, certified mail, return receipt requested, to BP Products North America, Inc., by placing it in the custody of the United States Postal Service addressed as follows:

REGIONAL HEARING CLERK  
DEC 16 10:30 AM '06

BP Products North America, Inc.  
2815 Indianapolis Blvd.  
Whiting, Indiana 46394

on the 12<sup>th</sup> day of December, 2006.

Ruth McNamara  
Ruth McNamara  
U.S. Environmental Protection Agency  
Region 5