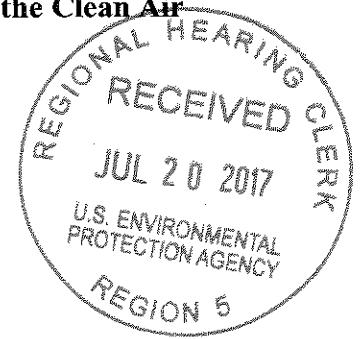




**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2017-0033</b>
	)	
<b>West Bay Exploration Company</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Lantis 30 CPF</b>	)	<b>Under Section 113(d) of the Clean Air</b>
<b>Jackson, Michigan</b>	)	<b>Act, 42 U.S.C. § 7413(d)</b>
	)	
<b>Respondent.</b>	)	
_____	)	



**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 (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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is West Bay Exploration (West Bay), a corporation doing business in Michigan.
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 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**

#### **Title V Permit Program**

9. Title V of the CAA, 42 U.S.C. § 7661 -7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for major sources of air pollution.

10. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) state that after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

11. In accordance with Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. See 57 Fed. Reg. 32295 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

12. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), requires each State to submit to EPA a permit program meeting the requirements of Title V.

13. 40 C.F.R. Part 70, Appendix A states that EPA granted final interim approval to the Michigan Title V operating permit program on January 10, 1997. 62 Fed. Reg. 1387. The

program became effective on February 10, 1997. The Michigan Title V program was granted final full approval by EPA, effective November 30, 2001. 66 Fed. Reg. 62949.

14. 40 C.F.R. § 70.1(b) states that all sources subject to 40 C.F.R. Part 70 shall have a permit to operate that assures compliance by the source with all applicable requirements.

15. 40 C.F.R. § 70.2 defines "major source" as, among other things, any stationary source belonging to a single major industrial grouping and that directly emits or has the potential to emit greater than 100 tons per year (tpy) or more of any air pollutant subject to regulation. See also 42 U.S.C. § 7661(2)(A).

16. 40 C.F.R. § 70.2 defines "regulated air pollutant" as, among other things, "[n]itrogen oxides or any volatile organic compounds."

17. 40 C.F.R. §70.5(a) requires the owner and operator of each source subject to 40 C.F.R. Part 70 to submit a timely and complete permit application.

18. 40 C.F.R. §70.7(b) states that "no part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under a part 70 program."

#### Michigan State Implementation Plan

19. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards.

20. On May 6, 1980, EPA approved Michigan Rule 336.1201 as part of the federally enforceable Michigan SIP. 45 Fed. Reg. 29790 (May 6, 1980).

21. Rule 336.1201 of the Michigan SIP states, "a person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning or refuse-burning equipment, or control

equipment pertaining thereto, which may be a source of an air contaminant, until a permit is issued by the commission.”

22. On June 11, 1992, EPA approved Michigan Rules 336.1101 and 336.1116, as part of the federally enforceable Michigan SIP. See 40 C.F.R. § 52.1170(c) and 57 Fed. Reg. 24752.

23. Rule 336.1101 defines an "air contaminant" as dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof."

24. Rule 336.1116 defines a "person" as "any of the following: (i) An individual person... (v) Association. (vi) Partnership. (vii) Firm... (ix) Company. (x) Corporation. (xi) Business trust... (xxi) Other entity recognized by law as the subject of rights and duties," among other things.

25. Rule 336.1116 defines "process" or "process equipment" as "any equipment, device, or contrivance and all appurtenances thereto, for the changing any materials or for the storing and handling of any materials, including ducts and stacks, the use of which may cause discharge of an air contaminant into the outer air."

26. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after January 12, 2009 through December 6, 2013; a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015; and a civil penalty of up to \$45,268 per day of violation up to a total of \$362,141 for CAA violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

27. 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.

28. 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**

#### **Factual Allegations**

29. At all times relevant to this CAFO, West Bay was the owner and/or operator of an oil and gas production and processing facility known as the Lantis 30 CPF (Lantis 30 facility), located at 5720 Baner Road, Jackson, Michigan, 49201.

30. West Bay is a person as that term is defined in the Michigan SIP.

31. The Lantis 30 facility contains process equipment as defined in the Michigan SIP, including storage vessels for the storing of crude oil and produced water.

32. The storage vessels at the Lantis 30 facility, which are process equipment, have the potential to emit volatile organic compounds (VOC).

33. VOC is a regulated air pollutant as defined in Title V of the CAA.

34. VOC, as a gaseous emission to the air, is an air contaminant as defined in the Michigan SIP.

35. On February 18, 2015, EPA issued a Request for Information (information request) to West Bay pursuant to Section 114 of the CAA, requesting, among other things, air

permits, air permit applications, past emissions calculations, material sampling and calculations to determine potential VOC emissions.

36. On March 23, 2015 and May 12, 2015, West Bay submitted its response to the information request.

37. Based on information submitted by West Bay, EPA determined that the storage vessels at the Lantis 30 facility had a potential to emit at least 287 tons of VOC per year. Therefore, EPA alleged that the Lantis 30 facility is a major source as defined by the CAA.

38. On February 3, 2016, EPA issued West Bay a Notice and Finding of Violation (NOV/FOV) alleging that it violated Title V of the CAA and the Michigan SIP.

39. EPA also sent a copy of the February 3, 2016 NOV/FOV to the Michigan Department of Environmental Quality (MDEQ).

40. Prior to June 14, 2016, West Bay, did not submit to MDEQ an application for a permit to install for its Lantis 30 facility.

41. Prior to June 14, 2016, West Bay, did not submit a timely and complete permit application in accordance with 40 C.F.R. Part 70 for its Lantis 30 facility.

42. Prior to June 14, 2016, West Bay was operating the Lantis 30 facility without a permit under 40 C.F.R. Part 70.

43. On August 29, 2016, MDEQ issued West Bay's Lantis 30 facility a federally enforceable Permit to Install, Permit No. 95-16.

44. The Permit to Install requires that West Bay's Lantis 30 facility limit its VOC emissions to 50 tons per year, on a rolling 12-month basis, and requires the use of a Vapor Recovery Unit (VRU) or Flare for the tank battery and shared vapor headspace at the Lantis 30 facility.

### Alleged Violations

45. The preceding paragraphs are incorporated by reference.

46. EPA alleges that, prior to June 14, 2016, West Bay was operating its Lantis 30 facility without a Title V permit, in violation of Section 502(a) of the CAA, 42 U.S.C. § 7661a(a) and 40 C.F.R. §§ 70.1(b), 70.5(a) and 70.7(b) and Rule 336.1201 of the Michigan SIP.

47. West Bay's alleged violation of Section 502(a) of the CAA, 42 U.S.C. § 7661a(a) and 40 C.F.R. §§ 70.1(b), 70.5(a) and 70.7(b) and Rule 336.1201 of the Michigan SIP subjects West Bay to the issuance of an Administrative Complaint seeking a civil penalty under Section 113(d) of the CAA.

### Civil Penalty

48. 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 Respondent's cooperation, prompt agreement to return to compliance by obtaining the necessary Permit to Install from MDEQ and to enter into an Administrative Consent Order under Section 113(a) and 114(a) to bring the Lantis 30 facility into compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$76,300.

49. Within 30 days after the effective date of this CAFO, Respondent must pay a \$76,300 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, state Respondent’s name and the docket number of this CAFO.

50. 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:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Nidhi K. O’Meara (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

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

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

52. 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 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.

53. 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**

54. Consistent with the Standing Order Authorizing E-Mail Service of Orders 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: omeara.nidhi@epa.gov (for Complainant), and SLJohnson@honigman.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

55. Respondent stipulates that the Permit to Install, Permit No. 95-16, issued to West Bay's Lantis 30 facility on or about August 29, 2016 is federally enforceable.

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

57. 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.

58. 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 56 above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

59. Respondent certifies that it is complying fully with the CAA and other applicable federal, state and local laws.

60. 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).

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

62. 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.

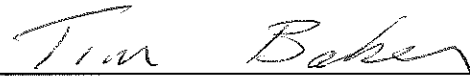
63. Each party agrees to bear its own costs and attorneys’ fees in this action.

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

**West Bay Exploration Company, Respondent**

June 20, 2017

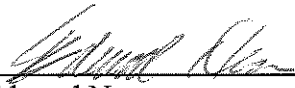
Date

Handwritten signature of Tim Baker in cursive script.

Tim Baker,  
Vice President of Engineering and Operations  
West Bay Exploration Company

**United States Environmental Protection Agency, Complainant**

7/10/17  
Date

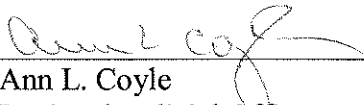
  
\_\_\_\_\_  
Edward Nam  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: West Bay Exploration Company**  
**Docket No. CAA-05-2017-0033**

**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.

July 18, 2017  
Date

  
\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: West Bay Exploration Company  
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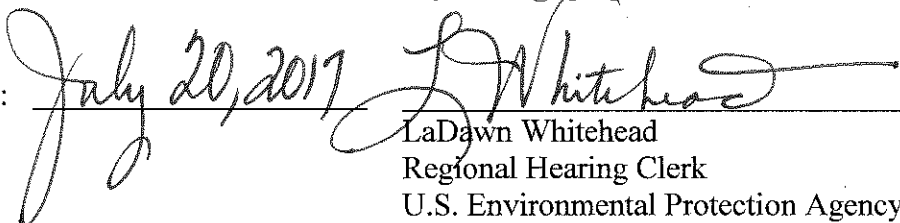
**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2017-0033, which was filed on 7/20/2017 in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Respondent: S. Lee Johnson  
[SLJohnson@honigman.com](mailto:SLJohnson@honigman.com)

Copy by E-mail to  
Attorney for Complainant: Nidhi K. O'Meara  
[omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov)

Copy by E-mail to  
Regional Judicial Officer: Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: July 20, 2017   
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5