



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 24 2018

REPLY TO THE ATTENTION OF  
WC-15

CT Corporation System  
Suite 125  
4400 Easton Common Way  
Columbus, Ohio 43219  
Registered Agent for Service of Process for:

BASF Corporation  
100 Park Avenue  
Florham Park, New Jersey 07932

Re: U.S. Environmental Protection Agency Civil Administrative Complaint Against BASF Corporation, 33 U.S.C. § 1319(g). **CWA-05-2018-0008**

Dear BASF Corporation:

Enclosed is an Administrative Complaint (Complaint) which specifies the U.S. Environmental Protection Agency's determination of violations of the Clean Water Act as amended, 33 U.S.C. § 1251 *et seq.*, by BASF Corporation (BASF). EPA based its determination on, among other things, several EPA inspections at BASF's facility located at 1000 Harvard Avenue, Cleveland, Ohio, during 2013 through 2014, including a sampling inspection on October 25 and 29, 2013; and information provided by BASF to EPA on or about May 5, 2015. The general allegations in the Complaint state the reasons for EPA's determination.

Accompanying this Complaint is a Notice of Opportunity for Hearing. Should you desire to contest the Complaint, you must file a written request for a hearing with the Regional Hearing Clerk within thirty (30) days after service of this Complaint. You must file the request for hearing with Regional Hearing Clerk (E-19J), Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604-3590. You must also send a copy of your request to Jeffery M. Trevino (C-14J), Associate Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604-3590.

Regardless of whether you choose to request a hearing within the prescribed time limit following the filing of this Complaint, EPA extends to you the opportunity to request an informal settlement conference. The settlement conference discussions may include the mitigation of the proposed penalty in accordance with EPA guidance on pollution prevention and supplemental environmental projects. A request for an informal settlement conference with EPA will not affect or extend the thirty (30) day deadline to file an Answer in order to avoid a Finding of Default on the Complaint.

If you have any questions or want to request an informal settlement conference with EPA, please contact, Todd Brown of my staff at (312) 886-6091 or [brown.todd@epa.gov](mailto:brown.todd@epa.gov). Your legal counsel may contact Associate Regional Counsel Mr. Jeffrey Trevino at (312) 886-6729, or at [trevino.jeffery@epa.gov](mailto:trevino.jeffery@epa.gov).

Sincerely,



Linda Holst  
Acting Director, Water Division

Enclosure

cc:	Linda Mirsky Brenneman, BASF	(via certified mail)
	Tiffani Kavalec, Ohio EPA	(via certified mail)
	Erin Sherer, Ohio EPA	(via e-mail)
	Larry Reeder, Ohio EPA	(via e-mail)
	William Palmer, Ohio EPA	(via e-mail)
	Kurt Princic, Ohio EPA	(via e-mail)
	Richard Blasick, Ohio EPA	(via e-mail)
	Dean Stoll, Ohio EPA	(via e-mail)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

BASF Corporation,  
Cleveland, Ohio,

Respondent.



) Docket No. CWA-05-2018-0008  
)  
) Proceeding to Assess a Class II Civil Penalty  
) Under Section 309(g) of the Clean Water Act,  
) 33 U.S.C. § 1319(g)  
)

COMPLAINT

**I. Statutory Authority**

1. This is an administrative action instituted by Region 5 of the United States Environmental Protection Agency, pursuant to Section 309(g) of the Clean Water Act, ("the Act"), 33 U.S.C. § 1319(g), and 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 at 40 C.F.R. Part 22.

**II. The Parties**

2. The Administrator of EPA has delegated the authority to take this action to the Regional Administrator of Region 5, who has delegated this authority to the Director of the Water Division of Region 5 (Complainant).

3. The Respondent in this matter is BASF Corporation, Cleveland, Ohio.

**III. General Allegations**

4. Respondent was and remains a corporation doing business in the state of Ohio.

5. Therefore, Respondent was and remains a “person” as defined at section 502(5) of the Act, 33 U.S.C. § 1362(5).

6. Respondent was and remains the owner of a 40-acre facility located at 1000 Harvard Avenue, Cleveland, Ohio.

7. Respondent added nickel, lead, cadmium, copper, selenium, uranium, and other radionuclides from Outfall No. 007 into the Cuyahoga River, Cleveland, Ohio, on at least the following 27 dates: July 1, 2012; May 31, October 25, 29, 2013; and August 28, September 3, 4, 8, 9, 15, 16, 22, 23, 24, 25, 29, 30, October 1, 2, 6, 7, 8, 9, 13, 14, and 15, 2014.

8. Therefore, Respondent “discharged” into waters as defined at section 502(16) and (12) of the Act, 33 U.S.C. § 1362(16) and (12).

9. Nickel, lead, cadmium, copper, selenium, uranium, and other radionuclides, were “chemical wastes,” or “radioactive materials,” or “industrial waste.”

10. Therefore, Respondent discharged “pollutants” into waters as defined at section 502(6) of the Act, 33 U.S.C. § 1362(6).

11. Respondent discharged from Outfall No. 007, a “discernible, confined, and discrete conveyance,” specifically a metal pipe within a concrete and iron structure on the western bank of the Cuyahoga River.

12. Therefore, Respondent discharged pollutants from a “point source” into waters as defined at section 502(14) of the Act, 33 U.S.C. § 1362(14).

13. The Cuyahoga River was “used in the past” and is “currently used” “in interstate or foreign commerce.”

14. Therefore, the Cuyahoga River was and remains “waters of the United States” as defined at 40 C.F.R. § 122.2.

15. Therefore, the Cuyahoga River was and remains “navigable waters” as defined at section 502(7) of the Act, 33 U.S.C. § 1362(7).

16. The Cuyahoga River also flowed and flows into Lake Erie.

17. Therefore, the Cuyahoga River also was and remains a “tributary” to Lake Erie as defined at 40 C.F.R. § 122.2.

18. Lake Erie was “used in the past” and is “currently used” “in interstate or foreign commerce” and was and remains an interstate water.

19. Therefore, Lake Erie was and remains “waters of the United States” as defined at 40 C.F.R. § 122.2.

20. Therefore, the Cuyahoga River, as a “tributary” to Lake Erie, also was and remains “waters of the United States” as defined at 40 C.F.R. § 122.2.

21. Therefore, the Cuyahoga River was and remains “navigable waters” as defined at section 502(7) of the Act, 33 U.S.C. § 1362(7).

22. On August 29, 2014, Complainant issued to Respondent an Information Request pursuant to section 308 of the Act, 33 U.S.C. § 1318, which required Respondent to complete 1) Visual Monitoring of Outfalls and Effluent Flows; 2) Monitoring of Precipitation and Effluent Flow; and 3) Representative Outfall Effluent Sampling and Analysis.

23. On Tuesday, September 9, 2014, Respondent received the Information Request.

24. On October 8, 2014, Complainant issued to Respondent a combination sections 308 Information Request and 309 Administrative Order for Compliance, 33 U.S.C. §§ 1318 and

1319, which required Respondent to 1) Immediately Cease and Desist Any and All Site Point Source Discharges in Navigable Water, including the Cuyahoga River; 2) Immediately Provide to Complainant for Approval a Written Proposed Cease and Desist Plan; and 3) Document to Complainant its Completion of each Cease and Desist Plan Milestone.

25. On October 16, 2014, Respondent dismantled and plugged Outfall 007 and ceased adding nickel, lead, cadmium, copper, selenium, uranium, and other radionuclides from Outfall No. 007 into the Cuyahoga River, Cleveland, Ohio.

#### **IV. Specific Allegations**

##### **Unpermitted Discharges**

##### **Counts 1 – 27**

26. Complainant incorporates into these counts all of the above allegations.

27. Respondent added nickel, lead, cadmium, copper, selenium, uranium, and other radionuclides from Outfall No. 007 into the Cuyahoga River, Cleveland, Ohio, on at least the following 27 dates: July 1, 2012; May 31, October 25, 29, 2013; and, August 28, September 3, 4, 8, 9, 15, 16, 22, 23, 24, 25, 29, 30, October 1, 2, 6, 7, 8, 9, 13, 14, and 15, 2014.

28. Respondent discharged pollutants from a point source into navigable waters without a permit in violation of section 301 of the Act, 33 U.S.C. § 1311.

##### **Failure to Provide Written Confirmation of Intent to Comply**

##### **Count 28**

29. Complainant incorporates into this count all of the above allegations.

30. Complainant's Information Request, dated August 29, 2014, Paragraph No. 1, required Respondent to provide Complainant written confirmation of its intent to comply with it within three business days of its receipt.

31. Respondent failed to provide Complainant written confirmation of its intent to comply with the Information Request in violation of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.

### **Failure to Visually Monitor Outfalls and Effluent Flow**

#### **Counts 29-61**

32. Complainant incorporates into these counts all of the above allegations.

33. Complainant's Information Request, dated August 29, 2014, Paragraph No. 21, required that no later than 3 days following receipt of the Request, Respondent visually examine the outfall structure at Outfall 007, and immediately commence construction or modification of any channel or conveyance works at Outfall 007 necessary to ensure accurate volumetric flow monitoring and representative sampling of the effluent.

34. Respondent failed to commence construction or modification of any channel or conveyance works at Outfall 007 necessary to ensure accurate volumetric flow monitoring and representative sampling of the effluent for the 33 days from September 13, 2014 through October 15, 2014 in violation of Paragraph No. 21 of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.

### **Counts 62-66**

35. Complainant incorporates into these counts all of the above allegations.

36. Complainant Information Request, dated August 29, 2014, Paragraph No. 22, required that, no later than 3 days following receipt of this request, Respondent visually monitor the effluent discharged from Outfall 007, on each business day, during daylight hours, including observations of the presence or absence of flow, as well as descriptions of color, odor, clarity, floating solids, foams, or oil sheen in the effluent.

37. Respondent failed to visually monitor the effluent discharged from Outfall 007 for the five business days between Saturday, September 13, 2014, through Sunday, September 21, 2014, in violation of Paragraph No. 22 of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.

### **Counts 67- 78**

38. Complainant incorporates into these counts all of the above allegations.

39. Complainant Information Request, dated August 29, 2014, Paragraph No. 22, also required that Respondent provide Complainant with weekly reports of its visual monitoring of its Outfall 007 effluent discharged.

40. Respondent failed to provide Complainant with weekly reports of its visual monitoring of effluent discharged from Outfall 007 for the 12 weeks of September 14, 2014 through December 6, 2014, in violation of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.



### **Counts 79-83**

41. Complainant incorporates into these counts all of the above allegations.

42. Complainant Information Request, dated August 29, 2014, Paragraph No. 23, required that, no later than 5 days following receipt of this request, Respondent visually monitor the effluent discharged from Outfalls 001 – 006, as well as any other point source discharges to the Cuyahoga River or Big Creek, on each business day, during daylight hours, including observations of the presence or absence of flow, as well as descriptions of color, odor, clarity, floating solids, foams, or oil sheen in the effluent.

43. Respondent failed to visually monitor the effluent discharged from Outfalls 001 - 006 for the 5 business days from September 15, 2014, through September 21, 2014, in violation of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.

### **Counts 84-95**

44. Complainant incorporates into these counts all of the above allegations.

45. Complainant Information Request, dated August 29, 2014, Paragraph No. 23, also required that Respondent provide Complainant with weekly reports of its visual monitoring of its Outfall 001 – 006 effluent discharged, as well as any other point source discharges to the Cuyahoga River or Big Creek.

46. Respondent failed to provide Complainant with weekly reports of its visual monitoring of its effluent discharged from Outfall 007 for the 12 weeks of September 14, 2014 –

December 6, 2014, in violation of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.

### **Failure to Monitor Precipitation and Effluent Flow**

#### **Counts 96- 102**

47. Complainant incorporates into these counts all of the above allegations.

48. Complainant Information Request, dated August 29, 2014, Paragraph No. 24, required that, no later than 5 days following receipt of this request, Respondent shall establish a network of automatic rain gauge(s) on Site that is representative of precipitation falling on the Site. The rain gauge(s) shall be capable of recording 15-minute rainfalls to the nearest 0.01 inches. Respondent will validate and report the data to Complainant weekly.

49. Respondent failed to establish a network of automatic rain gauge(s) on Site for seven days from September 15 – 21, 2014, in violation of Paragraph No. 24 of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.

#### **Count 103**

50. Complainant incorporates into these counts all of the above allegations.

51. Complainant Information Request, dated August 29, 2014, Paragraph No. 25, required that, no later than 10 days following receipt of this request, Respondent shall prepare and submit to EPA for approval a Quality Assurance Project Plan (QAPP) for the collection of precipitation and effluent flow monitoring data in accordance with Complainant Information Request Paragraph Nos. 26 – 28.

52. Respondent failed to prepare and submit to EPA for approval a QAPP for the collection of precipitation and effluent flow monitoring data, in violation of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.

### **Failure to Complete Representative Outfall Effluent Sampling and Analysis**

#### **Count 104**

53. Complainant incorporates into this count all of the above allegations.

54. Complainant Information Request, dated August 29, 2014, Paragraph No. 29, required that no later than 14 days following receipt of this request, Respondent prepare and submit to Complainant for approval a QAPP to conduct representative sampling and analysis of Outfall effluent for the parameters provided in the request.

55. Respondent failed to prepare and submit to Complainant for approval a QAPP to conduct representative sampling and analysis of Outfall effluent for the parameters provided in the request, in violation of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.

#### **Count 105**

56. Complainant incorporates into this count all of the above allegations.

57. Complainant Information Request, dated August 29, 2014, Paragraph No. 30, required that no later than 2 days following receipt of EPA approval of BASF's QAPP, BASF will begin effluent sampling at Outfall 007, and not later than 5 days following receipt of EPA approval of BASF's QAPP, BASF will begin effluent sampling at Outfalls 001- 006.

58. Respondent failed to complete any effluent sampling at Outfalls 001- 007, in violation of Paragraph No. 30 of the Information Request and sections 308 and 309(g)(1) of the Act, 33 U.S.C. §§ 1318 and 1319.

#### **V. Notice of Proposed Civil Penalty**

59. Pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2), the Administrator may assess a Class II civil penalty not to exceed \$16,000.00 per day for violations of Section 301 of the Act, 33 U.S.C. § 1311, that occurred between January 13, 2009, and November 1, 2015. The Administrator may assess a Class II civil penalty not to exceed \$20,965 per day for violations of Section 301 of the Act, 33 U.S.C. § 1311, that occurred between November 2, 2015 to the present. Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondents' ability to pay, prior history of such violations, culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA proposes a civil penalty of \$262,006.00.

60. Respondent shall pay this penalty by certified or cashier's check identifying the case name and docket number on the check and made payable to "Treasurer, the United States of America." Respondent shall send the check, with a transmittal letter identifying the case name and docket number to:

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

Copies of the transmittal letter and check shall be sent to:

Todd Brown (WC-15J)  
U.S. Environmental Protection Agency, Water Division  
77 West Jackson Boulevard  
Chicago, IL 60604-3590;

and,

Jeffery M. Trevino (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

#### **VI. Notice of Opportunity to Request a Hearing**

61. As provided in Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and Section 22.15 of the Consolidated Rules of Practice, 40 C.F.R. § 22.15, Respondent has the right to request a hearing to contest any material fact alleged in this Complaint and to contest the appropriateness of the amount of the proposed penalty. To request a hearing, a Respondent must specifically make such a request in its Answer, which is discussed below.

62. Any hearing Respondent requests regarding this Complaint will be held and conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which accompanies this Complaint.

#### **VII. Answer**

63. If Respondent contests any material fact alleged in this Complaint, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of

law, that Respondent must file the original and one copy of a written Answer to this Complaint with the Regional Hearing Clerk (E-19J), Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604-3590, within 30 days after service of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included, except when a time period expires on such, in which case the time period shall be extended to the next business day.

64. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint or state clearly it has no knowledge of a particular factual allegation. Where Respondent states it has no knowledge of a particular factual allegation, the allegation is deemed denied.

Respondent's Answer must also state:

- a. The circumstances or arguments Respondent alleges constitute grounds of defense;
- b. The facts Respondent disputes;
- c. The basis for opposing the proposed penalty; and,
- d. Whether Respondent requests a hearing.

65. Respondent's failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation as to that Respondent.

66. A copy of the Answer and all subsequent documents filed in this action must be sent to Jeffery M. Trevino (C-14J), Associate Regional Counsel, U.S. Environmental Protection

Agency, 77 West Jackson Boulevard, Chicago, IL 60604-3590, who may be telephoned at (312) 886-6729.

67. If Respondent fails to file a written Answer within 30 days after service of this Complaint, the Presiding Officer may issue a Default Order, after motion, pursuant to 40 C.F.R. § 22.17. Default by a Respondent constitutes an admission of all factual allegations made in the Complaint and a waiver of that Respondent's right to contest the factual allegations made in the Complaint. The Defaulting Respondent must pay any penalty assessed in a Default Order without further proceedings 30 days after the Order becomes a Final Order of the Administrator of U.S. EPA under 40 C.F.R. § 22.27(c). Respondent's failure to pay the entire proposed penalty assessed by the Default Order by its due date may result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs of collection proceedings, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).

68. If Respondent requests a hearing on the Complaint, members of the public who have exercised their right to comment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to present evidence on the appropriateness of the penalty assessment. If a hearing is not held, EPA may issue a Final Order assessing penalties and only members of the public who commented on the proposed penalty assessment during the 40 day period following issuance of the public notice will have an additional 30 days to petition U.S. EPA to set aside the Final Order assessing penalties and to hold a hearing thereon. U.S. EPA will grant the petition and hold the hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order assessing penalties.

### **VIII. Settlement Conference**

69. Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please write to Todd Brown, Enforcement Officer, Water Division, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (WC-15J), Chicago, IL 60604-3590, or telephone him at (312) 886-6091.

70. Respondent's request for an informal settlement conference will not extend the 30 day period for a Respondent to submit a written Answer and Request for Hearing. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure. EPA encourages all parties against whom a penalty is proposed to pursue settlement through an informal conference. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference will be embodied in a Consent Agreement and Final Order. Respondent's consent to a Consent Agreement and Final Order shall constitute a waiver of the right to request a hearing on any matter stipulated to therein.

### **IX. Notice to the State and Public**

71. EPA has consulted with the State of Ohio regarding this action, specifically the Ohio Environmental Protection Agency Division of Surface Water, and by offering the State of Ohio an opportunity to comment on the proposed penalty. EPA, contemporaneously with the issuance of this Complaint, caused a public notice to be published on the EPA website regarding this action.



**X. Continuing Obligation to Comply**

72. Neither assessment nor payment of a penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect a Respondent's continuing obligation to comply with the Act, with any other Federal, State or local law or regulation and with any Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a).

Linda Holst

7/18/18

Linda Holst  
Acting Director, Water Division  
United States Environmental Protection Agency  
Region 5

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. CWA-05-2018-0008  
BASF Corporation, )  
Cleveland, Ohio, ) Proceeding to Assess a Class II Civil Penalty  
Respondent. ) Under Section 309(g) of the Clean Water Act,  
 ) 33 U.S.C. § 1319(g)  
 )



CERTIFICATE OF SERVICE

I, Mark Conti, Lead Environmental Engineer, Office of Enforcement and Compliance Assurance, Cleveland Office, Region 5, U.S. EPA, 25063 Center Ridge Road, Westlake, Ohio, hereby certify I personally served to CT Corporation System, the Registered Agent for Service of Process for BASF Corporation, Cleveland, Ohio, at the following address, the original Complaint for this civil administrative action pursuant to section 309(a)(5)(A) of the Clean Water Act, 33 U.S.C. § 1319(a)(5)(A).

CT Corporation System  
Registered Agent for Service of Process for BASF Corporation  
Suite 125  
4400 Easton Common Way  
Columbus, OH 43219

I further certify that one copy of this Complaint was sent to Linda Mirsky Brenneman, Associate General Counsel – Environmental, BASF Corporation, via U.S. Mail, at the following address:

Linda Mirsky Brenneman  
BASF Corporation  
100 Park Avenue  
Florham Park, NJ 07932

\_\_\_\_\_  
Mark Conti

\_\_\_\_\_  
Date