

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

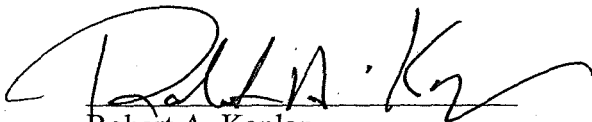
In the matter of:)	Docket No. CWA-05-2016-0015
)	
BP Products North America Inc.)	Proceeding to Assess a Class II Civil
Whiting, Indiana)	Penalty Under Section 311(b)(6) of the
)	Clean Water Act, 33 U.S.C. § 1321(b)(6)
<u>Respondent.</u>)	

Request to Assign Petition Officer

On February 27, 2017, EPA Region 5 received a timely petition to set aside the Consent Agreement and proposed Final Order (proposed CAFO) in the matter of *BP Products North America Inc.* under Section 311(b)(6) of the Clean Water Act and 40 C.F.R. § 22.45(c)(4).

After considering the issues raised in the petition, Complainant, the Acting Superfund Division Director, has decided not to withdraw the CAFO. Accordingly, I respectfully request that an Administrative Law Judge within EPA's Office of Administrative Law Judges be assigned to consider and rule on the petition pursuant to 40 C.F.R. § 22.45(c)(4)(iii).

A copy of the case file is attached, which includes the: petition; proposed CAFO; public comments received regarding the proposed CAFO; and Complainant's response to comments.



Robert A. Kaplan
Acting Regional Administrator

Date: 5-17-17

Attachments

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Request to Assign Petition Officer under 40 C.F.R. § 22.45(c)(4)(iii)
In the matter of: BP Products North America Inc.
Docket Number: CWA-05-2016-0015

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Request to Assign Petition Officer and a copy of the case file for docket number CWA-05-2016-0015, in the following manner to the following addressees:

Copy by Certified Mail
to Petitioners

Carlotta Blake-King
1004 Highland St.
Hammond, IN 46320

Carolyn A. Marsh
1804 Oliver St.
Whiting, IN 46394

Debra Michaud
1401 W. Winnemac Ave. 3E
Chicago, IL 60640

Patricia Walter
1829 Wildberry Dr. Unit G
Glenview, IL 60025

Copy by Certified Mail
to Attorney for Respondent

Paul M. Drucker
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, IL 60606

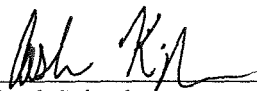
Copy by email to
Attorneys for Complainant

Kasey Barton and Rachel Zander
Office of Regional Counsel
77 W. Jackson Blvd. C-14J
Chicago IL, 60604
barton.kasey@epa.gov and zander.rachel@epa.gov

Copy by U.S. mail to
Administrative Law Judge

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Ariel Rios Building/Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dated: MAY 30 2017


Cash Kinghorn
Legal Technician
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7009 1680 0000 7647 5464

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the matter of:)	Docket No. CWA-05-2016-0015
)	
BP Products North America Inc.)	Proceeding to Assess a Class II Civil
Whiting, Indiana,)	Penalty Under Section 311(b)(6) of the
)	Clean Water Act, 33 U.S.C. § 1321(b)(6)
Respondent.)	

Petition to set aside Consent Agreement and proposed Final Order

List of Exhibits

Exhibit	Description	Date
1	Consent Agreement and proposed Final Order (CAFO)	May 31, 2016
2	Public Notice of CAFO	June 1, 2016
3	Petitioners' comments on the CAFO	July 12, 2016
4	Complainant's response to comments	January 1, 2017
5	Transmittal letter to commenter (example)	January 17, 2017
6	Petitioners' Confirmations of Receipt of CAFO and Response to Comments	January 24, 2017 and January 30, 2017
7	Petition to set aside CAFO	Dated February 24, 2017 Received February 27, 2017

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CWA-05-2016-0015
)
BP Products North America Inc.) Proceeding to Assess a Class II Civil Penalty
Whiting, Indiana,) Under Section 311(b)(6) of the Clean Water
Respondent.) Act, 33 U.S.C. § 1321(b)(6)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(ii), 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 Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is BP Products North America Inc., 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).
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 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

Spill prevention, control and countermeasure plan requirements

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (October 18, 1991).

10. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. 40 C.F.R § 112.1(a)(1).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. 40 C.F.R. § 112.1(b).

12. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan ("SPCC Plan") in accordance with the requirements of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.7(c) requires the owner or operator of a subject facility to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b), and further requires that the entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system will not escape the containment system before cleanup occurs. In determining the method, design, and capacity for secondary containment, the owner or operator must address the typical failure mode, and the most likely quantity of oil that would be discharged.

General provisions and enforcement of the CWA

14. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as waters of the United States.

15. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

16. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2, define “oil” as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

17. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B) and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

18. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

19. Appendix A to 40 C.F.R. § Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines “non-transportation-related” facility to include: oil refining facilities including all equipment and appurtenances related thereto; oil storage facilities, including all equipment and appurtenances related thereto; fixed bulk plant storage and terminal oil storage facilities; and industrial, commercial, agricultural or public facilities which use and store oil.

20. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), under Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 3121(b)(6)(A)(ii).

21. EPA may assess a class II civil penalty of up to \$16,000 per violation for each day of violation up to a maximum of \$187,500 for violations that occurred after December 6, 2013, under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R.

Part 19.

Factual Allegations and Alleged Violations

22. Respondent owns and operates a petroleum refinery located at 2815 Indianapolis Boulevard, Whiting, Indiana (“the Facility”).

23. The Facility is located on the shore of Lake Michigan.

24. Respondent is a corporation, and is therefore a “person” as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

25. Respondent is an “owner” and “operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

26. Respondent engages in storing, processing, refining, transferring, using, distributing or consuming oil or oil products at the Facility.

27. The Facility is located on land within the United States, and is therefore an “onshore facility” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

28. The Facility is an oil refining facility and is therefore an onshore “non-transportation-related” facility within the meaning of 40 C.F.R. Part 112, Appendix A.

29. The Facility has a total oil storage capacity of more than seven million gallons.

30. The oil that Respondent stores, handles, refines and processes at the Facility, which due to the Facility’s location, could reasonably be expected to discharge to Lake Michigan.

31. Lake Michigan is a navigable in fact water, and is therefore a “navigable water” of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

32. Respondent is subject to the spill prevention, control and countermeasure plan regulations and is therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

33. At the Facility, Respondent operates the Number 12 Pipestill (No. 12PS), which Respondent began operating in June of 2013. No. 12PS fractionates crude oil into various products and sends these products to other refinery units for further processing.

34. Respondent operates a “Once Through Cooling Water (OTCW)” system at the Facility. The OTCW system is used as non-contact cooling water throughout the Facility.

35. The OTCW system flows through a piping system to Six Separator for treatment. Six Separator is open to the ambient air and works by allowing time for oil, if any, to float to the surface based on the difference in density between oil and water. The OTCW flow ranges from 55 to 85 million gallons per day and the residence time varies from 50 to 90 minutes.

36. On March 24, 2014, Respondent discharged oil from the Facility to Lake Michigan from the Facility’s OTCW system outfall located at Six Separator.

37. Respondent conducted an investigation into the March 24, 2014 discharge and issued an “Incident Investigation Report” (“Report”) dated August 20, 2014 that described the findings and recommendations from the investigation.

38. Respondent's Report explains that the cause of the discharge originated at No. 12PS due to the installation of a temporary quench line that connected the No. 12PS brine line to the OTCW system. Due to abnormal conditions at No. 12PS, pressure in the brine line exceeded the pressure in the OTCW system at which time the check valves on the temporary quench line failed, allowing a mixture of brine and crude oil to flow backwards through the quench line into the OTCW system, Six Separator and Lake Michigan.

39. Respondent installed the temporary quench line on October 11, 2013 and removed the temporary quench line on March 25, 2014.

40. Respondent's Report stated that a contributing factor to the March 24, 2014 oil discharge was, among other things, that the oil flowing into Six Separator from No. 12PS exceeded the oil removal capacity of Six Separator. The Report further stated that the accumulation of solids present in Six Separator had built up over time and reduced the effectiveness of Six Separator to remove oil entrained in the water.

41. At all times relevant to this CAFO, Respondent's SPCC Plan for the Facility was dated January of 2014 ("2014 SPCC Plan").

42. Respondent's 2014 SPCC Plan provides that the OTCW system passes through Six Separator prior to discharging to Lake Michigan.

43. Respondent's 2014 SPCC Plan provides that if oil is detected in the OTCW system, the facility personnel act to locate the source of the oil and can take steps to correct the problem at its source, such as deploying sorbent sheets and vacuum trucks.

44. Respondent's 2014 SPCC Plan provides that additional observation points were being identified to monitor oil in the OTCW system, and that Respondent was performing an assessment of the system to identify and evaluate options to prevent oil from entering Lake Michigan.

45. Respondent's 2014 SPCC Plan provides that secondary containment for No. 12PS is Respondent's wastewater treatment plant.

46. Respondent's 2014 SPCC Plan further provides that once-through cooling water has the potential to contain water with hydrocarbons and the direction of flow is the outfall at Six Separator, with secondary containment listed as "facility containment."

47. After the March 24, 2014 discharge, Respondent conducted a review of connections to the OTCW system and blocked and sealed several connections, including the temporary quench line connection. Respondent also installed additional alarms upstream of Six Separator to detect oil in the OTCW system.

48. In August of 2015, Respondent completed the removal of the sediment accumulated in Six Separator.

49. In December of 2014, BP updated its SPCC Plan. In September of 2015, Respondent amended the December 2014 SPCC Plan to include, for oil-filled equipment that has the potential to discharge to the OTCW system and Lake Michigan, the typical failure mode, the most likely quantity of oil to be discharged, and the capacity of Six Separator to recover that quantity of oil.

50. Respondent failed to maintain and implement the 2014 SPCC Plan so as to prevent the discharge of oil from the Facility to navigable waters, in violation of 40 C.F.R. § 112.3.

51. Respondent failed to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. § 112.1(b), and failed to address the typical failure mode and the most likely quantity of oil that would be discharged from the oil-filled equipment with the potential to discharge to Lake Michigan, in violation of 40 C.F.R. § 112.7(c).

Civil Penalty

52. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, and the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is \$151,899.

53. Within 30 days after the effective date of this CAFO, Respondent must pay a \$151,899 civil penalty by an 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"

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CAFO.

54. 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:

Ellen Riley (SC-5J)
Enforcement Officer
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kasey Barton (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

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

56. If Respondent does not pay timely 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 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

57. 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 attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a nonpayment

penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 33 U.S.C. § 1321(b)(6)(H).

General Provisions

58. 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).

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

60. 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.

61. Respondent certifies that to the best of its knowledge and belief after reasonable inquiry it is complying with the requirements of 40 C.F.R. §§ 112.3, 112.7(c) and the SPCC Plan for the Facility.

62. 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 59, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

63. This CAFO constitutes a “prior violation(s)” as that term is used in EPA’s Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act to determine Respondent’s “history of prior violations” under Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

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

65. 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.

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


67. This CAFO constitutes the entire agreement between the parties concerning the violations alleged herein.

68. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO in accordance with Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b).

BP Products North America Inc., Respondent

CWA-05-2016-0015

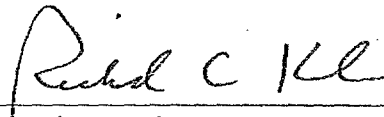
May 12, 2016
Date



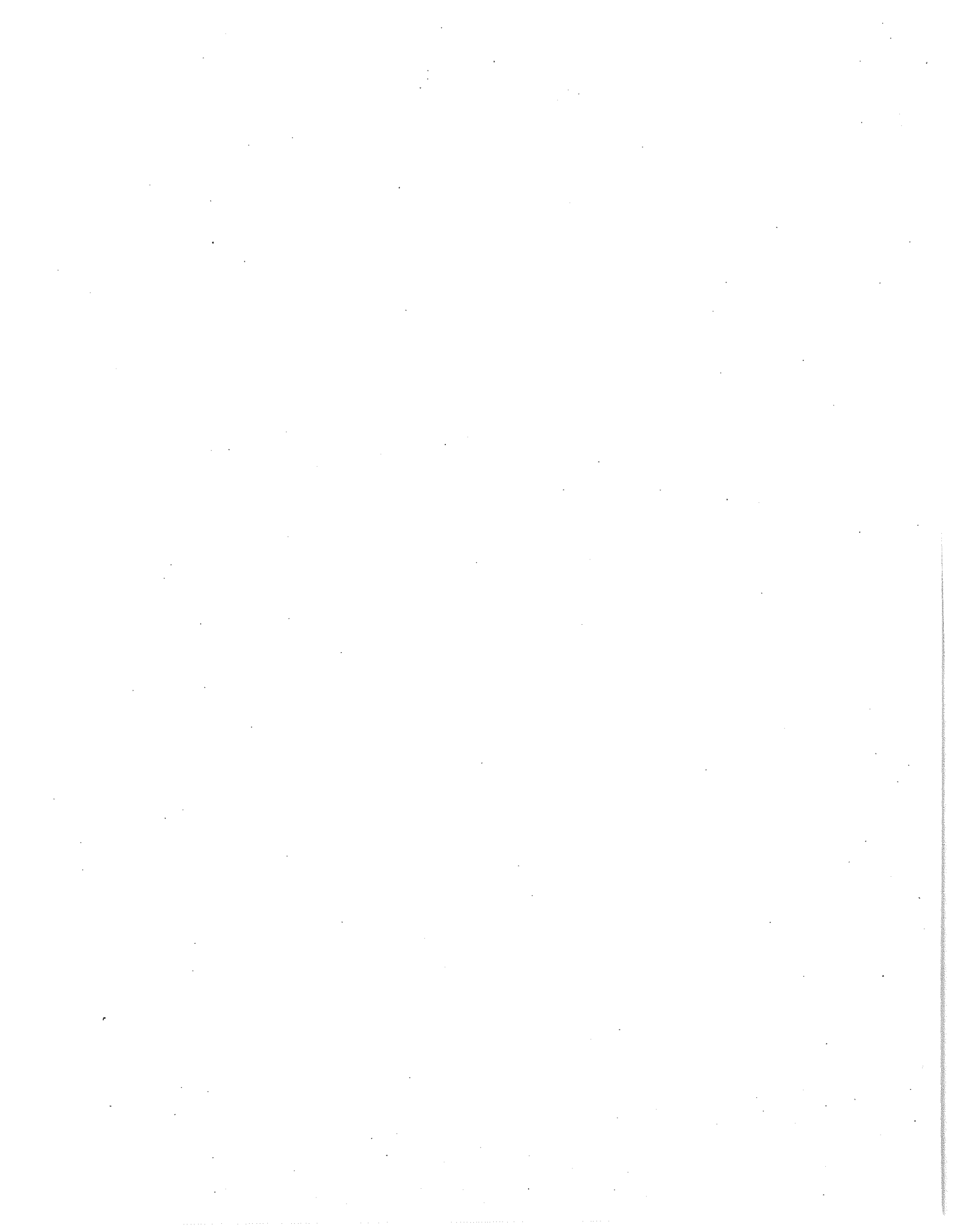
Donald Porter
Whiting Refinery Manager
BP Products North America Inc.

United States Environmental Protection Agency, Complainant

5-31-16
Date



Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency, Region 5



United States
Environmental Protection
Agency



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

PUBLIC NOTICE

BP Products North America Inc.
2815 Indianapolis Boulevard
Whiting, Indiana 46394
Case Docket No. CWA-05-2016-0015

The U.S. Environmental Protection Agency, Region 5, is providing notice of intent to file a proposed Consent Agreement and Final Order (CAFO) against BP Products North America Inc. (Respondent) for violations of the Clean Water Act (CWA). Respondent operates a petroleum refinery in Whiting, Indiana. The CAFO will resolve Respondent's liability for federal civil penalties for EPA's allegations that Respondent violated the CWA by failing to maintain and implement its Spill Prevention, Control and Countermeasure (SPCC) Plan and to provide appropriate containment to prevent a discharge of oil from the refinery. Respondent has agreed to pay a penalty of \$151,899 to resolve these alleged violations.

EPA identified the alleged violations as part of an investigation to evaluate BP's compliance with the oil pollution prevention regulations at 40 C.F.R. Part 112 after BP discharged oil into Lake Michigan on March 24, 2014. The United States Coast Guard assessed a civil penalty against BP for the unauthorized oil discharge.

A copy of the Proposed CAFO may be viewed online at: www.epa.gov/aboutepa/epa-region-5#events by clicking on the "Proposed Consent Agreement and Final Order" link on the Region 5 events calendar for the docket number identified above. Alternatively, the Proposed CAFO may be received by contacting the Regional Hearing Clerk at the address below.

OPPORTUNITY FOR COMMENT:

Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), requires that interested persons be given notice of the proposed penalty and a reasonable opportunity to comment on it. Any person who wishes to comment on this proposed CAFO may submit written comments, may attend or present evidence at any hearing scheduled on this matter, or both, by following the procedures in Title 40 of the Code of Federal Regulations, Part 22, Section 45 (40 C.F.R. § 22.45), particularly subpart (c) *comment by a person who is not a party*. This portion of the code of federal regulations may be accessed at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol1/pdf/CFR-2015-title40-vol1-sec22-45.pdf> or through <http://www.archives.gov/federal-register/cfr/>. You may also wish to review 40 C.F.R. Part 22 to learn more about the procedures and rules of practice governing the administrative assessment of civil penalties.

Comments should be made in writing to the Regional Hearing Clerk at:

Docket No. CWA-05-2016-0015
Regional Hearing Clerk
Mail Code E-19J
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Written comments may be submitted to the Regional Hearing Clerk by email to whitehead.ladawn@epa.gov; by facsimile (fax) to 312-692-2405; or by mail or delivery to the Clerk's address above. Your comments should include the case name, docket number, and your complete mailing address. If you plan to deliver your comments or other documents in person, please call the Regional Hearing Clerk at (312) 886-3713 for further instructions. Comments and documents sent to any EPA employee other than the Regional Hearing Clerk are not assured of consideration in this matter.

Note that the Agency requires your mailing address because we must use the U.S. Postal Service should we need to reply, request additional information, or notify you of a hearing, and to provide a copy of any consent agreement and proposed final order.

All written comments must be received in the Regional Hearing Clerk's Office no later than 4:30 p.m., Central Time, of the Comment Period End Date shown on the Region 5 events calendar page for this docket number: www.epa.gov/aboutepa/epa-region-5#events.

All documents filed in this proceeding (including documents submitted by the Respondent or by the public) are available for public inspection by appointment only between 9 a.m. and 4:30 p.m. Monday through Friday at the EPA Regional Office. An appointment for such an inspection may be made by calling (312) 886-3713 or by writing the Regional Hearing Clerk at the address above.

If this Proposed CAFO is filed in its present form, no hearing will be held in this matter. If a hearing is held, we will advise the public who (during the public comment period) submitted a written request to participate in a hearing of the date, time, and place of the hearing, which they may attend and present evidence on the appropriateness of the proposed penalty assessment by following the instructions in 40 C.F.R. § 22.45(c)(1).

Only persons who during the comment period submit written comments or ask to participate in any hearing held in this matter preserve a right to petition the Regional Administrator to set aside any consent agreement and proposed final order on the basis that material evidence was not considered, as described in 40 C.F.R. § 22.45(c)(4).

Whitehead, LaDawn

From: Carlotta Blake-King <cbk0563@comcast.net>
Sent: Tuesday, July 12, 2016 12:14 PM
To: Whitehead, LaDawn
Subject: Re: Docket No. CWA-05-2016-0015 BP Products North America, Inc.

July 12, 2016

Regional Hearing Clerk, LaDawn Whitehead
Via email: whitehead.ladawn@epa.gov
U.S. Environmental Protection Agency Region 5
Mail Code R-19J
77 West Jackson Boulevard
Chicago, Illinois 60604



Re: Docket No. CWA-05-2016-0015 BP Products North America, Inc

Director of the Superfund Division, U.S. EPA, Region 5:

We submit the following written comments as interested persons who are not a party to the proposed Consent Agreement and Final Order (CAFO) between U.S. Environmental Protection Agency (USEPA) Region 5 and BP Products North America, Inc, as is our right under 40CFR§22.45 (c).

Introduction

The BP Whiting petroleum refinery is located at 1815 Indianapolis Boulevard, Whiting, Indiana on the southwestern shore of Lake Michigan and the Indiana Harbor Ship Canal in the communities of Whiting, East Chicago and Hammond, Indiana. Whiting is the second largest refinery in the BP refining system, and the sixth largest in the United States. The refinery is close and visible to residents in the Hegewisch and East Side neighborhoods of Chicago, Illinois.

The March 24, 2014 BP oil spill was a Great Lakes wake-up call. The BP pattern of poor, ineffective responses to oil pollution was amplified by the worst offshore oil spill in U.S. history -- the BP Gulf of Mexico Deepwater Horizon spill in April 2010. We are concerned that there could be a BP Gulf-type accident in our Lake Michigan. Lake Michigan is the sixth largest freshwater lake in the world and our drinking water is at risk. Of all Earth's water, 2.5% is fresh. Only 1.2% is surface. Fresh lakes = .007 of all water (USGS).

We attended the first BP Whiting Citizens Advisory Committee meeting after the March 24, 2014 oil spill. The meeting was held at noon on June 25, 2014 at Calumet College, Whiting. Gloria Blanco, BP, gave the oil spill report. We questioned and wanted answers on the spill. It was the last one BP ever scheduled.

Tar sands crude oil and cause of the spill

Initially, the Midwest Region 5 EPA and the U.S. Coast Guard distorted the type of spill and referred to it as a conventional heavy crude rather than tar sands oil spill. U.S. Representative Jan Schakowsky (D-IL 9th District), revealed that it was, indeed, a more serious tar sands oil spill.

The temporary quench line and valves that failed were part of a system that handles 55 to 85 million gallons of oil per day (per CWA-05-2016-0014). The so-called "temporary" line was in place for five months and its failure caused the incident that released tar sands oil into Lake Michigan. The plan in place then was woefully inadequate for proper containment. Keith Matheny, "Detroit Free Press", reported the U.S. Coast Guard and

other responders are not adequately equipped or prepared for a 'heavy oil' spill on the Great Lakes, according to a Coast Guard commander who is pushing for action.

Clean Water Act fines

The Better Government Association's Brett Chase wrote, "...the company paid no fines over the past dozen years for multiple violations of water pollution permits. A review of government inspection reports by the Better Government Association found that despite more than a dozen violations of water pollution regulations since 2002, BP wasn't fined once by its frontline regulator, the Indiana Department of Environmental Management." http://www.bettergov.org/bad_communication_over_bp_spill/

Consistent with the pattern of nominal, if any fines, is the fact that the U.S. Coast Guard fined BP only \$2,000 instead of the maximum penalty of \$40,000 for the spill.

Consent Agreement and Final Order penalties

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Please add these comments to the public record under Docket No. CWA-05-2016-0015 BP Products North America, Inc.

Sincerely,

Carlotta Blake-King
Former Organizer for The Calumet Project, Inc.
1004 Highland Street
Hammond, Indiana 46320
Phone: 219-256-1770
Email: cbk0563@comcast.net

Carolyn A. Marsh
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1804 Oliver St.
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Best Regards,

Carlotta Blake-King, CEO Founder

CBK Performing Arts Centre, Inc.

PO Box 398

Hammond, In 46325

219-931-7272 Office & Fax

219-256-1770 Cell

"Using The Arts as the Catalyst to Catch our Children Before They Fall"

"The Fierce Urgency of Now" Rev. Dr. Martin Luther King, Jr.

Whitehead, LaDawn

From: Strem Center <donotreply@epa.gov>
Sent: Tuesday, July 12, 2016 12:11 PM
To: Whitehead, LaDawn
Subject: Fax from 2196597904 to 3126922405
Attachments: 3126922405-181529-1146.pdf

This is a fax from StremCenter



July 12, 2016

Regional Hearing Clerk, LaDawn Whitehead
Via email: ladawn.whitehead@epa.gov
U.S. Environmental Protection Agency Region 5
Mail Code R-19J
77 West Jackson Boulevard
Chicago, Illinois 60604
Fax (312) 692-2405



Re: Docket No. CWA-05-2016-0015 BP Products North America, Inc

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1004 Highland Street
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Phone: 219-256-1770
Email: carlotta@calumetproject.org

Whitehead, LaDawn

From: Carlotta Blake-King <cbk0563@comcast.net>
Sent: Tuesday, July 12, 2016 12:07 PM
To: Whitehead, LaDawn
Subject: RE: Docket No. CWA-05-2016-0015
Attachments: Whitehead EPA.docx

Good Morning,

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Best Regards,

Carlotta Blake-King, CEO Founder

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Patricia Walter
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1829 Wildberry Dr, Unit G
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Regional Hearing Clerk, LaDawn Whitehead

Via email: whitehead.ladawn@epa.gov

U.S. Environmental Protection Agency Region 5

Mail Code R-19J

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Patricia Walter

Citizens Act to Protect Our Water

1829 Wildberry Dr, Unit G

Glenview, IL 60025

847-730-3947

Email: patbund@comcast.net

Whitehead, LaDawn

From: patbund@comcast.net
Sent: Tuesday, July 12, 2016 10:49 AM
To: Whitehead, LaDawn
Subject: Docket No. CWA-05-2016-0015 BP Products North America, Inc

July 12, 2016

Regional Hearing Clerk, LaDawn Whitehead

Via email: whitehead.ladawn@epa.gov

U.S. Environmental Protection Agency Region 5

Mail Code R-19J

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Email: patbund@comcast.net

Whitehead, LaDawn

From: Debra Michaud <debramichaud73@gmail.com>
Sent: Tuesday, July 12, 2016 10:46 AM
To: Whitehead, LaDawn
Subject: Docket No. CWA-05-2016-0015 BP Products North America, Inc

July 12, 2016

Regional Hearing Clerk, LaDawn.Whitehead

Via email: whitehead.ladawn@epa.gov

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BP Citizens Advisory Committee member

1804 Oliver St.

Whiting, IN 46394

Phone: 219-659-7904

Email: cmarshbird@prodigy.net

Debra Michaud

Tar Sands Free Midwest

1401 W. Winnemac Ave. 3E

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Patricia Walter

Citizens Act to Protect Our Water

1829 Wildberry Dr, Unit G

Glenview, IL 60025

[847-730-3947](tel:847-730-3947)

Email: patbund@comcast.net

Whitehead, LaDawn

From: Carolyn A. Marsh <cmarshbird@prodigy.net>
Sent: Tuesday, July 12, 2016 10:33 AM
To: Whitehead, LaDawn
Subject: Docket No. CWA-05-2016-0015 BP Products North America, Inc

July 12, 2016

Regional Hearing Clerk, LaDawn Whitehead
Via email: whitehead.ladawn@epa.gov
U.S. Environmental Protection Agency Region 5
Mail Code R-19J
77 West Jackson Boulevard
Chicago, Illinois 60604



Re: Docket No. CWA-05-2016-0015 BP Products North America, Inc

Director of the Superfund Division, U.S. EPA, Region 5:

We submit the following written comments as interested persons who are not a party to the proposed Consent Agreement and Final Order (CAFO) between U.S. Environmental Protection Agency (USEPA) Region 5 and BP Products North America, Inc, as is our right under 40CFR§22.45 (c).

Introduction

The BP Whiting petroleum refinery is located at 1815 Indianapolis Boulevard, Whiting, Indiana on the southwestern shore of Lake Michigan and the Indiana Harbor Ship Canal in the communities of Whiting, East Chicago and Hammond, Indiana. Whiting is the second largest refinery in the BP refining system, and the sixth largest in the United States. The refinery is close and visible to residents in the Hegewisch and East Side neighborhoods of Chicago, Illinois.

The March 24, 2014 BP oil spill was a Great Lakes wake-up call. The BP pattern of poor, ineffective responses to oil pollution was amplified by the worst offshore oil spill in U.S. history -- the BP Gulf of Mexico Deepwater Horizon spill in April 2010. We are concerned that there could be a BP Gulf-type accident in our Lake Michigan. Lake Michigan is the sixth largest freshwater lake in the world and our drinking water is at risk. Of all Earth's water, 2.5% is fresh. Only 1.2% is surface. Fresh lakes = .007 of all water (USGS).

We attended the first BP Whiting Citizens Advisory Committee meeting after the March 24, 2014 oil spill. The meeting was held at noon on June 25, 2014 at Calumet College, Whiting. Gloria Blanco, BP, gave the oil spill report. We questioned and wanted answers on the spill. It was the last one BP ever scheduled.

Tar sands crude oil and cause of the spill

Initially, the Midwest Region 5 EPA and the U.S. Coast Guard distorted the type of spill and referred to it as a conventional heavy crude rather than tar sands oil spill. U.S. Representative Jan Schakowsky (D-IL 9th District), revealed that it was, indeed, a more serious tar sands oil spill.

The temporary quench line and valves that failed were part of a system that handles 55 to 85 million gallons of oil per day (per CWA-05-2016-0014). The so-called "temporary" line was in place for five months and its failure caused the incident that released tar sands oil into Lake Michigan. The plan in place then was woefully inadequate for proper containment. Keith Matheny, "Detroit Free Press", reported the U.S. Coast Guard and

other responders are not adequately equipped or prepared for a 'heavy oil' spill on the Great Lakes, according to a Coast Guard commander who is pushing for action.

Clean Water Act fines

The Better Government Association's Brett Chase wrote, "*...the company paid no fines over the past dozen years for multiple violations of water pollution permits. A review of government inspection reports by the Better Government Association found that despite more than a dozen violations of water pollution regulations since 2002, BP wasn't fined once by its frontline regulator, the Indiana Department of Environmental Management.*" http://www.bettergov.org/bad_communication_over_bp_spill/

Consistent with the pattern of nominal, if any fines, is the fact that the U.S. Coast Guard fined BP only \$2,000 instead of the maximum penalty of \$40,000 for the spill.

Consent Agreement and Final Order penalties

According to the Consent Agreement and Final Order (CAFO), BP violated the Clean Water Act by failing to maintain and implement its Spill Prevention, Control and Countermeasure (SPCC) Plan and to provide appropriate containment to prevent a discharge of oil from the refinery. The Consent Agreement penalty of \$151,899 is resolved only for the March 24, 2014 oil spill at the Whiting Wastewater Treatment Plant outfalls.

Recommendations

- 1. Recommend penalty increase to the maximum \$187,500 and impose an additional \$100,000 for absence of a culture of health and safety.**
- 2. Recommend a Supplemental Environmental Project (SEP) Fund.**
- 3. Request a Public Meeting.**

- 1. Recommend penalty increase to the maximum \$187,500 and impose an additional \$100,000 for absence of a culture of health and safety**

The oil spilled into Lake Michigan that provides water to 40 million people, was only two miles from the Hammond Indiana water intake crib, and eight miles from a Chicago water intake crib. The maximum fine of \$187,500 must be charged. There should be an additional penalty of \$100,000 for failures to improve a culture of health and safety.

- 2. Recommend a Supplemental Environmental Project (SEP) Fund**

A Supplemental Environmental Project (SEP) fund is not included in the CAFO. A SEP should be incorporated for local projects. For too long, the local public was excluded in determining SEP grants and projects.

In the past, decisions made by the USEPA and the Department of Justice have dispersed SEP funds to those that do not reside in environmental justice areas. (DJ.Ref. No. 90-5-2-1-05860 - May 8, 2013 letter from Carolyn A. Marsh to US DOJ, United States v. Dominion Energy Inc., Dominion Energy Brayton Point LLC, and Kincaid Generation LLC, Civ. No. 13-cv-3086(C.D. Ill.). The USEPA must recognize and include local residents in the decisions of how SEP funds are distributed.

The National Fish & Wildlife Federation, Central Region, is responsible for the Sustain Our Great Lakes program, the Chi-Cal Rivers Fund, and other NFWF efforts related to the Great Lakes. They have not fulfilled the responsibility to include residents in projects in the Lake George Branch of the Indiana Harbor Ship Canal.

- 3. Request a Public Meeting**

As four commenters on the Consent Agreement Final Order, we believe the CAFO penalty is not an adequate amount to pressure BP to improve operations to prevent future oil spills. The revelations read in the media that there is no Lake Michigan or Great Lakes coordinated first responder oil spill clean-up plan, necessitates that a public hearing is in the public's interest, to determine the CAFO. As commenters, we petition that the consent

agreement and proposed final order be set aside on the basis that material evidence should be considered in a public hearing.

Please add these comments to the public record under Docket No. CWA-05-2016-0015 BP Products North America, Inc.

Sincerely,

Carlotta Blake-King
Former Organizer for The Calumet Project, Inc.
1004 Highland Street
Hammond, Indiana 46320
Phone: 219-256-1770
Email: cbk0563@comcast.net

Carolyn A. Marsh
BP Citizens Advisory Committee member
1804 Oliver St.
Whiting, IN 46394
Phone: 219-659-7904
Email: cmarshbird@prodigy.net

Debra Michaud
Tar Sands Free Midwest
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Patricia Walter
Citizens Act to Protect Our Water
1829 Wildberry Dr, Unit G
Glenview, IL 60025
847-730-3947
Email: patbund@comcast.net

Whitehead, LaDawn

From: Dave Woronecki-Ellis <ellis012@gmail.com>
Sent: Tuesday, July 12, 2016 10:20 AM
To: Whitehead, LaDawn
Subject: Re: Docket No. CWA-05-2016-0015 BP Products North America, Inc.

July 11, 2016

Regional Hearing Clerk, LaDawn Whitehead

Via email: whitehead.ladawn@epa.gov

U.S. Environmental Protection Agency Region 5

Mail Code R-19J

77 West Jackson Boulevard

Chicago, Illinois 60604



Director of the Water Division, U.S. EPA, Region 5:

Re: Docket No. CWA-05-2016-0015 BP Products North America, Inc.

We submit the following written comments as interested persons who are not a party to the proposed Consent Agreement and Final Order (CAFO) between U.S. Environmental Protection Agency (EPA) Region 5 and BP Products North America, Inc, as is our right under 40CFR§22.45 (c).

Introduction

The BP Whiting petroleum refinery is located at 1815 Indianapolis Boulevard, Whiting, Indiana on the southwestern shore of Lake Michigan and the Indiana Harbor Ship Canal in the communities of Whiting, East Chicago and Hammond, Indiana. Whiting is the second largest refinery in the BP refining system, and the sixth largest in the United States. The refinery is close and visible to residents in the Hegewisch and East Side neighborhoods of Chicago, Illinois.

The March 24, 2014 BP oil spill was a Great Lakes wake-up call. The BP pattern of poor, ineffective responses to oil pollution was amplified by the worst offshore oil spill in U.S. history -- the BP Gulf of Mexico Deepwater Horizon spill in April 2010. We are concerned that there could be a BP Gulf-type accident in our Lake Michigan. Lake Michigan is the sixth largest freshwater lake in the world and our drinking water is at risk. Of all Earth's water, 2.5% is fresh. Only 1.2% is surface. Fresh lakes = .007 of all water (USGS).

Consent Agreement Final Order (CAFO) resolve penalties \$151,899

**EPA Response to Comments Regarding
Proposed CAFO to BP Products North America Inc.
Under Clean Water Act § 311(b)(6) and 40 C.F.R. Part 22
Docket Number CWA-05-2016-0015**

Background

On July 12, 2016, the public comment period closed for the Consent Agreement and Final Order (CAFO) that EPA proposes to issue to BP Products North America Inc. (BP) under Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), and 40 C.F.R. Part 22. BP operates an oil refinery in Whiting, Indiana. The CAFO would resolve BP's liability for federal civil penalties for EPA's allegations that BP violated the oil pollution prevention regulations at 40 C.F.R. Part 112. Specifically, EPA alleges that BP failed to maintain and implement its Spill Prevention, Control and Countermeasure (SPCC) Plan and provide appropriate containment to prevent a discharge of oil from the refinery. BP has agreed to pay a penalty of \$151,899 to resolve these alleged violations.

Comments Received

EPA received a number of comments from the public regarding the proposed CAFO, which were submitted by citizen groups and private individuals.¹ A number of the comments were nearly identical in substance. In general, the commenters raised issues with the scope and extent of relief obtained through the CAFO. EPA has considered all comments received, and finds that the commenters have not presented any relevant material information that EPA has not considered relating to the CAFO. While not required by the CWA or the applicable regulations to provide a response to these public comments, EPA is providing a response. The comments and EPA's responses are summarized below.

1. The civil penalty should be increased.

Some of the commenters stated that "[t]he proposed penalty of \$151,899 must be increased to the maximum \$187,500. . ." Other commenters requested that EPA impose the maximum fine of \$187,500, plus \$100,000 for "absence of a culture of health and safety." Finally, another group of commenters requested that EPA assess the maximum penalty for each of the violations listed in the proposed CAFO, and also assess the maximum penalty for five additional alleged violations described by the commenters.

EPA's Response

Under the proposed CAFO, BP must pay \$151,899 in civil penalties. At all times relevant to the allegations in the CAFO, the maximum statutory penalty was \$16,000 per day for each day of violation up to a maximum of \$187,500. 33 U.S.C. § 1321(b)(6)(B)(ii) and 40 C.F.R. Part 19. The proposed agreement under the CAFO is a settlement agreement.

¹ EPA received a number of identical comments from the same individual and a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

In settlement negotiations, civil penalties in CWA § 311 enforcement actions typically are calculated and negotiated based upon the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998.² The penalty policy is consistent with and takes into consideration the statutory criteria for assessing a civil penalty described in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

Under the penalty policy, EPA considers the violations cumulatively, or as a whole, to determine the extent of noncompliance. The size of the penalty depends in part upon the duration and extent of the alleged violations and their environmental impact, and takes into account EPA's assessment of the degree of litigation risk. Civil penalties imposed in CAFOs vary widely for reasons unique to each situation. Due to the confidential nature of settlement negotiations, there are legal constraints on the information that EPA can share concerning the details of penalty calculations and negotiations.

Use of EPA's penalty policy ensures that penalties are consistently applied throughout the regulated community and that the objectives of a penalty are achieved. The civil penalty contained in the proposed CAFO is consistent with EPA's civil penalty policy. Unless a respondent agrees to pay the maximum penalty in a settlement agreement, the alleged violations in the proposed CAFO would first need to be proven. In adjudicated CWA penalty cases, the penalty calculations are "highly discretionary calculations that take into account multiple factors." See *Tull v. U.S.*, 481 U.S. 412, 427 (1987). In addition, EPA is satisfied that the civil penalty being paid by BP is adequate to deter future violations and is further supported by conserving the resources required by prolonged litigation and avoiding uncertainty regarding the outcome at an administrative hearing or trial.

Many of the commenters point to the fact that BP discharged oil into Lake Michigan in March of 2014 as the basis for the need of a higher penalty. However, the 2014 oil discharge is not at issue in this matter. The U.S. Coast Guard (USCG) had lead enforcement authority over the discharge and assessed a \$2,000 penalty against BP. This CAFO concerns allegations that BP failed to comply with the oil pollution prevention regulations, particularly with respect to the SPCC Plan for the refinery.

Some commenters provided a "track record" or list of what appears to be alleged environmental and safety issues relating to BP's operations from 2001 to 2015. This list covers a wide range of issues, including various environmental and other laws and regulations and enforcement actions at facilities operated by BP across the country. None of the issues appear to relate to the allegations described in the CAFO. Additionally, many of the issues describe enforcement actions that have been resolved through settlements and are well outside the applicable five year statute of limitations. See 28 U.S.C. § 2462. These commenters also raise what they contend are five additional violations for which BP should be assessed a penalty, which are discussed further below.

² <https://www.epa.gov/sites/production/files/documents/311pen.pdf>. The amount of the civil penalty must be adjusted for inflation. <https://www.epa.gov/sites/production/files/2016-07/documents/finalpenaltyinflationguidance.pdf>.

2. The CAFO should include a Supplemental Environmental Project.

Many commenters stated that the CAFO should require BP to perform a Supplemental Environmental Project (SEP) for “local projects,” and that EPA should include local residents in the decision on how SEP funds are distributed. Other commenters similarly stated that the penalty funds should be put towards a SEP for the local area and not into the Oil Spill Liability Trust Fund (OSLTF). Finally, some commenters requested that all penalties from the CAFO be deposited with a neutral third-party, such as the National Fish and Wildlife Foundation, for the purpose of funding an independent review and analysis of data received from a FOIA request to EPA, and funding of independent advisory committees and environmental monitoring programs.

EPA’s Response

Federal law directs where civil penalties are to be applied. All civil penalties paid pursuant to Section 311 of the CWA must be deposited in the OSLTF, which is administered by the USCG. *See* 26 U.S.C. § 9509(b)(8). The main uses of Fund expenditures are: removal costs incurred by the USCG and EPA in responding to discharges; state access for removal activities, payments to federal, state and Native American tribe trustees to conduct natural resource damage assessments and restorations; and payment of claims for uncompensated removal costs and damages.³

A SEP is an environmentally beneficial project or activity that is not required by law, but that a respondent agrees to undertake as part of a settlement or enforcement action. SEPs are projects that go beyond what could legally be required in order for the respondent to return to compliance, and secure environmental and/or public health benefits in addition to those achieved by compliance with applicable laws. While EPA encourages the use of SEPs that are consistent with the 2015 SEP Policy, EPA cannot require a respondent to perform a SEP, or dictate any particular SEP.⁴

Even in the absence of a SEP, enforcement settlements provide substantial benefits to communities and the environment. Penalties promote environmental compliance by deterring future violations by the respondent and other members of the regulated community. Penalties also ensure a national level playing field for the regulated community. As discussed above, EPA is satisfied that the penalty assessed for the violations alleged in the CAFO achieves those goals.

3. A public meeting should be held regarding the CAFO.

Many commenters requested that a public meeting or hearing be held because the CAFO “is not an adequate amount to pressure BP to improve operations to prevent future oil spills,” and because “there is no Lake Michigan or Great Lakes coordinated first responder oil spill clean-up plan.” Other commenters requested that EPA hold a public hearing on the spill, the proposed penalties, and comments sent to EPA.

³ <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/oil-spill-liability-trust-fund>.

⁴ <https://www.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf>.

EPA's Response

The regulations at 40 C.F.R. § 22.45 govern the public notice and comment procedures in these proceedings. The regulations do not address requests for public meetings. The regulations do, however, provide the opportunity to present written comments during the comment period. Should EPA choose to issue the CAFO after considering the comments received, EPA must mail a copy of the proposed CAFO to each commenter. Commenters then have 30 days to petition the Regional Administrator to set aside the CAFO on the basis that material evidence was not considered. The specific procedures that apply when a commenter petitions the Regional Administrator include, among other things, an opportunity for complainant to withdraw the CAFO. If complainant does not withdraw the CAFO, the assigned Petition Officer shall issue written findings as to, among other things, the extent to which the petition states an issue relevant and material to the issuance of the proposed CAFO and whether resolution of the proceeding is appropriate without a hearing. *See* 40 C.F.R. § 22.45(c)(4).

As discussed above, EPA has considered all comments received, and finds that the commenters have not presented any relevant material information that EPA has not considered relating to the Proposed CAFO. Additionally, the penalty is consistent with the penalty policy and EPA is satisfied that the civil penalty being paid by BP is adequate to deter future violations.

Furthermore, the existence of a "Lake Michigan or Great Lakes coordinated first responder oil spill clean-up plan" does not relate to the alleged violations and is outside the scope of the CAFO. As required by Section 311(j) of the CWA, 33 U.S.C. § 1321(j) and the National Contingency Plan at 40 C.F.R. § 300.210, EPA Region 5 and USCG have developed, in consultation with the States, a Regional Contingency Plan to coordinate an effective and timely response to discharges of oil and/or hazardous substances within Region 5, which includes the Lake Michigan area.⁵

4. An independent advisory committee and environmental monitoring program for BP's wastewater treatment plant should be created.

Several commenters requested that a "Regional Citizens Advisory Committee" (RCAC) be set up for the area, including representatives from Illinois, Indiana, Chicago, BP, EPA and other officials, to be funded by "Great Lakes operators." These funds would be used for "reviewing and inspecting the records." Other commenters requested that a similar committee be set up and modeled after the Prince William Sound RCAC and be funded with \$10 million dollars annually for program implementation.⁶

⁵ For more information on the Region 5 Regional Response Team, *see* <http://rrt5.org/>.

⁶ The Prince William Sound RCAC was established after the 1989 Exxon Valdez oil spill in Alaska and was specifically funded by the Oil Pollution Act. Additionally, the Exxon Valdez spill has been estimated to have been between 11 million and 38 million gallons of oil. By comparison, the 2014 BP spill, the penalties for which were addressed through an action brought by USCG, involved an estimated 1,500 gallons.

The commenters further requested the establishment of an independent environmental monitoring program for BP's wastewater treatment plant, modeled after the program conducted by the Prince William Sound RCAC for the Alyeska tanker terminal, and requested \$250,000 to design the program and \$250,000 annually to implement the program. These commenters also asked for the "establishment of an independent Lake Michigan Area Committee comprised of local, state, and federal agencies, as mandated under the Oil Pollution Act of 1990" and requested \$10 million dollars annually for program implementation.

EPA's Response

These comments do not provide any relevant, material information regarding the basis of or findings in the proposed CAFO. EPA brought this enforcement action under Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), which allows EPA to assess a civil penalty against, among other things, any operator of any facility who fails to comply with the oil pollution prevention regulations. The assessment of civil penalties under CWA § 311(b)(6)(A)(ii) are governed by 40 C.F.R. Part 22. 40 C.F.R. § 22.18(c) provides that payment of a penalty proposed in a CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO. EPA does not have authority under Section 311(b)(6)(A)(ii) of the CWA or 40 C.F.R. Part 22 to establish advisory committees and independent monitoring programs, or fund such committees or programs. As discussed above, all penalties collected are required to be deposited in the OSLTF.

For more information regarding EPA Region 5 Regional Response Team's response planning and coordination efforts as required by CWA § 311 and the National Contingency Plan, see footnote 5, above.

Additionally, the BP refinery reports that it has a dedicated public affairs representative who engages in community outreach activities with public officials, community groups and individual residents. Such outreach includes meetings with public officials and community groups regarding refinery activities and engagement with the community. The BP representative is available to respond to questions and concerns regarding the refinery via email at Thomas.Keilman@bp.com.⁷

- 5. EPA should establish a communication program to immediately alert the public when there are public health risks presented by an oil and/or hazardous substance discharges and releases.**

Several commenters requested that EPA create an effective communication plan to immediately alert the public "when our drinking water or air quality is at risk due to any oil or hazardous substance spill or release."

⁷ For more information regarding BP's outreach and community involvement, see http://www.bp.com/en_us/bp-us/community/community-outreach.html; http://www.bp.com/en_us/bp-us/media-room/bp-social-media.html; http://www.bp.com/en_us/bp-us/contact-bp-in-america.html.

EPA's Response

While as explained above, this comment is outside the scope of this penalty action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), EPA makes involving the community when hazardous substance releases and oil discharges occur a priority. An official EPA spokesperson is appointed for each emergency response action to keep the public informed and to respond to any questions.⁸ EPA's public affairs office also provides critical public information to the press and social media.

EPA has an established protocol to notify state and local authorities when oil and hazardous substance discharges occur through the National Response Center (NRC) and National Contingency Plan at 40 C.F.R. Part 300.⁹ The NRC is a part of the federally established National Response System, and is staffed 24 hours a day by USCG. It is the designated federal point of contact for reporting all oil, chemical, radiological, biological and etiological discharges into the environment, anywhere in the United States.¹⁰

Reports to the NRC activate the National Contingency Plan and federal government's response capabilities, and NRC staff immediately notify the appropriate agencies, such as the USCG and EPA, who then assign a Federal On-Scene Coordinator (OSC). The OSC who takes command of the response then coordinates notifications to the state and local governments and response agencies that may be affected by or are supporting the response action to the discharge. The OSC, as part of the emergency response coordination, also ensures that the operators of potentially impacted drinking water intakes are notified.

6. EPA cited an incorrect regulation in the CAFO, and BP violated five additional regulations that are not included in the CAFO.

Some commenters stated that EPA cited an incorrect regulation for a violation alleged in the CAFO. They claim that EPA should have cited BP for violating 40 C.F.R. § 112.1, instead of 40 C.F.R. § 112.3.

The commenters also identified five additional violations that they claim should be included in the CAFO, and for which BP should receive the maximum penalty of \$187,500. These violations include: (1) failure to amend the SPCC Plan for a change of operation that materially affects potential for discharge, in violation of 40 C.F.R. § 112.5(a); (2) failure to include all connecting lines in the Facility diagram for the SPCC Plan, in violation of 40 C.F.R. § 112.7(a)(3); (3) failure to include the direction, rate of flow, and total quantity of oil that could be discharged as a result of a major equipment failure from equipment previously known to be a

⁸ For more information on community involvement during emergency responses, see <https://www.epa.gov/emergency-response/community-involvement-during-emergency-responses>.

⁹ For more information on the National Response Center, see <https://www.epa.gov/emergency-response/national-response-center>.

¹⁰ Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9603(a), requires that any person in charge of a vessel or facility with knowledge of a release of a hazardous substance in certain quantities from such vessel or facility to immediately notify the NRC.

source of failure, in violation of 40 C.F.R. § 112.7(b); (4) failure to observe effluent treatment facility frequently enough to detect possible system upsets that could cause a discharge, in violation of 40 C.F.R. § 112.8(c)(9); and (5) failure to operate the facility and systems necessary to achieve compliance with the SPCC Plan, in violation of 40 C.F.R. § 112.1(e).

EPA's Response

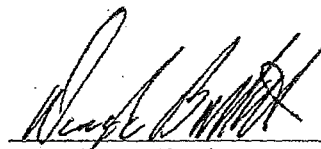
EPA has broad enforcement discretion in conducting investigations and determining what violations to pursue in any enforcement action. As a general matter, EPA's decision not to prosecute or enforce is a decision committed to the Agency's absolute discretion. *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991).

As to commenters' statement that EPA cited the incorrect regulation, 40 C.F.R. § 112.1 describes the applicability of the regulations to facilities, and is not relevant to the violations alleged in the CAFO. The regulation at 40 C.F.R. § 112.3 requires the operator of a subject facility to prepare and implement a SPCC Plan in accordance with the applicable requirements of 40 C.F.R. Part 112. In the CAFO, EPA alleged that BP failed to comply with 40 C.F.R. § 112.3.

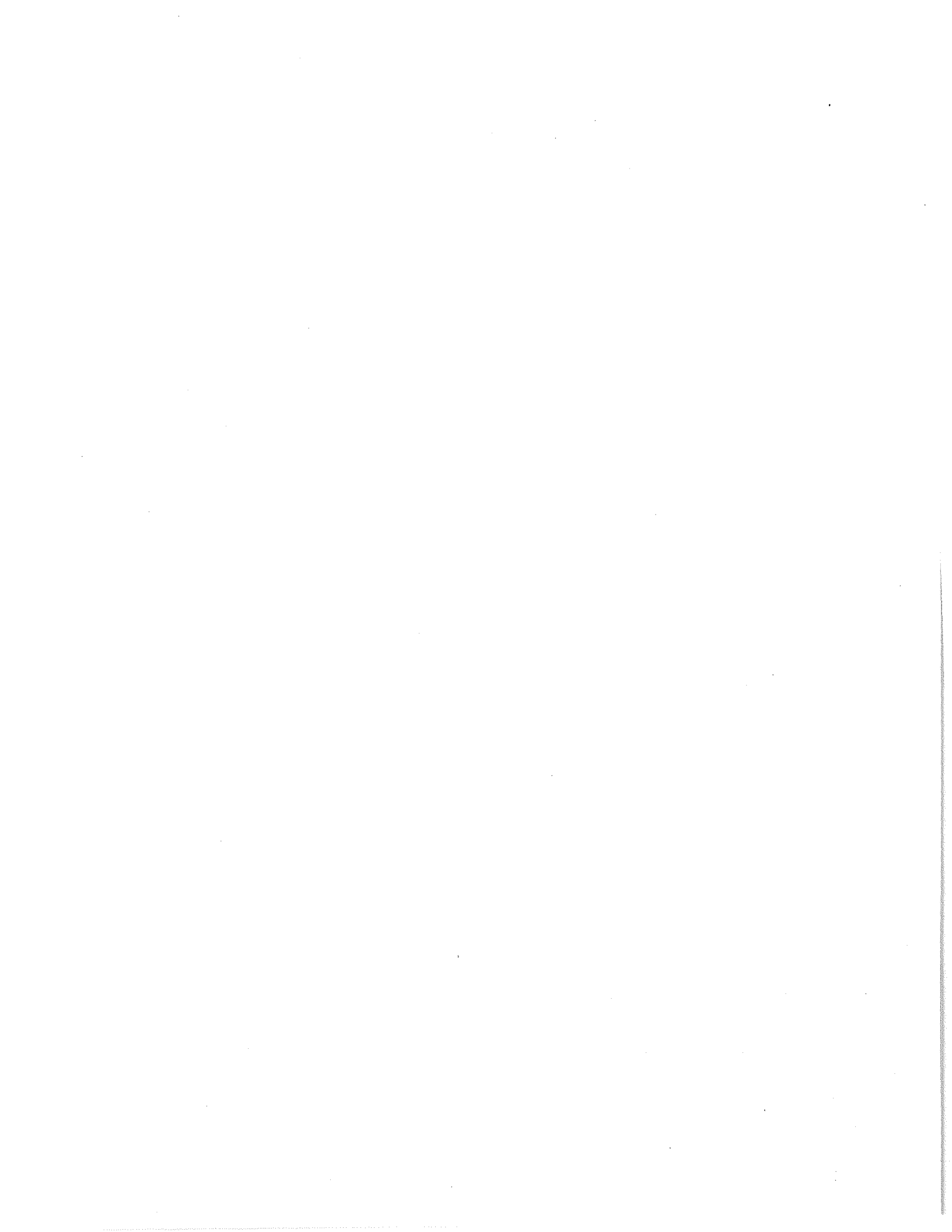
The commenters' allegations that BP violated five other regulations are not supported by any factual information and are not applicable to this matter. As noted in paragraph 39 of the proposed CAFO, BP installed a temporary quench line at a process unit on October 11, 2013, and removed the temporary quench line on March 25, 2014. BP used this temporary line for a little over five months. Under 40 C.F.R. § 112.5(a), the owner or operator of a subject facility is allowed six months to prepare an amendment to its existing SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in 40 C.F.R. § 112.1(b). These five additional allegations all appear to be related to the installation of the temporary quench line and are not applicable to this action.

Date

1/5/2019



Douglas Ballotti
Acting Director
Superfund Division
U.S. Environmental Protection Agency, Region 5





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

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



JAN 17 2017

Ms. Debra Michaud
Tars Sands Free Midwest
1401 W. Winnemac Ave., 3E
Chicago, Illinois 60640

Re: BP Products North America Inc., Whiting, Indiana
Consent Agreement and Proposed Final Order – Docket No; CWA-05-2016-0015
Response to Comments

Dear Ms. Michaud:

Enclosed please find a copy of the Consent Agreement and proposed Final Order (CAFO) for the above matter. EPA plans to issue the CAFO 30 days after receipt, unless a petition to the Regional Administrator to set aside the CAFO is submitted under Section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(iii), and 40 C.F.R. § 22.45(c)(4).

Any petition to set aside the CAFO on the basis that material evidence was not considered must conform to the requirements at 40 C.F.R. § 22.45(c) and be submitted within 30 days of receipt of the enclosed CAFO to:

For Complainant:
Douglas Ballotti
Acting Division Director
Superfund Division
US EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

For Respondent:
Paul M. Drucker
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606

Additionally, we have enclosed a copy of EPA's response to the comments received on the Consent Agreement in this matter.

If you have any questions, please contact Ellen Riley, Enforcement Officer, (312) 886-9497 or riley.ellen@epa.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Hans", with a horizontal line extending to the right.

Michael E. Hans, Chief
Chemical Emergency Prevention and Preparedness Section

Enclosures

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

Carlotta Blake-King
Former Organizer for The Calumet Project, Inc.
1004 Highland Street
Hammond, Indiana 46320



9590 9402 2244 6193 8245 71

2. Article Number (Transfer from service label)

7009 1680 0000 7646 0675

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 X *Carlotta Blake-King*

B. Received by (Printed Name) *Carlotta King* C. Date of Delivery *11/30/17*

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

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Carolyn Marsh
1804 Oliver Street
Whiting, Indiana 46394



9590 9402 2244 6193 8245 57

2. Article Number (Transfer from service label)

7009 1680 0000 7646 0682

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
Carolyn Marsh

B. Received by (Printed Name) *Carolyn Marsh* C. Date of Delivery *Jan 4, 2017*

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type Priority Mail Express®
 Adult Signature Registered Mail™
 Adult Signature Restricted Delivery Registered Mail Restricted Delivery
 Certified Mail® Return Receipt for Merchandise
 Certified Mail Restricted Delivery Signature Confirmation™
 Collect on Delivery Signature Confirmation Restricted Delivery
 Collect on Delivery Restricted Delivery Signature Confirmation Restricted Delivery

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

Patricia Walter
Citizens Act to Protect Our Water
1829 Wildberry Dr., Unit G
Glenview, IL 60025



9590 9402 2244 6193 8245 26

2. Article Number (Transfer from service label)

7009 1680 0000 7646 0705

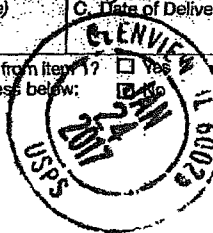
PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 X *Patricia Walter*

B. Received by (Printed Name) *Patricia Walter* C. Date of Delivery *11/30/17*

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



3. Service Type Priority Mail Express®
 Adult Signature Registered Mail™
 Adult Signature Restricted Delivery Registered Mail Restricted Delivery
 Certified Mail® Return Receipt for Merchandise
 Certified Mail Restricted Delivery Signature Confirmation™
 Collect on Delivery Signature Confirmation Restricted Delivery
 Collect on Delivery Restricted Delivery Signature Confirmation Restricted Delivery

Domestic Return Receipt

English

Customer Service

USPS Mobile

Register / Sign In



USPS Tracking®

Still Have Questions?
Browse our FAQs >

Get Easy Tracking Updates >
Sign up for My USPS.

Tracking Number: 7009168000076460699

Product & Tracking Information

Postal Product:

Features:
Certified Mail™

DATE & TIME

STATUS OF ITEM

LOCATION

January 30, 2017, 12:25 pm

Delivered, Individual Picked Up at Postal Facility

CHICAGO, IL 60640

Your item was picked up at a postal facility at 12:25 pm on January 30, 2017 in CHICAGO, IL 60640.

January 21, 2017, 11:02 am

Notice Left (No Authorized Recipient Available)

CHICAGO, IL 60640

January 20, 2017, 7:26 pm

In Transit to Destination

January 19, 2017, 7:26 pm

Departed USPS Facility

CHICAGO, IL 60607

January 19, 2017, 10:01 am

Arrived at USPS Facility

CHICAGO, IL 60607

January 19, 2017, 3:42 am

Departed USPS Facility

BEDFORD PARK, IL 60499

January 18, 2017, 8:40 pm

Arrived at USPS Facility

BEDFORD PARK, IL 60499

Available Actions

Text Updates

Email Updates

Track Another Package

Tracking (or receipt) number

Track It

U.S. Postal Service CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

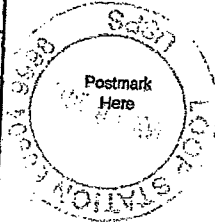
For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 1.78
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	

Total Postage & Fees \$ 7.78

Sent To
Street or PO
City, St
Debra Michaud
Tar Sands Free Midwest
1401 W. Winnemac Ave., 3E
Chicago, IL 60640



7009 1680 0000 7646 0699

February 24, 2017

For Complainant:
Douglas Ballotti, Acting Division Director
Superfund Division
USEPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60614

For Respondent:
Paul M. Drucker
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, Illinois 60606

RE: USEPA Response to Comments Regarding Proposed CAFO to BP Products North America Inc. Under Clean Water Act, 309(g) and 40 C.F.R. Part 22, Docket Number CWA-05-2016-0015

We are troubled that the USEPA will not conduct a public hearing as requested during the public comment period. We petition USEPA to set aside a consent agreement and the proposed final order on the basis that material evidence was not considered, Docket Number CWA-05-2016-0015. We submit the following written comments as interested persons who are not a party to the proposed Consent Agreement and Final Order (CAFO) between U.S. Environmental Protection Agency (USEPA) Region 5 and BP Products North America, Inc, as is our right under 40CFR§22.45 (c).

In view of the recent legal battles regarding the East Chicago, Indiana, West Calumet water and housing crisis, we feel a public hearing is necessary to understand the chemical, air and water violations of the proposed CAFO that we maintain involves the broader Northwest Indiana and Northeast Illinois communities.

The USEPA and Justice Department position is that citizens did not provide feedback offered during a public comment period on the East Chicago USS Lead Superfund site and missed their chance to weigh in on the environmental cleanup of their neighborhood and cannot legally do so now while the work is on-going. (NWI Times, Sarah Reese, Govt: E.C. residents missed day in court.) East Chicago lives are permanently harmed because of the ineffectiveness of government environmental agencies, but the public is blamed for not participating in a comment period.

There are too many accidents at BP for the public to tolerate the cavalier attitude by government regulators assigned to BP. Not too long ago, Greenpeace leaked an internal BP investigation report (NWI Times, Joseph S. Pete, December 15, 2016) that revealed BP is not managing critical safety information well. The report stated, "Whiting experienced an incident in January 2014 which was very complex in nature involving multiple parties across the lifecycle, from

design through commissioning," The accident was a near-miss that could have caused an explosion and fatalities.

Since the USEPA and Justice Department can deny us our legal rights to be involved in a consent decree cleanup and restoration plans because of the lack of feedback during a comment period, then we must insist that a public hearing be held on the proposed BP & USEPA consent decree agreement final order. If the public is not informed of the meaning of this consent decree agreement through a public hearing, the consequences can be catastrophic against the public.

Introduction and EPA response to comments

EPA stated: *"EPA has considered all comments received, and finds that the commenters have not presented any relevant material information that EPA has not considered relating to the CAFO."*

The EPA dismisses issues constantly as "not at issue" when we believe that the issues are connected. The EPA's logic has caused the West Calumet environmental crisis by separating issues when they are connected. As in the West Calumet water, lead and arsenic crisis, there was inadequate cleanups and finger pointing with no government agency taking responsibility for the failure to cleanup the environment. The George Lake Canal branches are near West Calumet homes and there is a connection to BP and their pollution of the neighboring canal. A public hearing is necessary to understand the proposed consent decree agreement CAFO.

An independent advisory committee and environmental monitoring program for Respondent's wastewater treatment plant should be created and EPA responses to comments.

EPA states: *"Additionally, the BP refinery reports that it has a dedicated public affairs representative who engages in community outreach activities with public officials, community groups, and individual residents. Such outreach includes meetings with public officials and community groups regarding refinery activities and engagement with community. The BP representative is available to respond to questions and concerns regarding the refinery via email at community@bp.com. 7 footnote.*

You list BP websites in a footnote for the public to find information about BP. BP operates its main website to have a flash notice, on for a second, which states it will attach a cookie to someone clicking on their website. The website doesn't explain why and what the cookie means, but it certainly is something that makes one afraid of using the BP websites.

It is not currently known what BP does for community outreach. BP did provide a quarterly Whiting plant operations and accident report "The Communicator" and held quarterly Citizens Advisory Committee meetings at noon on a weekday until June 24, 2014. Those activities were not voluntary, but were required under a consent decree remediation case when AMOCO owned the Whiting Refinery before BP. That consent decree was about 30 years ago and involved the migration of underground oil products off BP property. BP determined in 2014, the operations report and CAC were not needed and the report was abolished and the CAC

disbanded. Carolyn Marsh, a Whiting CAC member, was never notified of those official BP decisions, or was the public. A public hearing is necessary to understand the proposed consent decree agreement CAFO.

We are pro-active and pollution prevention activists that want BP held accountable for polluting the air and water that threatens our drinking water, wildlife and human health and safety. We refer to our previous Comments on this case and these additions as relevant. We therefore petition USEPA to set aside the consent agreement and the proposed final order on the basis that material evidence was not considered in this case between BP and the USEPA.

Please add these comments to the public record under Docket No. CWA-05-2016-0015 BP Products North America, Inc.

Sincerely,

Carlotta Blake-King *Carlotta Blake-King/cm*
Former Organizer for The Calumet Project, Inc.
1004 Highland Street
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Email:

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Former BP Citizens Advisory Committee member
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Debra Michaud *Debra Michaud/cm*
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Patricia Walter *Patricia Walter/jcm*
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Glenview, IL 60025
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