

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

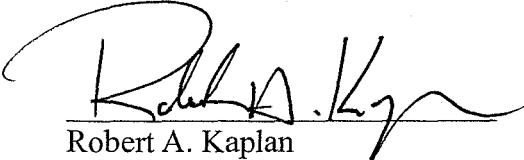
In the matter of: ) Docket No. CWA-05-2016-0014  
)  
BP Products North America Inc. ) Proceeding to Assess a Class II Civil  
Whiting, Indiana ) Penalty Under Section 309(g) of the  
) Clean Water Act, 33 U.S.C. § 1319(g)  
)  
Respondent. )

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 309(g) of the Clean Water Act and 40 C.F.R. § 22.45(c)(4).

After considering the issues raised in the petition, Complainant, the Water 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-05-2016-0014

**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-05-2016-0014, 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 5402

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the matter of:</b>	)	<b>Docket No. CWA-05-2016-0014</b>
	)	
<b>BP Products North America Inc.</b>	)	<b>Proceeding to Assess a Class II Civil</b>
<b>Whiting, Indiana,</b>	)	<b>Penalty Under Section 309(g) of the</b>
	)	<b>Clean Water Act, 33 U.S.C. § 1319(g)</b>
<b><u>Respondent.</u></b>	)	

**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-05-2016-0014  
)  
BP Products North America Inc. ) Proceeding to Assess a Class II Civil  
Whiting, Indiana, ) Penalty Under Section 309(g) of the  
) Clean Water Act, 33 U.S.C. § 1319(g)  
Respondent. )

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), 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* (the Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Water Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is BP Products North America Inc. (Respondent), a corporation doing business in the State of 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 matter.

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, its right to appeal this CAFO and its right to judicial review of this CAFO provided at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

### Statutory and Regulatory Background

9. To restore and maintain the integrity of the nation's water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA approved a program authorizing the State of Indiana, through the Indiana Department of Environmental Management (IDEM), to issue and administer NPDES permits as set forth in the CWA.

11. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 define the term "pollutant" to mean, among other things, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

12. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2 define the term "discharge of a pollutant" to mean, among other things, any addition of any pollutant to navigable waters from any point source.

13. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean the waters of the United States, including the territorial seas.

14. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

15. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator of EPA (Administrator) to, after consultation with the State in which the violation occurs, assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), when the Administrator finds on the basis of any information available that any person has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any condition or limitation of a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

16. The Administrator may assess a Class II civil penalty of up to \$16,000 per day of violation up to a total of \$177,500 for CWA violations that occurred after January 12, 2009 through December 6, 2013 and may assess a civil penalty of up to \$16,000 per day of violation up to a total of \$187,500 for CWA violations that occurred after December 6, 2013 under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and 40 C.F.R. Part 19.

#### **General Allegations and Alleged Violations**

17. Respondent is the owner and operator of a petroleum refinery located at 2815 Indianapolis Boulevard, Whiting, Indiana (the Facility). At the Facility, Respondent operates a wastewater treatment plant (WWTP).

18. Respondent is a corporation, and is therefore a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19. At all times relevant to this CAFO, Respondent operated the Facility subject to a NPDES permit (Permit) issued by IDEM pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Permit authorized Respondent to, among other things, discharge pollutants through outfalls 002, 003, 004, and 005 from the Facility to Lake Michigan and the Lake George Branch of the Indiana Harbor Ship Canal (Lake George Canal) subject to the terms and conditions set forth in the Permit.

20. Respondent discharges wastewater from its Facility through outfalls 002 and 005 to Lake Michigan and through outfalls 003 and 004 to the Lake George Canal.

21. Lake Michigan and the Lake George Canal are each a “navigable water” and “water of the United States,” as those terms are defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

22. The effluent discharged by Respondent through outfalls 002, 003, 004 and 005 may contain, among other things, total suspended solids, biochemical oxygen demand, oil and grease, and phosphorus which are “pollutants” as that term is defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6).

23. Outfalls 002, 003, 004, and 005 are each a “point source” that discharges “pollutants” into waters of the United States, as defined in Sections 502(14) and 502(12) of the CWA, 33 U.S.C. §§ 1362(14) and 1362(12), respectively.

24. From May 5, 2014 to May 9, 2014, EPA conducted an inspection of the Facility.



25. Based on Respondent's discharge monitoring reports (DMRs), EPA alleges that

Respondent violated the Permit effluent limits in the manner described in Table 1 below:

Table 1: Discharge Monitoring Effluent Limit Violations

Monitoring Period	Outfall	Parameter	Permit Limit	Time Period Limit	Reported DMR Value	Days of Violation
7/1/2010 through 7/31/2010	001 <sup>1</sup>	Total Suspended Solids (TSS)	5694 lbs/day	Daily Maximum	7050 lbs/day	1
4/1/2011 through 4/30/2011	005	Biochemical Oxygen Demand (BOD)	8164 lbs/day	Daily Maximum	14116 lbs/day	1
4/1/2011 through 4/30/2011	005	TSS	7723 lbs/day	Daily Maximum	8324 lbs/day - 66362 lbs/day	8
4/1/2011 through 4/30/2011	005	TSS	4925 lbs/day	Monthly Average	14174 lbs/day	30
4/1/2011 through 4/30/2011	005	Oil and Grease	2600 lbs/day	Daily Maximum	3263 lbs/day	1
11/1/2011 through 11/30/2011	005	Phosphorus	1 mg/l	Daily Maximum	1.25 mg/l	1

<sup>1</sup> Outfall 001 existed under Respondent's previous NPDES Permit. Effluent that previously flowed through outfall 001 flows through outfall 005 under Respondent's current NPDES Permit.

26. Respondent operates a once-through cooling water system at the Facility. After use in the Facility, once-through cooling water is sent to the number six separator (six separator) at the Facility's WWTP to remove any oil present prior to discharging through outfall 002 to Lake Michigan. Six separator is a multiple cell retention basin with concrete underflow dams that separate each of the cells. Six separator works by allowing time for oil droplets to float to the surface based on the difference in density between the water and oil. Once at the surface, oil is manually captured and removed through the use of, among other things, booms and/or vacuum trucks. The flow through the six separator ranges from 55 to 85 million gallons per day and the residence time of water in the separator varies from 50 to 90 minutes.

27. Outfall 002 is subject to, among other things, an oil and grease daily maximum permit limit of 5 milligrams per liter (mg/l).

28. During the inspection, EPA inspectors observed oil sheen throughout the six separator on each day of the inspection, including sheen in the final cell prior to discharge to Lake Michigan. At the time of the inspection, six separator contained adsorbent boom and pads to collect oil for removal using vacuum trucks. EPA inspectors further observed sediment accumulation in the six separator that was approximately two feet below the water's surface in several locations.

29. In general, sediment accumulation reduces the capacity and residence time of the six separator, which affects the separator's ability to work effectively.

30. EPA alleges that Respondent failed to properly maintain and efficiently operate six separator in good working order, in violation of Respondent's Permit which requires Respondent to maintain in good working order and efficiently operate all facilities and systems for the collection and treatment which are installed or used by Respondent and which are necessary for achieving compliance with the terms and conditions of this permit. *See* Part II, Section B, Number 1, Management Requirements, Proper Operation and Maintenance.

31. During the inspection, EPA inspectors observed a discharge from the Facility to Indianapolis Boulevard and to the City of East Chicago's storm sewer. The storm sewer travels south along Indianapolis Boulevard and discharges to the Lake George Canal. Respondent informed the inspectors that the discharge was emanating groundwater that was near a nonoperational hydraulic groundwater gradient control system. EPA inspectors observed that the discharge was orange/brown in color and had an oily sheen, and the area smelled strongly of oil and hydrocarbons. EPA alleges that Respondent's discharge of pollutants to the storm sewer is not authorized under the Permit, and is a violation under Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

32. Respondent's Industrial Storm Water Pollution Prevention Plan (SWPPP), Section 5.2.2: Stock and Spoil Piles, states that on-going working piles require the installation of sediment barrier measures along the down-slope side of all soil stockpiles/borrow areas and that unvegetated areas likely to be left inactive for fifteen (15) days or more are temporarily or permanently stabilized with measures appropriate for the season to minimize erosion potential. Additionally, SWPPP Section 5.4.2: Structural Best Management Practices, states that piles are covered and/or surrounded with an impervious structure such as silt fencing on the down gradient side of the pile.

33. During the inspection, EPA inspectors observed large piles of excavated dirt and other materials that Respondent stored in a manner that allowed contact with storm water and a subsequent discharge through erosional pathways to the Lake George Canal. During the inspection, the storm water controls surrounding the piles included silt fencing that was dilapidated and allowed storm water to bypass the controls. EPA alleges that Respondent's discharge of pollutants from the dirt piles to Lake George Canal is not authorized under the SWPPP or Permit, and is a violation under Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### Civil Penalty

34. Based on analysis of the factors specified in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), the facts of this case and Respondent's cooperation, Complainant determined that an appropriate civil penalty to settle this action is \$74,212.

35. Within 30 days after the effective date of this CAFO, Respondent must pay the \$74,212 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note Respondent's name and the docket number of this CAFO.

36. 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:

Regional Hearing Clerk  
Mail Code (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Kasey Barton  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Donald R. Schwer III  
Water Enforcement & Compliance Assurance Branch (WC-15J)  
Water Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

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

38. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue 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 quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. The nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### General Provisions

40. 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).

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

42. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violation of law.

43. 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 41, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

44. Respondent certifies that to the best of its knowledge and belief after reasonable inquiry it is complying with the requirements of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the NPDES Permit and SWPPP for the Facility.

45. This CAFO may be considered in determining Respondent's "prior history of such violations" under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

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


47. 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.

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

49. Pursuant to 40 C.F.R. § 22.38(b), Complainant provided the State of Indiana an opportunity to consult with Complainant about this action.

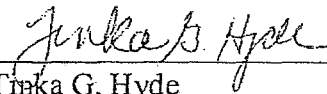
50. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO in accordance with Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45(b).

May 12, 2016  
Date

  
\_\_\_\_\_  
Donald Porter  
Whiting Refinery Manager  
BP Products North America Inc.

**United States Environmental Protection Agency, Complainant**

May 31, 2016  
Date

  
\_\_\_\_\_  
Trinka G. Hyde  
Director, Water Division  
United States Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**

**In the Matter of: BP Products North America Inc.**

**Docket No. [Docket Number] CWA-05-2016-0014**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert A. Kaplan  
Acting Regional Administrator  
United States 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-05-2016-0014

The U.S. Environmental Protection Agency (EPA), Region 5, is providing notice of intent to file a Proposed Consent Agreement and Final Order (Proposed CAFO) against BP Products North America Inc. (Respondent) for alleged violations of the Clean Water Act (CWA). Respondent discharges pollutants to Lake Michigan and the Lake George Branch of the Indiana Harbor Ship Canal subject to the requirements of a National Pollutant Discharge Elimination System (NPDES) permit. In May of 2014, EPA conducted an inspection at Respondent's refinery in Whiting, Indiana, and identified alleged violations of the Clean Water Act based on the findings from that inspection. The Proposed CAFO will resolve Respondent's liability for civil penalties for alleged violations of effluent permit limits in April of 2011 and November of 2011; the failure to properly operate and maintain a wastewater treatment device that discharges to Lake Michigan; and the failure to implement stormwater controls and operate a groundwater control system that resulted in unauthorized discharges to the Lake George Branch of the Indiana Harbor Ship Canal. EPA and Respondent have agreed that Respondent will pay a civil penalty of \$74,212 to resolve these alleged violations.

A copy of the Proposed CAFO may be viewed online at: [www.epa.gov/aboutepa/epa-region-5#events](http://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 309(g) of the CWA, 33 U.S.C. § 1319(g) 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-05-2016-0014  
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](mailto: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](http://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

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**From:** Debra Michaud <debramichaud73@gmail.com>  
**Sent:** Tuesday, July 12, 2016 10:51 AM  
**To:** Whitehead, LaDawn  
**Subject:** Re: Docket No. CWA-05-2016-0014 BP Products North America, Inc.

Regional Hearing Clerk, LaDawn Whitehead

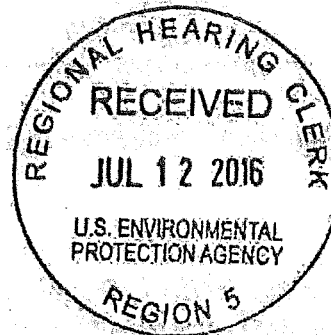
Via email: [whitehead.ladawn@epa.gov](mailto:whitehead.ladawn@epa.gov)

U.S. Environmental Protection Agency Region 5

Mail Code R-19J

77 West Jackson Boulevard

Chicago, IL 60604



Director of the Water 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 at the Whiting refinery. The meeting was held at noon on June 25, 2014 at Calumet College, Whiting. We questioned and wanted answers on the spill. It was the last one BP ever scheduled.

### **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/](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 Final Order (CAFO) resolve penalties \$74,212**

According to the Consent Agreement and Final Order (CAFO), BP violated the Clean Water Act for discharges of pollutants to Lake Michigan and the Lake George Branch of the Indiana Harbor Ship Canal.

- Failure to properly operate and maintain a wastewater treatment device that discharges to Lake Michigan – according to the Discharge Monitoring Reports (DMR) for July 2010, April of 2011 and November of 2011.
- Failure to implement storm water controls and operate a groundwater control system that resulted in unauthorized discharges to the Lake George Branch of the Indiana Harbor Ship Canal.

CAFO resolved a minor civil penalty of \$74,212, which includes the five-day EPA inspection of May 5 - 9, 2014 (six weeks after the March 24, 2014 spill).

### **Recommendations**

- 1. Assessed CAFO penalties should be increased to \$619,500.**
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Sincerely,

Carlotta Blake-King

Former Organizer for The Calumet Project, Inc.

1004 Highland Street

Hammond, Indiana 46320

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BP Citizens Advisory Committee member

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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](mailto:patbund@comcast.net)

**Whitehead, LaDawn**

---

**From:** patbund@comcast.net  
**Sent:** Tuesday, July 12, 2016 10:45 AM  
**To:** Whitehead, LaDawn  
**Subject:** Docket No. CWA-05-2016-0014 BP Products North America, Inc.

July 12, 2016

Regional Hearing Clerk, LaDawn Whitehead

Via email: [whitehead.ladawn@epa.gov](mailto: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-05-2016-0014 BP Products North America, Inc.**

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

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Email: [patbund@comcast.net](mailto:patbund@comcast.net)

## Whitehead, LaDawn

**From:** Carolyn A. Marsh <cmarshbird@prodigy.net>  
**Sent:** Tuesday, July 12, 2016 10:35 AM  
**To:** Whitehead, LaDawn  
**Subject:** Docket No. CWA-05-2016-0014 BP Products North America, Inc.

July 12, 2016

Regional Hearing Clerk, LaDawn Whitehead  
Via email: [whitehead.ladawn@epa.gov](mailto:whitehead.ladawn@epa.gov)  
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## Whitehead, LaDawn

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**From:** Carlotta Blake-King <cbk0563@comcast.net>  
**Sent:** Tuesday, July 12, 2016 10:30 AM  
**To:** Whitehead, LaDawn  
**Subject:** Fwd: Docket No. CWA-05-2016-0014 BP Products North America, Inc.

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Please add these comments to the public record under Docket No. CWA-05-2016-0014 BP Products North America, Inc.

Sincerely,

Carlotta Blake-King  
Former Organizer for The Calumet Project, Inc.  
1004 Highland Street  
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Glenview, IL 60025  
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Email: [patbund@comcast.net](mailto:patbund@comcast.net)

## Whitehead, LaDawn

---

**From:** Dave Woronecki-Ellis <ellisd012@gmail.com>  
**Sent:** Tuesday, July 12, 2016 10:18 AM  
**To:** Whitehead, LaDawn  
**Subject:** Re: Docket No. CWA-05-2016-0014 BP Products North America, Inc.

July 11, 2016

Regional Hearing Clerk, LaDawn Whitehead

Via email: [whitehead.ladawn@epa.gov](mailto: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-05-2016-0014 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).

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**Consent Agreement Final Order (CAFO) resolve penalties \$74,212**



**Whitehead, LaDawn**

---

**From:** Carlotta Blake-King <cbk0563@comcast.net>  
**Sent:** Tuesday, July 12, 2016 1:32 PM  
**To:** Whitehead, LaDawn  
**Subject:** Fwd: Docket No. CWA-05-2016-0014 BP Products North America, Inc.

---

July 12, 2016



Regional Hearing Clerk, LaDawn Whitehead

Via email: [whitehead.ladawn@epa.gov](mailto:whitehead.ladawn@epa.gov)

U.S. Environmental Protection Agency Region 5

Mail Code R-19J

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Chicago, Illinois 60604

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1004 Highland Street

Hammond, Indiana 46320

219-256-1770

Email: [cbk0563@comcast.net](mailto:cbk0563@comcast.net)

Carolyn A. Marsh

? Citizens Advisory Committee member

1804 Oliver St.

Whiting, IN 46394

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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](mailto:patbund@comcast.net)

**Whitehead, LaDawn**

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**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](mailto: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



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Carolyn A. Marsh  
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Patricia Walter  
Citizens Act to Protect Our Water  
1829 Wildberry Dr, Unit G  
Glenview, IL 60025  
847-730-3947  
Email: [patricia@actpocw.org](mailto:patricia@actpocw.org)



**EPA 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-05-2016-0014**

**Introduction**

The U.S. Environmental Protection Agency (EPA), Region 5, has provided a notice of intent to file and a public comment period for a Proposed Consent Agreement and Final Order (Proposed CAFO) against BP Products North America Inc. (Respondent or BP) under Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22. The public comment period for the Proposed CAFO closed July 12, 2016. Respondent operates an oil refinery in Whiting, Indiana. Respondent discharges pollutants from the oil refinery to Lake Michigan and the Lake George Branch of the Indiana Harbor Ship Canal subject to the requirements of a National Pollutant Discharge Elimination System (NPDES) permit. In May of 2014, EPA conducted an inspection at Respondent's refinery and identified alleged violations of the CWA.

The Proposed CAFO would resolve Respondent's liability for federal civil penalties for: alleged violations of effluent permit limits in April of 2011 and November of 2011; the failure to properly operate and maintain a wastewater treatment device that discharges to Lake Michigan; and the failure to implement storm water controls and operate a groundwater control system that resulted in unlawful discharges to the Lake George Branch of the Indiana Harbor Ship Canal. EPA and Respondent have agreed that Respondent will pay a civil penalty of \$74,212 to resolve these alleged violations.

**Response to Comments**

EPA received a number of comments from the public during the public comment period for the Proposed CAFO.<sup>1</sup> A number of the comments were nearly identical in substance. 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. While not required by the CWA or applicable regulations to respond to these comments, EPA is providing a response. The comments and EPA's responses are summarized below.

As an initial matter, many of the comments relate to concerns regarding oil spills from Respondent's refinery, and specifically refer to the oil discharge to Lake Michigan that occurred at the refinery in 2014. However, the 2014 oil discharge is not at issue in this matter. The U.S. Coast Guard (USCG) had lead enforcement authority for that discharge and assessed a \$2,000 penalty against Respondent. EPA's Proposed CAFO concerns allegations that Respondent failed to comply with the NPDES permit for the facility and Section 301 of the CWA, 33 U.S.C. § 1311, as described above.

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<sup>1</sup> 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.

**1. The civil penalty should be increased.**

Many of the commenters stated that EPA should increase the civil penalty or assess the maximum penalty for each alleged violation. Some commenters also stated that Respondent should be assessed an additional penalty of \$5,000,000 because the violations occurred within the Grand Calumet River Area of Concern.

EPA Response

Under the Proposed CAFO, Respondent must pay \$74,212 in civil penalties. At all times relevant to the allegations in the Proposed 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. § 1319(g)(2)(B) and 40 C.F.R. Part 19. The agreement under the Proposed CAFO is a settlement agreement.

Some commenters provided a “track record” or list of what appears to be alleged environmental and safety issues relating to Respondent’s operations from 1976 through 2015. This list covers a wide range of issues, including various environmental and other laws and enforcement actions at facilities operated by BP across the country. None of the issues appear to relate to the allegations described in the Proposed 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.

In settlement negotiations, civil penalties in CWA § 309(g) enforcement actions typically are calculated and negotiated based upon the *Interim Clean Water Act Settlement Penalty Policy* dated March 1, 1995.<sup>2</sup> The civil penalty policy includes an economic benefit component, calculated by a publicly available computer model known as BEN, and a gravity component. 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 settlement negotiations.

Use of EPA’s penalty policy ensures that penalties: are large enough to deter noncompliance; maintain a level playing field by ensuring that violators do not obtain an economic advantage over their competitors; are consistent; and are based on a logical calculation methodology to promote swift resolution of enforcement actions and underlying violations. The size of 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. Under the penalty policy, the gravity component of the penalty is calculated for each month in which there was a violation and not for each individual violation. For instance, in months with multiple effluent limit violations, a value is assigned for the most significant effluent limit violation and for the number of effluent limit violations that occurred within the month.

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

The civil penalty contained in the Proposed CAFO is consistent with EPA's civil penalty policy. In addition, EPA is satisfied that the civil penalty being paid by Respondent 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.

Unless Respondent agrees to pay the maximum penalty, 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). Additionally, on May 31, 2016, EPA issued an Administrative Consent Order (ACO) to Respondent, which required Respondent to undertake compliance actions to address the alleged violations in the Proposed CAFO. EPA is reviewing Respondent's Final Report required by paragraph 25 of the ACO, which must include a description of all actions taken to achieve compliance.

Furthermore, the fact that these violations may have occurred within the Grand Calumet Area of Concern does not warrant a separate, additional penalty. The U.S.-Canada Great Lakes Water Quality Agreement defines "Area of Concerns" (AOCs) as "geographic areas designated by the Parties where significant impairment of beneficial uses has occurred as a result of human activities at the local level."<sup>3</sup> Designating an area as an AOC is a process by which EPA and other federal and state agencies work to restore certain areas within the Great Lakes Basin. The penalty policy requires EPA to consider many factors in assessing a penalty, including the impact on human health and environmental harm. As discussed above, EPA believes the penalty assessed is appropriate for the alleged violations and consistent with the penalty policy.

## **2. The Proposed CAFO should include a Supplemental Environmental Project.**

Many commenters stated that the Proposed 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 stated that the penalty should be put into a SEP for the local area and not into the Oil Spill Liability Trust Fund. Finally, some commenters requested that all penalties from the Proposed 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, independent advisory committees and environmental monitoring programs.

### EPA Response

Federal law directs where civil penalties are to be applied. Civil penalties paid to EPA must be deposited in the U.S. Treasury pursuant to the Miscellaneous Receipts Act, 31 U.S.C. § 3302(b).

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<sup>3</sup>For more information on the Grand Calumet River Area of Concern, see <https://www.epa.gov/grand-calumet-river-aoc>.



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.<sup>4</sup>

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 Proposed CAFO achieves those goals.

### **3. A public meeting should be held regarding the Proposed CAFO.**

Many of the commenters requested that a public meeting or hearing be held because the Proposed 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.” Another commenter requested a public hearing to obtain “a closer look at what is going into my groundwater and into Lake Michigan.”

#### EPA 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 Proposed 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 Proposed CAFO. If complainant does not withdraw the Proposed 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.

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

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 Proposed 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.<sup>5</sup> Finally, issues relating to the groundwater in and around the Whiting, Indiana area are outside the scope of this Proposed CAFO.

**4. An independent advisory committee and environmental monitoring program for Respondent'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 discuss issues such as "other discharges, monitoring changes, and identifying questionable other areas that need EPA review, such as those found in the EPA visit from May 5 – May 9, 2014." 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.<sup>6</sup>

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 Response

These comments do not provide any relevant and material information regarding the basis of or findings in the Proposed CAFO. EPA brought this enforcement action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), which allows EPA to assess a civil penalty against, among other things, any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or any permit condition or limitation implementing the CWA in an NPDES permit issued by a State. The assessment of civil penalties under CWA § 309(g) are governed by 40 C.F.R. Part 22. The 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. 40 C.F.R. § 22.18(c). EPA does not have authority under Section 309(g) of the CWA or 40 C.F.R. Part 22 to establish advisory

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

<sup>6</sup> The Prince William Sound RCAC was established after the 1989 Exxon Valdez oil spill in Alaska and was 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.

committees and independent monitoring programs, or fund such committees or programs. As discussed above, all penalties collected are required to be deposited in the U.S. Treasury.

For more information regarding EPA Region 5 Regional Response Team's response planning and coordination efforts as required by CWA Section 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](mailto:Thomas.Keilman@bp.com).<sup>7</sup>

**5. More information is needed to make sure that the allegations are addressed regarding Respondent's failure to properly operate and maintain six separator.**

Some commenters requested additional information with respect to the allegations in the Proposed CAFO relating to Respondent's failure to properly operate and maintain six separator. They state that this information is needed "to identify proper solutions." Specifically, the commenters stated:

*Does each outfall have its own separator? If so, then the reasons for the noted violations at Outfalls 001 and 005 could be that the 50 to 90 minute residence time may be too short to allow sufficient separation of oil and grease and TSS. This problem might be exacerbated by nonconventional oil. If each outfall does not have its own separator, then is the effluent that was discharged from the Outfalls 001 and 005 first treated in Six Separator? If so, then the 50 to 90 minute residence time may be too short to allow sufficient separation of oil and grease and TSS and/or the sludge compromised functioning of Six Separator may either or both be factors contributing to the effluent limit violations. Was there an Incident (system upset) that occurred in April 2011? If so, this could also have contributed to the daily and monthly violations of TSS limits. However, incident and action reports should have been filed. Were any? Have there been any independent environmental monitoring studies to determine if the WWTP is functioning as intended or simply flushing hydrocarbons and other pollutants through the system?*

*Is there, or was there ever supposed to be, a sludge incinerator at the BP Whiting refinery that was part of the WWTP? Are there records that indicate when sludge was removed and WWTP tanks, including and such as Six Separator, cleaned? How often has EPA reviewed these records? If there is no sludge incinerator, how is the sludge disposed of and are there records? What happens to the sludge?*

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<sup>7</sup> 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/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/media-room/bp-social-media.html); [http://www.bp.com/en\\_us/bp-us/contact-bp-in-america.html](http://www.bp.com/en_us/bp-us/contact-bp-in-america.html).

*In CAFO0520160015, which deals with similar issues, EPA states: "On August of 2015, [BP] completed the removal of the sediment accumulated in Six Separator." This means that the BP Whiting refinery was operating for one year and five months with a severely compromised WWTP – and it is very likely that there were daily and monthly violations of NPDES permit effluent limits for various parameters during this entire time. Further since the sediment did not accumulate overnight when EPA inspectors first observed it, this also means that the BP Whiting refinery was operating for some time prior to the May 2014 inspection dates with a severely compromised WWTP – and that it is also very likely that there were daily and month violations of the NPDES permit effluent limits during this entire time. Were the DMRs in 2012, 2013, 2014, and 2015 reviewed for potential NPDES permit violations? If not, why not? If so, the record and CAFO does not reflect this work and is incomplete. Finally, heavier oil and tar sands oil in particular have more particulates and sediment than conventional crude. This means that sediment might accumulate more rapidly in the WWTP, since the BP Whiting refinery was "modernized" to process Canadian tar sands crude oil during 2009–2014. Has EPA considered the effects of heavier oil and tar sands oil on function of the WWTP? Are there independent and/or industry studies to show that the WWTP is capable of handling this increased load from unconventional oils? How does this effect residence time and throughput?*

#### EPA Response

These comments are outside the scope of the Proposed CAFO, and none of the commenters raise any relevant and material information that EPA has not previously considered. As discussed above, the May 31, 2016 ACO contains the specific requirements that Respondent must implement in order to address the alleged violations in the CAFO, including Respondent's failure to properly operate and maintain six separator. The Proposed CAFO only addresses Respondent's liability for federal civil penalties. Requiring additional compliance measures is outside the scope of this Proposed CAFO. However, EPA will respond to the key issues identified in the commenters' questions below.

The Indiana Department of Environmental Management (IDEM) issued Respondent's NPDES permit. The effluent violations cited in the Proposed CAFO occurred at Outfall 001 and Outfall 005. Outfall 001 no longer exists; effluent that previously flowed through Outfall 001 now flows through Outfall 005 subject to Respondent's NPDES permit. Outfall 005 discharges treated effluent from Respondent's Waste Water Treatment Plant (WWTP) through a diffuser into Lake Michigan. The WWTP treats, among other things, process wastewater generated and/or processed at the facility. As described in paragraph 26 of the Proposed CAFO, the once through cooling water (OTCW) system and six separator discharge non-contact cooling water through Outfall 002. These outfalls are part of two distinct treatment processes for separate process streams. The alleged effluent violations at Outfall 005 are not related to the operation and maintenance of six separator.

The Proposed CAFO identified alleged total suspended solids (TSS) exceedances in April 2011. Respondent stated in the Compliance Plan required by the ACO that those TSS exceedances occurred as a result of a failure at one of two clarifiers at the WWTP. Respondent further stated that it completed repair of the failed clarifier on April 30, 2011, and initiated preventative modifications to the other clarifier. Based on information received during EPA's inspection, Respondent filed a notice of noncompliance with the IDEM regarding this incident. Respondent also responded to the violation letter sent by IDEM by describing the incident and measures taken to correct the violations. EPA is unaware of any independent environmental monitoring studies conducted at the WWTP.

As required by the ACO, Respondent removed sediment from six separator in August 2015, and must inspect six separator on an annual basis. When the average water depth is less than 6 feet, Respondent must schedule and complete a cleaning of the separator within 18 months. In the ACO Compliance Plan, Respondent stated that the sediment accumulation in six separator is comprised of sand and silt from the lake water intake. EPA is not aware of any effluent limit exceedances that occurred at six separator over the past 5 years. In Respondent's 2013 NPDES permit application to IDEM, Respondent provided the residence time of flow through six separator as 30 minutes to one hour. In the ACO Compliance Plan, BP stated that the 2014/2015 average flow through six separator met this residence time criteria. The type of oil processed at the refinery should not significantly impact the functioning of the six separator because it processes and treats non-contact cooling water.

BP does not have a sludge incinerator on site. As documented in EPA's May 2014 inspection report, BP sends sludge generated at the WWTP off-site for disposal.

**6. Respondent violated a requirement of the CWA that is not included in the Proposed CAFO, and failed to fully address the alleged violations related to the oil and grease effluent permit limit.**

Some commenters stated that EPA failed to include a violation applicable to Respondent in the Proposed CAFO based on an allegation in paragraph 28 that stated EPA inspectors observed oil sheen throughout six separator on each day of the inspection, including sheen in the final cell prior to discharge to Lake Michigan. The commenters go on to state that:

*Visible oil and grease very likely exceeds the permissible daily maximum effluent limit of 2,600 pounds per day. Visible oil and grease sheens equate to about 15 mg/L. An average flow of 55 to 85 million gallons per day (MGD) and an average Total Recoverable Oil and Grease (TROG) loading of 15 mg/L imply a discharge of approximately 6,875 to 10,625 pounds of oil per day—over 3 to 5 tons. We request that EPA counts this as one additional type of violation. Why were these incidents not recorded by EPA as violations? Why is the permissible daily maximum for oil and grease so high in the first place? The daily maximum of 2,600 pounds per day is over a ton of oil and grease per day. It seems these parameter limits could be much lower, given state of art equipment and best management practices. Further, there are likely many more violations just on this parameter alone, given the fact that visible oil and grease were observed during 100 percent of the 5 day inspection; the observed lack of maintenance in Six Separator as evidenced by sediment accumulation (discussed below); and previous history of (known) violations of*

NPDES permit limits, as evidenced in the Track Record for effluent limit violations in April and July 2011, 2010, October 2006, 2005 (mentioned in previous Record), 2004, 2002–2003 (at least 4 violations).

Did EPA review the DMRs for all outfalls for violations of NPDES permit effluent limits from December 2011 through May 2016, the date of this CAFO? If not, why not? If so, there were surely other violations—the most obvious being on March 24, 2014, and the daily visible oil and grease sheens during the EPA inspection. Why are these not listed and part of this CAFO?

Are there daily air quality monitoring records specific to the wastewater treatment plant? If so, what pollutants are monitored? What action, if any, was taken to correct the benzene problem, noted above, in years 2003–2008? For example, the most obvious solution is a vapor recovery system similar to what BP and the other TransAlaska Pipeline System (TAPS) owners installed at the Alyeska tanker terminal WWTP during the 1990s—after concerned residents and investigative journalists became informed and engaged in the public process. Are there records to justify why WWTP emissions from the BP Whiting refinery are not captured and incinerated?

#### EPA 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).

The commenters do not raise any new relevant information that EPA has not already considered relating to the alleged oil and grease permit limitations. Permit limits are determined by the permitting authority and are outside the scope of the Proposed CAFO. As alleged in paragraph 28 of the Proposed CAFO, EPA observed oil sheen in six separator during the inspection. EPA further observed absorbent booms throughout six separator and observed that the sheen quickly dissipated within the final cell of the six separator, as documented in the May 2014 inspection report.

The oil and grease effluent permit limit of 2,600 pounds per day applies to Outfall 005 and not six separator. Six separator discharges through Outfall 002. The daily maximum effluent limitation for oil and grease at Outfall 002 is 5.0 milligrams per liter. EPA did not document any effluent exceedances at Outfall 002 during the inspection. The narrative water quality standards in the permit require that the discharge shall not cause an oily sheen in the receiving waters. EPA did not document an oily sheen in the receiving water during the inspection.

As part of the May 2014 inspection, EPA reviewed all discharge monitoring reports (DMRs) for the previous five years from the date of the inspection. All identified violations relating to the DMRs from that time period are included in the Proposed CAFO. Any other potential effluent permit violations that occurred before and/or after this time period are outside the scope of the Proposed CAFO. Additionally, as explained above, EPA did not assess penalties for the March 24, 2014 discharge as a violation under the Proposed CAFO because a penalty was issued for that discharge by USCG. Furthermore, the Proposed CAFO relates to alleged violations of Section 301 of the CWA and the applicable NPDES permit, and any potential air issues are not relevant to the Proposed CAFO.

Date

1/13/17



Christopher Korleski  
Director, Water Division







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

JAN 13 2017

REPLY TO THE ATTENTION OF:  
WC-15J

**CERTIFIED MAIL 7009 1680 0000 7646 0682**  
**RETURN RECEIPT REQUESTED**

Carolyn Marsh  
1804 Oliver Street  
Whiting, Indiana 46394

Re: BP Products North America Inc., Whiting, Indiana  
Consent Agreement and Proposed Final Order – Docket No: CWA-05-2016-0014  
Response to Comments

Dear Ms. Marsh:

Enclosed please find a copy of the Consent Agreement and proposed Final Order (CAFO) for the above matter. The U.S. Environmental Protection Agency 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 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), 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:  
Christopher Korleski  
Division Director  
Water 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 proposed Consent Agreement in this matter.

If you have any questions, please contact Donald R. Schwer III, Enforcement Officer, 312-353-8752.

Sincerely,



Patrick F. Kuefler  
Chief  
Water Enforcement & Compliance Assurance Branch

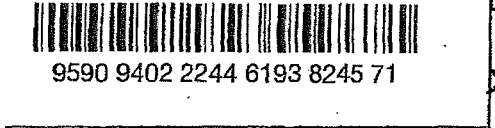
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**SENDER: COMPLETE THIS SECTION**

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- 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



2. Article Number (Transfer from service label)  
7009 1680 0000 7646 0675

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee  
*X*

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

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

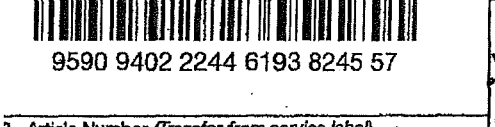
3. Service Type
- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                         | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®              | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                     | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |

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

**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.

Carolyn Marsh  
1804 Oliver Street  
Whiting, Indiana 46394



2. Article Number (Transfer from service label)  
7009 1680 0000 7646 0682

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee  
*Carolyn Marsh*

B. Received by (Printed Name) *Carolyn Marsh* C. Date of Delivery *Jan 24, 2017*

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

3. Service Type
- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                         | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®              | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                     | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |

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

**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



2. Article Number (Transfer from service label)  
7009 1680 0000 7646 0705

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee  
*X*

B. Received by (Printed Name) C. Date of Delivery

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

3. Service Type
- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                         | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®              | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                     | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |

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

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Customer Service

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## Available Actions

Text Updates

Email Updates

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

## Track Another Package

Tracking (or receipt) number

Track #

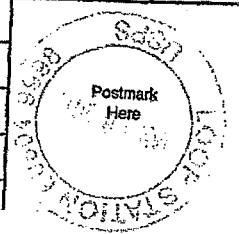
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PS Form

Debra Michaud  
Tar Sands Free Midwest  
1401 W. Winnemac Ave., 3E  
Chicago, IL 60640



Carolyn Marsh  
1804 Oliver Ave.  
Whiting, IN 46394

1000



60614

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AMOUNT  
**\$0.49**  
R2305K139780-07



Christopher Krasicki  
Remission Manager  
Attention WC-15J  
Water Remission  
US EPA Region 5  
77 West Jackson Blvd.  
Chicago, IL 60614

S SLJF 09AM  
IL 604  
24 FEB 17  
PM 7A

50604-360865



U.S. POSTAGE





February 24, 2017

Christopher Korlski, Division Director  
Attention: WC-15J  
Water Division, USEPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60614

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

Mr. Korlski and Mr. Drucker:

**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-05-2016-0014**

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-05-2016-0014. 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 comments 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.

#### **The civil penalty should be increased and EPA response to comments**

EPA stated: *"Some commenters also stated that Respondent should be assessed an additional penalty of \$5,000,000 because the violations occurred within the Grand Calumet River Area of Concern."*

You have not responded why a violation that occurred within the Grand Calumet River Area of Concern is not relevant. BP discharged pollutants from the oil refinery to Lake Michigan and the Lake George Branch of the Indiana Harbor Ship Canal where restoration projects are occurring. EPA should calculate the very highest monetary value on the discharges into cleanup and restoration superfund areas. Otherwise, like in West Calumet, it can only be viewed as mock cleanups and restoration if BP discharges pollutants that will again damage the remediation process. A public hearing is necessary to understand the proposed consent decree agreement CAFO.

#### **The Proposed CAFO should include a Supplemental Environmental Project and EPA response to comments**

EPA stated: *"Many commenters stated that the Proposed 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. Federal law directs where civil penalties are to be applied"*.

Funds are directed to be deposited in the U.S. Treasury. However, these funds are distributed to states. There are no Lake County representatives on the Indiana committee that decides how to use penalty funds and SEPs. Why is that? Why is this appointed state committee not known to the public and how it operates? Organizations outside Lake County benefit, not Lake County organizations. If there are Lake County SEPs, then the processes that determined it are unknown.

Who decides to set up private foundations to distribute penalty and SEP funds? Foundations are not legally obligated to disclose their financial and grant operations, which means the public is not aware of or able to understand their funded cleanup and restoration projects. When superfund site people do not benefit from settlements, it is discrimination against us. Many of the Foundations including the National Fish and Wildlife Foundation, Chi-Cal Rivers Fund, Sustain Our Great Lakes Fund and the Student Conservation Association Fund appear to be organizations influenced by BP.

The consent decree cleanup and restoration projects on BP property, which connects to the George Lake Canal branches and the Indiana Harbor Ship Canal to Lake Michigan, may be funded with penalty and SEP money funneled through a Foundation they control through funding. (30 June 2015. CHICAGO – BP announced today that it will donate \$1 million to the nonprofit Student Conservation Association (SCA) for environmental projects in Chicago and Northwest Indiana.) There appears there is a silent kickback scheme at work. 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](mailto: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-05-2016-0014 BP Products North America, Inc.

Sincerely,

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