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

September 25, 2018

REPLY TO THE ATTENTION OF E-19J

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE:	In the Matter of:	BASE Corporation
	Docket Nos.	CWA-05-2018-0008
	Complaint Date:	July 24, 2018
	Total Proposed Penalty:	$262,006.00

Dear Judge Biro:

Pursuant to 40 C.F.R. § 22.21(a) I have enclosed the Respondent's Answer to an Administrative Complaint and Request for Hearing.

Please assign an Administrative Law Judge to this case.

If you have questions, please contact me at (312) 886-3713.

Sincerely,

LaDawn Whitehead
Regional Hearing Clerk

Enclosures

cc: Yelena S. Ferreira
Associate
BRESSLER, AMERY & ROSS, P.C.
325 Columbia Turnpike
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Jeffery M. Trevino
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Whitehead, LaDawn

From: Yelena S. Ferreira <YFerreira@bressler.com>
Sent: Monday, September 24, 2018 3:26 PM
To: Whitehead, LaDawn
Cc: Trevino, Jeffery; DJ Camerson
Subject: In the Matter of BASF Corporation (CWA-05-2018-0008) - BASF Corporation's Answer
Attachments: BASF-Harvard Denison - BASF Answer to Complaint, Affirmative Defenses and Request for Hearing 9-24-18.PDF

Dear Clerk Whitehead:

As you know, this firm represents Respondent BASF Corporation in the above referenced matter. Enclosed please find BASF Corporation's Answer to Complaint, Affirmative Defenses, and Request for a Hearing. Should you have any questions please do not hesitate to contact us. Thank you for your consideration.

Yelena S. Ferreira
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Yelena S. Ferreira
Associate

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September 24, 2018

VIA ELECTRONIC MAIL AND FEDEX

LaDawn Whitehead, Regional Clerk
U.S. EPA- Region 5
77 West Jackson Boulevard (C-14J)
Chicago, IL 60604-3590

Re: In the Matter of BASF Corporation
Docket No.: CWA-05-2018-0008

Dear Ms. Whitehead:

As you know, this firm represents Respondent BASF Corporation in the above-referenced matter. Enclosed for filing is an original and one copy of Respondent BASF Corporation's Answer to Complaint, Affirmative Defenses and Request for Hearing.

Should you have any questions, please do not hesitate to contact us. Thank you for your consideration.

Respectfully submitted,

Y. Ferreira

Yelena S. Ferreira

Enclosures
cc: Jeffrey M. Trevino, Esq. (Via Electronic Mail and FedEx)

5043059_1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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

ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES, AND REQUEST FOR A HEARING

BASF Corporation ("BASF" or "Respondent"), through the undersigned attorneys, presents its Answer to the Administrative Complaint ("Complaint") issued by the Environmental Protection Agency ("EPA") on July 24, 2018 and respectfully states, alleges and prays as follows:

I. Statutory Authority

1. Paragraph 1 of the Complaint sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied. Respondent further specifies that The Consolidated Rules of Practice state that "a copy of [the] Consolidated Rules of Practice shall accompany each complaint served." 40 CFR § 22.14(b). Claimant did not provide a copy of the Consolidated Rules of Practice to the Respondent with the Complaint or at any other time.

II. The Parties

2. Paragraph 2 of the Complaint is a statement of law and procedure, or of the application of law and procedure to facts, which requires no admission, denial or explanation, and, in the alternative, is denied.

3. In response to the allegations contained in paragraph 3 of the Complaint, Respondent admits only that it is a respondent to the Complaint, but denies all other allegations contained in paragraph 3 of the Complaint, including, but not limited to, all references to "BASF Corporation, Cleveland, Ohio."

III. General Allegations

4. In response to the allegations contained in paragraph 4 of the Complaint, Respondent admits only that it is a corporation authorized to conduct business in the state of Ohio. The remaining allegations in paragraph 4 of the Complaint are conclusions of law to which no response is required. To the extent a reply may be required, except as otherwise admitted herein, Respondent denies the allegations contained in this paragraph.

5. Paragraph 5 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

6. Respondent denies the allegations contained in paragraph 6 of the Complaint.

7. Respondent denies the allegations contained in paragraph 7 of the Complaint.

8. Paragraph 8 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

9. Paragraph 9 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

10. Paragraph 10 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained

in this paragraph.

11. Respondent denies the allegations contained in paragraph 11 of the Complaint.

12. Paragraph 12 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

13. Paragraph 13 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

14. Paragraph 14 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

15. Paragraph 15 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

16. Paragraph 16 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

17. Paragraph 17 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent is without knowledge or

information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

18. Paragraph 18 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

19. Paragraph 19 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

20. Paragraph 20 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

21. Paragraph 21 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

22. In response to the allegations contained in paragraph 22 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Request speaks for itself. Respondent denies the remaining allegations contained in paragraph 22 of the Complaint.

23. In response to the allegations contained in paragraph 23 of the Complaint,

Respondent admits only that on September 9, 2014, Respondent received an Information Request from Claimant. Respondent denies the remaining allegations contained in paragraph 23 of the Complaint.

24. In response to the allegations contained in paragraph 24 of the Complaint, Respondent admits only that Claimant issued an Administrative Order for Compliance, pursuant to Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a) with a date of October 8, 2014, and states that such Information Request speaks for itself. Respondent denies the remaining allegations contained in paragraph 24 of the Complaint.

25. In response to the allegations contained in paragraph 25 of the Complaint, Respondent responds that it closed Outfall 007 as of October 15, 2014. Respondent denies the remaining allegations in this paragraph.

IV. Specific Allegations

Unpermitted Discharges

Counts 1-27

26. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 25 as if fully set forth herein.

27. Respondent denies the allegations contained in paragraph 27 of the Complaint.

28. Respondent denies the allegations contained in paragraph 28 of the Complaint.

Failure to Provide Written Confirmation of Intent to Comply

Count 28

29. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 28 as if fully set forth herein.

30. In response to the allegations contained in paragraph 30 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date

of August 29, 2014, and states that such Information Request speaks for itself. Respondent denies the remaining allegations contained in paragraph 30 of the Complaint, including those that purport to characterize the contents of such Information Request.

31. Paragraph 31 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

Failure to Visually Monitor Outfalls and Effluent Flow

Counts 29-61

32. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 31 as if fully set forth herein.

33. In response to the allegations contained in paragraph 33 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Request speaks for itself. Respondent denies the remaining allegations contained in paragraph 33 of the Complaint, including those that purport to characterize the contents of such Information Request.

34. Paragraph 34 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

Counts 62-66

35. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 34 as if fully set forth herein.

36. In response to the allegations contained in paragraph 36 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Request speaks for itself. Respondent

denies the remaining allegations contained in paragraph 36 of the Complaint, including those that purport to characterize the contents of such Information Request.

37. Paragraph 37 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

Counts 67-78

38. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 37 as if fully set forth herein.

39. In response to the allegations contained in paragraph 39 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Respondent denies the remaining allegations contained in paragraph 39 of the Complaint, including those that purport to characterize the contents of such Information Request.

40. Paragraph 40 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

Counts 79-83

41. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 40 as if fully set forth herein.

42. In response to the allegations contained in paragraph 42 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Request speaks for itself. Respondent denies the remaining allegations contained in paragraph 42 of the Complaint, including those that purport to characterize the contents of such Information Request.

43. Paragraph 43 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

Counts 84-95

44. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 43 as if fully set forth herein.

45. In response to the allegations contained in paragraph 45 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Request speaks for itself. Respondent denies the remaining allegations contained in paragraph 45 of the Complaint, including those that purport to characterize the contents of such Information Request.

46. Paragraph 46 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

Failure to Monitor Precipitation and Effluent Flow

Counts 96-102

47. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 47 as if fully set forth herein.

48. In response to the allegations contained in paragraph 48 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Request speaks for itself. Respondent denies the remaining allegations contained in paragraph 48 of the Complaint, including those that purport to characterize the contents of such Information Request.

49. Paragraph 49 of the Complaint sets forth legal conclusions to which no response

is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

Count 103

50. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 49 as if fully set forth herein.

51. In response to the allegations contained in paragraph 51 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Request speaks for itself. Respondent denies the remaining allegations contained in paragraph 51 of the Complaint, including those that purport to characterize the contents of such Information Request.

52. Paragraph 52 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

Failure to Complete Representative Outfall Effluent Sampling and Analysis

Count 104

53. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 52 as if fully set forth herein.

54. In response to the allegations contained in paragraph 54 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Request speaks for itself. Respondent denies the remaining allegations contained in paragraph 54 of the Complaint, including those that purport to characterize the contents of such Information Request.

55. Paragraph 55 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained

in this paragraph.

Count 105

56. Respondent repeats and incorporates its responses set forth above in paragraphs 1 through 55 as if fully set forth herein.

57. In response to the allegations contained in paragraph 57 of the Complaint, Respondent admits only that Claimant issued an Information Request to Respondent with a date of August 29, 2014, and states that such Information Respondent denies the remaining allegations contained in paragraph 57 of the Complaint, including those that purport to characterize the contents of such Information Request.

58. Paragraph 58 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent denies the allegations contained in this paragraph.

V. Notice of Proposed Civil Penalty

59. Paragraph 59 of the Complaint sets forth legal conclusions to which no response is required. To the extent a reply may be required, Respondent responds that the proposed final order assessing administrative penalties in the amount of $262,006.00 has no basis in law or in fact. Moreover, the proposed penalty is excessive, inappropriate and unwarranted, and Complainant has not provided adequate explanation as to how the penalty amount was calculated. The proposed penalty fails to take into account the factors identified in Section 309(g)(3) of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, §1319(g)(3). All factual allegations contained in Part V of the Complaint are denied. The Respondent further reserves the right to assert various defenses to dismiss this Complaint and the civil penalty demanded, as set forth below.

60. The allegations in Paragraph 60 of the Complaint set forth legal conclusions and

procedures to which no response is required. To the extent further response is required, it is contained in this Answer, Affirmative Defenses and Request for Hearing.

VI. Notice of Opportunity to Request a Hearing

61-62. Paragraphs 61 and 62 of the Complaint set forth legal conclusions and procedures to which no response is required. To the extent further response is required, Respondent is requesting a hearing to contest the allegations in this Complaint including the proposed penalty.

VII. Answer

63-68. Paragraphs 63 through 68 of the Complaint set forth legal conclusions and procedures to which no response is required. To the extent the allegations are inconsistent with applicable law, they are denied. To the extent further response is required, it is contained in this Answer, Affirmative Defenses and Request for Hearing.

VIII. Settlement Conference

69-70. Paragraphs 69 through 70 of the Complaint set forth legal conclusions and procedures to which no response is required. To the extent further response is required, Respondent responds that, without any admission of fault or responsibility, Respondent is amenable to a settlement conference including Region 5 management. All such settlement communications are inadmissible pursuant to Rule 408 of the Federal Rules of Evidence.

IX. Notice to the State and Public

71. Paragraph 71 of the Complaint sets forth legal conclusions and procedures to which no response is required. To the extent allegations are inconsistent with applicable law, they are denied.

X. Continuing Obligation to Comply

72. Paragraph 72 of the Complaint sets forth legal conclusions and procedures to

which no response is required. To the extent allegations are inconsistent with applicable law, they are denied.

AFFIRMATIVE DEFENSES

BASF states the following affirmative defenses, and expressly reserves the right to amend this Answer to raise additional affirmative defenses as may arise in the course of discovery and information exchange in this matter.

General

1. The Complaint fails to state a claim upon which relief can be granted against Respondent.

2. Respondent has not discharged pollutants to "waters of the United States."

3. To the extent that Respondent's acts or omissions may, without either so admitting or denying, be in non-compliance with Sections 301, 308, or 309(g)(1) of the Clean Water Act, 33 U.S.C. §§ 1311, 1318, and 1319, those failures are *de minimis* in nature, have created no danger to health and public safety or human welfare, or a danger to the environment.

4. Any and all alleged actions or omissions concerning compliance with Clean Water Act Section 301, 33 U.S.C. § 1311, have not resulted in any economic benefit to Respondent.

5. Upon information and belief, there is no history of violations or alleged violations of the Clean Water Act by Respondent at the property at issue in this matter since it purchased the property from Engelhard in 2006.

6. Respondent has at all times acted in good faith based on all the facts and circumstances known to Respondent at the time it acted.

7. Respondent has created no danger to health and public safety or human welfare, nor any danger to the environment. The absence of harm has not adequately been considered as a

mitigating factor in connection with the penalty assessment.

8. Complainant's allegations constitute agency action that is arbitrary and capricious, and an abuse of discretion under the Administrative Procedure Act, 5 U.S.C. §§ 553 and 706(2).

9. Complainant's penalty assessment constitutes an abuse of discretion.

10. The proposed penalty is excessive, inappropriate and unwarranted, and Complainant has not provided adequate explanation as to how the penalty amount was calculated.

11. The statute, regulations and/or guidance relied upon by Claimant in the Complaint in assigning the conduct and calculating and/or assessing the penalties are not applicable to the alleged violations.

12. The Claimant has incorrectly applied the applicable statute, regulations and/or guidance in assigning the conduct and calculating and/or assessing the penalties for each of the alleged violations in the Complaint.

13. Complainant's allegations are not supported by substantial evidence.

Specific

(Statute of Limitations)

14. Complainant's allegations are barred by the applicable statute of limitations and/or laches.

15. Claimant's allegations that Respondent "discharged" on July 1, 2012 and May 31, 2013 are barred by the five year statute of limitations for government actions to assess a civil penalty under the Clean Water Act. 28 U.S.C. § 2462.

(100 Harvard Avenue, Cleveland, Ohio)

16. Respondent is the present owner of the former Harshaw Chemical Company

Facility located at 1000 Harvard Avenue in Cleveland, Ohio (the property). The property had been formerly owned and operated by Harshaw Chemical Company. In 1988, Engelhard purchased the assets from Harshaw/Filtrol Partnership. The assets included the property except Building G-1, which was and continues today to be a landlocked parcel. Chevron Corporation, a party unrelated to Respondent, is the owner and/or operator of Building G-1 and is the successor in interest to the Harshaw Chemical Company for, among other things, environmental liabilities at and/or relating to Building G-1. In or about 2006, Respondent acquired Engelhard Corporation.

17. Respondent never conducted or performed any operations at the property, except for investigation and remedial activities.

18. Building G-1 has been owned and operated by the Chevron Corp., since 1988, and was at all times relevant to the matters underlying this action under the exclusive jurisdiction of the U.S. Army Corps of Engineers (USACE).

19. In the early 2000s, the U.S. Congress delegated to the U.S. Army Corps of Engineers the remediation of radioactive contamination at the property including Building G-1 pursuant to the Formerly Utilized Sites Remedial Action Program (FUSRAP).

20. Since March 30, 2010, Respondent has been performing remediation of heavy metals in the soil and groundwater at the property pursuant to a RCRA 3008(h) Administrative Corrective Action Order ("Order"). The Order excluded Building G-1 since RCRA did not include radioactive contaminants and since the USACE was delegated the responsibility for the remediation of radiological contamination.

(Joinder of Necessary Parties)

21. The injuries or damages of which Complainant complains were caused in whole or in part by non-parties whom Claimant has failed to join in this action.

22. USACE and/or Chevron are solely responsible for and/or liable for radionuclides at the property, including, but not limited to radionuclides discharged via Outfall 007, as alleged in the Complaint.

23. USACE and Chevron are indispensable parties to the allegations in the Complaint.

(Respondent Did Not Add Pollutants)

24. From 1976 through 1998, Harshaw Chemical Company obtained and held permits issued by the State of Ohio for discharges from outfalls at the property, including Outfall 007, into Cuyahoga River. The permits included: OEPA Permit No, 31E00006*FD, effective October 1, 1993.

25. Upon request by Engelhard, which included sampling required by the state, Ohio terminated permit 3IE00006*FD effective February 1998.

26. The State of Ohio concluded that a permit was not required under applicable law for discharges occurring at the property.

27. Contrary to the allegations of the Complaint, Respondent did not add nickel, lead, cadmium, copper, selenium, uranium, and other radionuclides from Outfall No. 007 into the Cuyahoga River, Cleveland, Ohio, including, but not limited on: July 1, 2012; May 31, October 25, 29, 2013; and August 28, September 3, 4, 8, 9, 15, 16, 22, 23, 24, 25, 29, 30, October 1, 2, 6, 7, 8, 9, 13, 14, and 15, 2014.

28. The statutes and/or regulations cited in the Complaint do not apply to the discharges alleged in the Complaint.

29. Respondent did not "discharge" into waters as defined at section 502(12) and (16) of the CWA, 33 U.S.C. § 1362(12) and (16).

30. Respondent did not discharge "pollutants" from Outfall 007 as the term is defined

in section 502(6) of the Clean Water Act, 33 U.S.C. 1362(6).

31. Respondent did not discharge pollutants from a "point source" into waters as defined at section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14).

32. The discharges from alleged in the Complaint, do not require a permit, as Claimant alleges in the Complaint.

33. Respondent was not required to obtain a permit by the State of Ohio and/or Claimant as alleged in the Complaint

34. The sampling results and historical data from the outfalls, including Outfall 007, were below actionable levels relative to discharge to surface water criteria for all compounds analyzed, and, therefore, a permit was not required.

35. USACE has sampled effluent from the pipe (Outfall 007) annually since at least 2003. USACE has maintained that concentrations of radionuclides in the effluent from Outfall 007 is not actionable and/or did not require a permit.

36. Without admitting any facts, fault, violations, or wrongdoing by Respondent, any metals alleged to be discharged in the Complaint are the result of historic fill.

37. Respondent incorporates by reference all defenses stet forth or provided in the statutes and/or regulations cited in the Complaint.

(Laches, Waiver, Estoppel)

38. Claimant has admitted that the USACE sampled the effluent from Outfall 007 annually since at least 2003.

39. USACE's sampling and actions with relation to Outfall 007 are imputed to Claimant.

40. Claimant sampled Outfall 007 in 2011.

41. Claimant did not issue the Information Request, which is the underlying basis for the Complaint, until, at the earliest, August 29, 2014.

42. The Complaint is barred in whole or in part by the doctrines of waiver, laches, and/or estoppel.

(Information Request)

43. The Information Request is not consistent or compliant with 33 U.S.C. § 1318.

44. The Information Request is not supported by and/or exceeds the authority set forth in 33 U.S.C. § 1318.

45. The information and/or actions demanded in the Information Request is not provided for and/or exceeds the authority set forth in 33 U.S.C. § 1318.

46. Claimant does not have statutory authority under section 308 of the Clean Water Act, 33 U.S.C. § 1318, to require construction, modification, or remediation requests.

47. Claimant's demand in the Information Request that Respondent provide written confirmation of its intent to comply within three business days of its receipt is without statutory basis and authority, and is unreasonable.

48. The time tables set forth in the Information Request are not supported by, in compliance with, and/or exceed the authority set forth in 33 U.S.C. § 1318.

49. The requests for sampling in the Information Request are not supported by, in compliance with, and/or exceed the authority set forth in 33 U.S.C. § 1318.

(Respondent Complied with Claimant's Orders)

50. Complainant alleges in the Complaint that it issued to Respondent a combination sections 308 Information Request and 309 Administrative Order for Compliance, 33 U.S.C. §§ 1318 and 1319 dated October 8, 2014 ("Administrative Order"). The Administrative Order required Respondent to, among other things, cease all discharges into the Cuyahoga River.

51. Respondent submitted a outfall closure plan to Claimant.

52. Claimant did not identify any issues with the outfall closure plan submitted by Respondent.

53. Respondent closed Outfall 007 by October 15, 2014, and Outfall 006 by October 17, 2014.

54. Claimant performed a site inspection on October 20, 2014 and confirmed that the outfalls were closed pursuant to the outfall closure plan and that there was no effluent coming from the outfalls.

55. The Information Request only required the monitoring and sampling of effluent from the outfalls. The Administrative Order superseded and replaced Claimant's Information Request.

56. Compliance with the Administrative Order rendered the Information Request, including compliance therewith, moot.

57. There can be no alleged violations of the Information Request after Respondent's compliance with the Administrative Order.

58. The Claimant's allegations of non-compliance with the Information Request given Respondent's compliance with the Administrative Order is unreasonable, arbitrary, and/or not supported by statute.

REQUEST FOR A HEARING

Respondent requests a hearing on the facts alleged in the Complaint and the proposed penalty.

Respectfully submitted,

Donald J. Camerson, II, Esq.
Yelena S. Ferreira, Esq.
BRESSLER, AMERY & ROSS, P.C.
301 Columbia Turnpike, Suite 301
Florham Park, NJ 07932
Tel: (973) 514-1200
Fax: (973) 514-1660
DJCamerson@bressler.com
YFerreira@bressler.com
Counsel for BASF Corporation

DATED: September 24, 2018

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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

CERTIFICATE OF SERVICE

I hereby certify that today I issued a copy of this ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES, AND REQUEST FOR A HEARING via Overnight Mail, Federal Express and e-mail to:

LaDawn Whitehead, Regional Clerk
U.S. EPA - Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois, 60604-3590
Whitehead.Ladawn@epa.gov

Jeffery M. Trevino, Esq.
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois, 60604-3590
trevino.jeffery@epa.gov
Counsel to Complainant

Dated: September 24, 2018

Y. Ferreira

Yelena S. Ferreira
Counsel for Respondent

In the Matter of: BASF Corporation
Docket No. CWA-05-2018-0008

Certificate of Service

I certify that I served the original and one copy of the Respondent's Answer and case file via certified mail to:

CERTIFIED MAIL RECEIPT NUMBER: 7011 1150 0000 2643 7336

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

I certify that I served a copy of the Respondent's Answer by electronic mail to:

Ann Coyle, Regional Judicial Officer
coyle.ann@epa.gov

Yelena S. Ferreira, Associate
BRESSLER, AMERY & ROSS, P.C.
YFerreira@bressler.com

Jeffery M.Trevino, Associate Regional Counsel
trevino.jeffery@epa.gov

On the 25 day of September 2018.

LaDawn Whitehead
Regional Hearing Clerk
Region 5