

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)
<u>Respondent.</u>)	

**Complainant's response to petition to set aside
Consent Agreement and proposed Final Order**

Complainant, the Director of the Water Division, U.S. Environmental Protection Agency, Region 5, is responding to the petition to set aside the Consent Agreement and proposed Final Order in the matter of *BP Products North America Inc.*, Docket No. CWA-05-2016-0014 (CAFO). Complainant respectfully presents this response to the assigned Petition Officer under Section 309(g)(4) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(4), 40 C.F.R. § 22.45(c)(4)(iv) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Rules of Practice), and the Petition Officer's Order dated June 16, 2017.

Complainant has carefully reviewed and considered the petition and the information provided on the issues it raised. For the reasons discussed below, Complainant has determined that Petitioners have not raised any issues that are relevant and material to the issuance of the CAFO that have not already been considered.

I. Background

A. CAFO and Administrative Consent Order

Under 40 C.F.R. §§ 22.1(a)(6)¹ and 22.13(b), where the parties agree to settlement of one or more causes of actions before the filing of a complaint, a class II administrative penalty

¹ The CAFO incorrectly cites 40 C.F.R. § 22.1(a)(2) as a basis for bringing this action.

proceeding under Section 309(g) of the CWA may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). On May 31, 2016, Complainant signed the consent agreement in this matter, which is a class II administrative penalty proceeding brought under Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A). (Ex. 1).² The Respondent, BP Products North America Inc., operates an oil refinery in Whiting, Indiana, near the shore of Lake Michigan. As part of its operations, Respondent discharges pollutants to Lake Michigan and the Lake George Branch of the Indiana Harbor Ship Canal (Lake George Canal) subject to the requirements of a National Pollutant Discharge Elimination System (NPDES) permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

The CAFO would resolve Respondent's liability for federal civil penalties for EPA's allegations that Respondent discharged pollutants in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and violated the terms and conditions of Respondent's NPDES permit for the refinery. Respondent has agreed to pay a penalty of \$74,212 to resolve these alleged violations.

Specifically, the CAFO alleges that Respondent violated its NPDES permit by: exceeding permit effluent limits for pollutants discharged to Lake Michigan on a number of occasions during 2010 and 2011; failing to properly maintain and efficiently operate an oil/water separator in good working order; and implement storm water pollution prevention requirements. Furthermore, the CAFO alleges that Respondent's failure to implement storm water controls and operate a groundwater control system resulted in discharges of pollutants to the Lake George Canal in violation of Section 301 of the CWA, 33 U.S.C. § 1311. (Ex. 1, paragraphs (paras.) 25 through

² This response refers to the exhibits attached to and referenced in the List of Exhibits that was transmitted to the Office of Administrative Law Judges with the Request to Assign Petition Officer on June 6, 2017 except for Exhibit 8, which is attached to this response.

33). EPA identified these alleged violations during an inspection of the refinery conducted from May 5, 2014 through May 9, 2014.

Relatedly, on May 31, 2016, EPA issued an Administrative Consent Order (ACO) to Respondent under Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a). (Ex. 8).³ The ACO required Respondent to undertake compliance actions to address the alleged violations in the CAFO through the implementation of a compliance plan. The compliance plan documented the actions that Respondent had already taken to address the violations, including: installation of equipment and filters to address the effluent exceedances; removal of sediment from the oil/water separator; implementation of storm water controls; and inspection schedules for the oil/water separator and storm water controls. Except for future inspections, Respondent completed all of the required compliance actions prior to issuance of the ACO.

B. Public Notice and Comment Period

From June 3, 2016 through July 12, 2016, Complainant provided public notice of and opportunity to comment on the CAFO under Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45(b).⁴ (Ex. 2). Complainant received a number of comments during the public comment period, including comments from Petitioners. (Ex. 3). After careful review and consideration of the comments received, Complainant did not make any changes to the CAFO. Although not required to do so by the CWA or 40 C.F.R. Part 22, Complainant also issued a response to the comments, which was signed on January 13, 2017. (Ex. 4). On January 17, 2017,

³ The ACO is included as an attachment to this response as Exhibit 8.

⁴ EPA Region 5 posts public notices for CWA CAFOs on its website at <https://www.epa.gov/aboutepa/epa-region-5>.

Complainant mailed to the commenters a copy of the CAFO as required by 40 C.F.R. § 22.45(c)(4), and a copy of the response to comments.⁵ (Ex. 5).

C. Petition to set aside the CAFO

On February 27, 2017, Complainant received a timely petition to set aside the CAFO on the basis that material evidence was not considered under Section 309(g) of the CWA and 40 C.F.R. § 22.45(c)(4).⁶ (Ex. 7). The petition was submitted by four citizens who commented on the CAFO, two of whom appear to be affiliated with citizen organizations in the greater Chicago area. After carefully considering the issues raised in the petition, Complainant determined that Petitioners did not identify any relevant and material issues that had not already been considered with respect to issuance of the CAFO. Therefore, Complainant decided not to withdraw the CAFO under 40 C.F.R. § 22.45(c)(4)(iii). On May 17, 2017, the Regional Administrator of EPA Region 5 requested that an Administrative Law Judge within EPA's Office of Administrative Law Judges be assigned to consider and rule on the petition under 40 C.F.R. § 22.45(c)(4)(iii).

II. Standard of Review

Under Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), if no hearing is held under CWA § 309(g)(2)(B) before issuance of an order assessing a class II civil penalty, any person who commented on the proposed assessment may petition, within 30 days after issuance of such order, EPA to set aside such order and provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the

⁵ Although the transmittal letter provided in Exhibit 5 as an example is dated January 13, 2017, EPA mailed all of the transmittal letters enclosed with copies of the CAFO and response to comments on January 17, 2017.

⁶ Under 40 C.F.R. § 22.45(c)(4)(ii), any person who comments on the CAFO may petition the Regional Administrator to set aside the CAFO within 30 days of receipt of the CAFO. According to the certified mail receipts, two of the petitioners received the CAFO on January 24, 2017, and therefore submitted the petition after the 30-day deadline of February 23, 2017. However, because the other two petitioners received the petition on January 30, 2017, and submitted the petition by March 1, 2017, Complainant considers the petition to be timely. (Ex. 6).

order, EPA shall immediately set aside such order and provide a hearing in accordance with Section 309(g)(2)(B) of the CWA.

Section 22.45(c)(4) of the Rules of Practice implement the requirements of Section 309(g)(4)(C) of the CWA. Under 40 C.F.R. § 22.45(c)(4)(ii), within 30 days of receipt of the CAFO, a commenter may petition the Regional Administrator (RA) to set aside the CAFO on the basis that material evidence was not considered. If Complainant does not withdraw the CAFO to consider the matters raised in the petition within 15 days of receipt, the RA assigns a Petition Officer to consider and rule on the petition under 40 C.F.R. § 22.45(c)(4)(iii).

The assigned Petition Officer shall review the petition and Complainant's response, and issue written findings as to: (1) the extent to which the petition states an issue relevant and material to the issuance of the proposed Final Order; (2) whether complainant adequately considered and responded to the petition; and (3) whether a resolution of the proceeding by the parties is appropriate without a hearing. 40 C.F.R. § 22.45(c)(4)(v).

III. Complainant's response to the issues raised in the petition

A. Petitioners raise issues outside the scope of the CAFO in support of a request for a public hearing.

Petitioners contend that 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." In support of this, Petitioners raise issues related to the USS Lead Superfund Site in East Chicago, Indiana, where, according to Petitioners, citizens were unable to participate in the clean-up and restoration requirements under the Consent Decree (CD) for the Site because they failed to comment during the CD's public comment period.⁷ Petitioners

⁷ Petitioners appear to cite to a news article as support for this statement.

also point to a report of a “near-miss” accident at Respondent’s refinery that occurred in January of 2014 that “could have caused an explosion and fatalities,” and that Petitioners maintain shows Respondent is not managing critical safety information well.⁸ Finally, Petitioners state that “the George Lake Canal branches are near West Calumet homes and there is a connection to BP and their pollution of the neighboring canal.”

None of the issues Petitioners raise are relevant and material to the issuance of the CAFO. As described above, the CAFO memorializes a class II administrative penalty action in settlement of Complainant’s allegations against Respondent for violations of Respondent’s NPDES permit and unlawful discharges of pollutants from Respondent’s oil refinery in Whiting, Indiana. EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. 40 C.F.R. § 22.18(b). As described above, Respondent has taken actions to address the exceedances of permit limits, inadequate operation and maintenance of the oil/water separator, and failure to implement storm water controls. Additionally, the agreed upon penalty of \$74,212 is consistent with EPA’s penalty policy⁹, adequate to deter future violations, and is further supported by conserving the significant government resources required by prolonged litigation. Therefore, this settlement is consistent with the provisions and objectives of Section 309 of the CWA and Respondent’s NPDES permit.

The USS Lead Superfund Site is not related to this action, and does not provide a basis for a hearing on this matter. Additionally, a news report citing a “near-miss” accident at Respondent’s refinery in January of 2014 that could have caused an explosion and relating to Respondent’s

⁸ Petitioners appear to cite to a news article as support for this assertion, which Complainant was able to locate. Joseph S. Pete, *Near-Miss at BP Whiting Refinery in 2014 Was Potentially Deadly*, Dec. 14, 2016, http://www.nwitimes.com/business/near-miss-at-bp-whiting-refinery-in-was-potentially-deadly/article_2406bd02-9738-59f4-bb7d-40039bc666b7.html.

⁹ *Interim Clean Water Act Settlement Penalty Policy* (March 1, 1995) <https://www.epa.gov/sites/production/files/documents/cwapol.pdf>.

allegedly poor management of critical safety information, while troubling, is not relevant and material to Respondent's effluent permit limit exceedances, which occurred in 2010 and 2011, and Respondent's inadequate operation and maintenance of the oil/water separator and failure to implement storm water controls, which EPA identified during the May 2014 inspection of the refinery.

Finally, Petitioners do not identify any information to support their allegation that Respondent has polluted the Lake George Canal, or explain how it is relevant to the allegations in the CAFO. The CAFO does allege that Respondent unlawfully discharged pollutants to the Lake George Canal during May 5, 2014 through May 9, 2014 from an area near a groundwater control system and piles of excavated dirt. Complainant considered these alleged discharges in the assessment of the proposed penalty and believes that the penalty is appropriate. Additionally, Respondent has implemented storm water controls and additional inspections to abate those discharges.

Petitioners ask for a public hearing to understand the CAFO, which they contend is connected to the broader environmental issues facing the Northwest Indiana and Northeast Illinois communities. However, Section 309(g)(2)(B) of the CWA and the Rules of Practice provide for a hearing on the merits of the CAFO. The purpose of such a hearing would be to determine whether Complainant has shown, by a preponderance of the evidence, that the alleged violations occurred as set forth in the CAFO and the assessed penalty is appropriate. 40 C.F.R. §§ 22.24 and 22.45(c). That is, a hearing would determine whether Complainant has adequately proven that Respondent failed to comply with the NPDES permit for the refinery and unlawfully discharged pollutants in violation of CWA § 301. The USS Lead Superfund Site, a potential incident at Respondent's

refinery in January 2014, and a vague reference to Respondent's alleged pollution of the Lake George Canal are not relevant and material to the allegations in the CAFO.

B. The fact that the alleged discharges may have occurred within the Grand Calumet River "Area of Concern" does not warrant an additional penalty of \$5,000,000.

Petitioners contend that because Respondent discharged pollutants to water bodies within the Grand Calumet River "Area of Concern," EPA should assess an additional penalty of \$5,000,000, a contention they previously raised during the public comment period. Petitioners further state that EPA should calculate the highest monetary value on the discharges on cleanup and superfund restoration areas, otherwise "it can only be viewed as mock cleanups and restoration if BP discharges pollutants that will again damage the remediation process."

Although Petitioners state that Complainant has not responded as to why their contention is not relevant, Complainant did consider and respond to this issue in the response to comments. (Ex. 4, page 3). The fact that these violations may have occurred within the Grand Calumet River "Area of Concern" does not warrant a separate, additional penalty of \$5,000,000.¹⁰ Complainant calculated the penalty in accordance with the *Interim Clean Water Act Settlement Penalty Policy* dated March 1, 1995.¹¹ The penalty policy "sets forth the policy of EPA for establishing appropriate penalties in settlement of civil judicial and administrative action." (Emphasis in original). The policy is drafted so that violators whose actions, or inactions, resulted in significant economic benefit and/or harmed or threatened public health or the environment will pay the highest penalties. Penalty policy at 2.

¹⁰ The U.S.-Canada Great Lakes Water Quality Agreement defines "Area of Concerns" 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." Designating an area as an Area of Concern is a process by which EPA and other federal and state agencies work to restore certain areas within the Great Lakes Basin. For more information, see <https://www.epa.gov/grand-calumet-river-aoc>.

¹¹ Available at <https://www.epa.gov/sites/production/files/documents/cwapol.pdf>.

Petitioners do not point to any information in the penalty policy that directs EPA to assess maximum penalties for alleged discharges that may impact Areas of Concern, or provide any information that indicates Respondent's alleged discharges impacted any ongoing cleanup or remediation work. Rather, the penalty policy directs EPA to consider many factors in assessing a penalty, including but not limited to: economic benefit; the toxicity and amount of the pollutant discharged; impacts on human health (e.g., interference with drinking water supplies, harm or increased risks to subsistence fishing); impacts on aquatic environment/environmental harm (e.g., fish kill, beach closing, restrictions on use of water body, other impact on aquatic environment); and litigation considerations. Complainant did consider these factors when assessing the penalty against Respondent and, as discussed further below, believes the penalty is appropriate for the alleged violations.

C. EPA cannot require Respondent to perform a Supplement Environmental Project, and Petitioners' concerns about distribution of SEP funds are not relevant and material to the CAFO.

Petitioners include an excerpt from EPA's response to comments, which related to Petitioners' comment that the CAFO should require Respondent 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. Petitioners go on to question why there are no Lake County representatives on the "Indiana committee that decides how to use penalty funds and SEPs," and state concerns with what they perceive to be a lack of transparency in how the Indiana committee and other private foundations were created, operate, and decide how funds should be distributed. Petitioners also allege that Respondent is engaged in a "silent kickback scheme" because Respondent has influence over organizations that may have received funding with "penalty money and SEP money."

The CAFO requires Respondent to pay a \$74,212 penalty and does not include a SEP. 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.¹²

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, Complainant is satisfied that the penalty assessed for the violations alleged in the CAFO achieves those goals.

With respect to Petitioners' comments about directing penalty and SEP funds, 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). Petitioners state that funds deposited in the U.S. Treasury are distributed to states. While the federal government does provide funding to states through grants and other mechanisms, Petitioners' request is well outside the scope of this matter. Complainant has no control over how penalties submitted to the U.S. Treasury are directed.

Petitioners' concerns regarding an Indiana committee that decides how to use penalty funds and SEPs and an alleged kickback scheme are not relevant and material to the CAFO, which does

¹² Available at <https://www.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf>.

not include a SEP. Complainant does note that EPA's SEP Policy states that when a respondent agrees to perform a SEP, the type and scope of each project must be specifically described and defined in the settlement document. SEP Policy at 8. Cash donations to community groups, environmental organizations, state/local/federal entities, or any other third party are not acceptable SEPs. SEP Policy at 17.

D. Petitioners' request for an independent advisory committee and comments on Respondent's outreach activities are not relevant and material to this class II civil administrative penalty proceeding.

Petitioners state that an "independent advisory committee and environmental monitoring program for Respondent's wastewater treatment plant should be created." They quote an excerpt from Complainant's response to comments on that same issue, which included information reported by Respondent about its public outreach activities and the contact information for Respondent's representative for questions or concerns about the refinery. Petitioners further identify concerns they have with accessing Respondent's website, indicate that they do not know what current public outreach Respondent conducts, and refer to past public meetings held by Respondent related to a consent decree that no longer occur.

These statements do not provide any relevant and material issues related to the issuance of the CAFO, and are outside the scope of EPA's authority under this class II administrative penalty proceeding. Complainant brought this enforcement action under Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), which allows Complainant to assess a civil administrative penalty against, among other things, any person who has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any permit condition or limitation implementing the CWA in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. Under 40 C.F.R. § 22.18(c), payment of a penalty proposed in a CAFO shall only resolve Respondent's liability for federal

civil penalties for the violations and facts alleged in the CAFO. EPA does not have authority under Section 309(g) of the CWA (Administrative Penalties) or the Rules of Practice to establish advisory committees and independent monitoring programs, or fund such committees or programs. As discussed above, 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). Similarly, EPA cannot require Respondent to conduct outreach activities, and has no control over Respondent's website. Complainant included the information related to Respondent's public affairs representative and website in the response to comments in an effort to be responsive to the public comments received on the CAFO.

E. Petitioners' comments on the CAFO do not raise any relevant and material issues.

Petitioners refer to their comments submitted during the public comment period for the CAFO as relevant to their petition. (Ex. 3). Petitioners' comments, some of which are already discussed above, and Complainant's responses are included below. Complainant's responses are taken largely from Complainant's response to comments, which Complainant requests be included as part of its response to this petition.¹³ (Ex. 4).

1. The civil penalty should be increased to \$619,500.

Petitioners commented that the total penalty should be \$619,500, "or whatever the current maximum(s) are, for the 42 days of different discharges per the Discharge Monitoring Reports (DMR), plus the Storm Water Pollution Prevention Plans (SWPPP) violations for two different locations during the five-day USEPA inspection as defined below." Petitioners contend that Complainant should assess a \$369,500 penalty for the alleged permit exceedances described in

¹³ Complainant's response to comments summarized all of the comments received on the CAFO, which included comments from other citizens in addition to Petitioners.

DMRs in 2010 and 2011, and a \$250,000 penalty for the alleged failure to comply Section 301(a) of the CWA and the SWPPP, for a total penalty of \$619,500. Petitioners further state that “the fact that Respondent “cooperated” only applies to the visit by EPA officials, not to the correct implementation of the permit limitations.”

EPA’s CAFO requires Respondent to pay \$74,212 in civil penalties. At all times relevant to the allegations in the CAFO, the adjusted 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.

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, 1995.¹⁴ 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.

¹⁴Available at: <https://www.epa.gov/sites/production/files/documents/cwapol.pdf>. The amount of the civil penalty must be adjusted for inflation. *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)* (July 27, 2016), available at <https://www.epa.gov/sites/production/files/2017-01/documents/finalpenaltyinflationguidance.pdf>.

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.

The civil penalty contained in the 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 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 CAFO.

2. EPA should assess a Grand Calumet River Area of Concern violation penalty of \$5,000,000.

Petitioners commented EPA should assess an additional penalty of \$5,000,000 because the alleged violations occurred in the Grand Calumet River "Area of Concern." *See* Section III.B, above.

3. The CAFO should include a Supplemental Environmental Project.

Petitioners commented that the CAFO should require Respondent 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. They also stated that past decisions by the government "have dispersed SEP funds to those that do not reside in environmental justice

areas,” and that the National Fish & Wildlife Federation has not included residents in projects related to the Lake George Canal. *See* Section III.C, above.

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

Petitioners requested that a public meeting be held because the CAFO “is not an adequate amount to pressure BP to improve operations to prevent future oil spills,” and because “there is no Lake Michigan or Great Lakes coordinated first responder oil spill clean-up plan.”

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

Furthermore, the existence of a “Lake Michigan or Great Lakes coordinated first responder oil spill clean-up plan” does not relate to the alleged violations and is outside the scope of the CAFO. As required by Section 311(j) of the CWA, 33 U.S.C. § 1321(j) and the National Contingency Plan at 40 C.F.R. § 300.210, EPA Region 5 and USCG have developed, in consultation with the States, a Regional Contingency Plan to coordinate an effective and timely response to discharges of oil and/or hazardous substances within Region 5, which includes the Lake Michigan area.¹⁵

¹⁵ For more information on the Region 5 Regional Response Team, *see* Region 5 Regional Response Team, <http://rrt5.org/> (last updated April 17, 2017).

IV. Conclusion

In summary, Petitioners have not identified any document or witnesses to be introduced or description of information to be presented that are relevant and material to the allegations in the CAFO. For the reasons described above, Petitioners do not raise any issues relevant and material to the issuance of the CAFO.

Respectfully submitted,

7/7/17
Date

Juda Holst
for Christopher Korleski
Director
Water Division
U.S. Environmental Protection Agency, Region 5

Complainant's response to petition to set aside Consent Agreement and proposed Final Order
In the matter of: *BP Products North America Inc.*
Docket Number: CWA-05-2016-0014

Certificate of Service

I certify that I filed and served on the Petition Officer through the Office of Administrative Law Judge's E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf a copy of "Complainant's response to petition to set aside Consent Agreement and proposed Final Order" for Docket Number CWA-05-2016-0014. I further certify that I served a copy of "Complainant's response to petition to set aside Consent Agreement and proposed Final Order" for Docket Number CWA-05-2016-0014 in the following manner to the following addressees:

Copy by email to Petitioners	Carlotta Blake-King cbk0563@comcast.net	Carolyn A. Marsh cmarshbird@prodigy.net
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Dated: 7/13/2017

Kasey Barton
Kasey Barton
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5