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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:) Docket No. **CAA-5-99-027**
)
) Proceeding to Assess
BP Chemicals, Inc.) Administrative penalties
Lima, Ohio) under section 113(a)(1) of
) the Clean Air Act,
)
_____) 42 U.S.C. Section 7413(a)(1)

COMPLAINT
AND
NOTICE OF OPPORTUNITY FOR HEARING ON
PROPOSED ADMINISTRATIVE ORDER ASSESSING PENALTIES

This is an action for the assessment of a civil administrative penalty brought against BP Chemicals, Inc. ("BP Chemicals" or "Respondent") pursuant to Sections 113(a)(1) of the Clean Air Act ("Act"), 42 U.S.C. §§ 7413(a)(1), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits" ("Consolidated Rules"), 40 C.F.R. Part 22, for violations of Section 112 of the Act, 42 U.S.C. § 7412, and the regulations promulgated thereunder.

THE PARTIES

1. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, Chicago, Illinois.
2. The Respondent is BP Chemicals, Inc., which operates a chemical manufacturing facility in Lima, Ohio.

STATUTORY AND REGULATORY BACKGROUND

3. Section 110 of the Act, 42 U.S.C. § 7410, requires States to adopt, and submit to the U.S. EPA for approval, State Implementation Plans ("SIPs") providing for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards ("NAAQS") promulgated by U.S. EPA pursuant to Section 109 of the Act, 42 U.S.C. § 7409. U.S. EPA has promulgated NAAQS for, among other pollutants, volatile organic compounds.
4. Part C of the Act, 42 U.S.C. §§ 7470-7491, requires the Administrator to promulgate regulations to prevent the significant deterioration of air quality in areas designated as attainment or unclassifiable in accordance with Section 107(d) of the Act, 42 U.S.C. § 7407(d). In accordance with the Act, the Administrator promulgated regulations at 40 C.F.R. § 51.166 setting forth SIP approval requirements for the prevention of significant deterioration of air quality.
5. Section 161 of the Act, 42 U.S.C. § 7471, and 40 C.F.R. § 51.166(a)(1) requires the States to submit SIPs containing emission limitations and other measures necessary to prevent the significant deterioration of air quality. Pursuant to Section 110(a) of the Act, 42 U.S.C. § 7410(a), the Administrator determined that the Ohio SIP did not satisfy the requirements to ensure the prevention of significant deterioration of air quality. As a result, the Administrator disapproved the PSD portion of the Ohio SIP, 40 C.F.R. § 52.1884(a).

6. In accordance with Section 110(c) of the Act, 42 U.S.C. § 7410(c) and 40 C.F.R. § 52.21(a), the Administrator incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) [PSD Regulations] as part of the Ohio SIP, 40 C.F.R. § 52.1884(b).
7. "Major stationary source" is defined at 40 C.F.R. § 52.21(b) (1) (I) as, among other things, any chemical process plant that emits or has the potential to emit, 100 tons per year of any air pollutant subject to regulation under the act.
8. "Major modification" is defined at 40 C.F.R. § 52.21(b) (2) (I) as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act."
9. "Construction" is defined at 40 C.F.R. § 52.21(b) (8) as "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions."
10. "Begin actual construction" is defined at 40 C.F.R. § 52.21(b) (11) as "initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those onsite activities other than preparatory activities which mark the initiation of the change."

11. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(I) as "net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates" including but not limited to: "100 tons per year (TPY) CO, 40 TPY of NO_x, 40 TPY of SO₂, 25 TPY of Particulate Matter and 40 tpy of volatile organic compounds for Ozone."
12. 40 C.F.R. § 52.21(I) states "no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements."
13. Section 165(a) of the Act states, *inter alia*, that no major emitting facility may be constructed or modified unless a permit has been issued in accordance with requirements of Part C of the Act.
14. The issuance and effective dates for a PSD permit are regulated under 40 C.F.R. § 124.15.
15. 40 C.F.R. § 124.15(a) states "after the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision..." Pursuant to this requirement, the Ohio Environmental Protection Agency ("OEPA") issued a final permit decision on November 10, 1998.
16. 40 C.F.R. § 124.15(b) states "a final permit decision shall become effective thirty (30) days after the service of notice of the decision ..." Pursuant to this regulation, BP's permit was effective on December 11, 1998.

17. 40 C.F.R. § 52.21(r) provides, *inter alia*, that any owner or operator of a source subject to the PSD regulations who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.
18. 40 C.F.R. § 52.23 provides, *inter alia*, that failure to comply with any provisions of 40 C.F.R. Part 52, or with any approved regulatory provision of a SIP or with any permit condition, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the SIP, subjects the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.

GENERAL ALLEGATIONS

19. BP Chemicals owns and operates a chemical manufacturing facility located at Ft. Amanda Road, Lima, Ohio in Allen County.
20. BP Chemicals is a "person" as defined at 42 U.S.C. § 7602.
21. Allen County is an area presently classified as attainment or unclassifiable for all criteria pollutants. 40 C.F.R. Subpart B, § 81.336.

22. On November 10, 1998, OEPA issued a PSD permit to BP Chemicals for the Butanediol ("BDO") unit. The PSD permit was not effective until after the 30 day appeal period (December 11, 1998), as required by 40 C.F.R. § 124.15.
23. On November 20, 1998, U.S. EPA and BP Chemicals met to discuss the activities BP Chemicals intended to undertake during the 30 day appeal period. During the meeting, U.S. EPA put BP Chemical on notice that the installation of the cooling water line would be a violation of the PSD regulations and the other activities (placement of a thin mud mat and site preparation of form and rebar work for the foundation of the reactor and pipe rack) discussed during the conference were of concern to the Agency and required further review and discussion with U.S. EPA headquarters.
24. On November 23, 1998, BP Chemicals initiated and completed the mud mat construction.
25. On November 30, 1998, BP Chemicals initiated the form and rebar work for the foundation for the reactor and pipe rack. The work was completed on December 10, 1998.
26. On December 11, 1998, BP Chemicals notified U.S. EPA that there were no appeals for their PSD permit and that they are starting construction.
27. On May 13, 1999, Richard C. Karl, Acting Director, Air and Radiation Division, Region 5, issued a Notice of Violation, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, to BP Chemicals, alleging violations of Section 165 of the Clean Air Act and 40 C.F.R. § 52.21..

28. BP Chemicals was offered an opportunity to meet with the U.S. EPA to discuss the Notice of Violation. A conference was held on June 1, 1999, in U.S. EPA's Region 5 office in Chicago, Illinois.

COUNT I

29. Paragraphs 1. through 28. are realleged herein by reference.
30. 40 C.F.R. § 52.21(I) states "no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements."
31. Section 165(a) of the Act states, *inter alia*, that no major emitting facility may be constructed or modified unless a permit has been issued in accordance with requirements of Part C of the Act.
32. On November 23, 1998, BP Chemicals initiated and completed the mud mut construction.
33. BP Chemicals' failure to obtain a construction permit issued in accordance with the PSD regulations and beginning actual construction on the BDO Unit is a violation of Section 165(a)(1) of the Act and 40 C.F.R. § 52.21(I).

COUNT II

34. Paragraphs 1. through 33. are realleged herein by reference.
35. 40 C.F.R. § 52.21(I) states "no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements."

36. Section 165(a) of the Act states, *inter alia*, that no major emitting facility may be constructed or modified unless a permit has been issued in accordance with requirements of Part C of the Act.
37. On November 30, 1998, BP Chemicals initiated the form and rebar work for the foundation for the reactor and pipe rack. The work was completed on December 10, 1998.
38. BP Chemicals' failure to obtain a construction permit issued in accordance with the PSD regulations and beginning actual construction on the BDO Unit is a violation of Section 165(a)(1) of the Act and 40 C.F.R. § 52.21(I).

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

39. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, the Administrator of the U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, up to a total of \$220,000, for violations of requirements under the Act. The proposed civil penalty herein has been determined under those authorities in accordance with Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), which requires the Complainant to take the following factors into consideration in determining the amount of penalty assessed under Section 113: the size of the Respondent's business; the economic impact of the penalty on the business; Respondent's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as

established by credible evidence (including evidence other than the applicable test method); payment by Respondent of penalties previously assessed for the same alleged violations; the economic benefits of noncompliance; and the seriousness of the alleged violations.

40. After consideration of the factors set forth at Section 113(e)(1) of the Act, based upon the facts and circumstances alleged in this Complaint, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing Administrative Penalties assessing a penalty in the amount of **\$ 92,800.00**. This proposed penalty was calculated under Section 113(e) of the Act, with specific reference to the Clean Air Act Stationary Source Penalty Policy (Penalty Policy). The Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases. A copy of the Penalty Policy is attached hereto as Exhibit A.
41. In determining the proposed penalty, Complainant considered the economic benefit that Respondent received from the violations. The penalty must be sufficient to prevent the violator from gaining a monetary benefit from avoiding or delaying the expenditures that are necessary to comply. Because BP did not receive substantial economic benefit by avoiding compliance costs, the proposed penalty does not include an amount for Respondent's economic benefit.
42. Complainant considered Respondent's compliance history and its good faith efforts to comply. The penalty reflects an appropriate increase

for prior citations for Respondent's Clean Air Act violations at its Toledo, Ohio facility.

43. Complainant considered the duration of the violations in assessing the actual or possible harm resulting from the violations. The violations alleged in Count I commenced on November 23, 1999 and continued through December 10, 1999. The violations alleged in Count II commenced on November 30, 1999 and continued through December 10, 1999. Thus, Complainant based the penalty on a 0-1 month duration of violations.
44. Complainant considered the Respondent's degree of willfulness or negligence in calculating the proposed penalty. Complainant considered the degree of control the Respondent had over the events giving rise to the violations, the foreseeability of the events giving rise to the violations, the level of sophistication of the Respondent within the industry, and the extent to which the Respondent had knowledge of the legal requirements alleged to have been violated. Accordingly, the proposed penalty reflects an upward adjustment for the Respondents degree of willfulness or negligence.
45. The proposed penalty of \$ 92,800.00 reflects a presumption of the Respondent's ability to pay the penalty and to continue in business based upon the size of its business and the economic impact of the proposed penalty.
46. Respondent shall pay the assessed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall

deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Margaret Sieffert (AE-17J)
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and,

Karl Karg (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

47. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

OPPORTUNITY TO REQUEST A HEARING

48. Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2), requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint

or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, you must specifically make such request in your Answer, as discussed in Paragraphs 46 through 50 below.

49. The hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316 (1992), a copy of which is attached hereto as Exhibit B.

ANSWER

50. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within twenty (20) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such day, in which case the deadline shall be extended to the next business day.
51. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied. Your Answer shall also specifically state:

- a. The circumstances or arguments which you allege constitute grounds for a defense;
 - b. The facts that you intend to place at issue; and
 - c. Whether you request a hearing discussed in Paragraphs 44 and 45, above.
52. Failure to respond to any factual allegation in this Complaint shall constitute an admission of the alleged fact.
53. You must send a copy of your Answer and any documents subsequently filed in this action to Karl A. Karg, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Karg at (312) 886-7948.
54. If you fail to file a written Answer within twenty (20) calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. 40 C.F.R. § 22.17. The civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. §§ 22.27 or 22.31.

SETTLEMENT CONFERENCE

55. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Margaret Sieffert, U.S. EPA, Region 5, Air and Radiation Division, Air

Enforcement and Compliance Assurance Branch (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Sieffert at (312) 353-1151.

56. Your request for an informal settlement conference does not extend the twenty (20) calendar day period during which you must submit a written Answer to this Complaint. You may simultaneously pursue the informal settlement conference and adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order Assessing Administrative Penalties shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.
57. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the Clean Air Act or any other Federal, State or local law or regulation.

Date

8/20/99



Margaret M. Guerriero, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAX-5-99-027

REGIONAL HEARING CLERK
REGIONAL HEARING CLERK

In the Matter of BP Chemicals, Inc.

Docket No.:

CAA-5-99-027

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CERTIFICATE OF SERVICE

I hereby certify that I filed the original of the foregoing Complaint and Notice of Opportunity for Hearing on Proposed Administrative Order (Order) Assessing Penalties against BP Chemicals, Inc. Docket No. **CAA-5-99-027** with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent true and accurate copies of the Order along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policies (described in the Complaint) was sent via certified mail, return receipt requested to:

James Walpole
Project Manager
BP Chemicals, Inc.
Ft. Amanda Road
P.O. Box 628
Lima, Ohio 45802-0628

P140777339
Certified Mail Number

I also certify that a copy of the Order was sent by first class mail to:

Gerald Rich, APC Supervisor
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

on the 20th Day of August, 1999

Betty Williams for Loretta Shaffer
Loretta Shaffer, Secretary
ARD/AECAB/AECAS (MN/OH)