



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

APR 22 2005

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Linda Wilson
BP Products North America
Whiting Refinery
MC 122
2915 Indianapolis Blvd.
Whiting, Indiana 46394-0719

Dear Ms. Wilson:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves BP Products North America Inc. (BP), CAA Docket No. ~~CAA-05-2005 0020~~. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 25 2005.

Pursuant to paragraph 62 of the CAFO, BP must pay the civil penalty within 30 days of APR 25 2005. Your check must display the case docket number, ~~CAA-05-2005 0020~~ and the billing document number, 050303079.

Please direct any questions regarding this case to John Matson, Associate Regional Counsel, (312) 886-2243.

Sincerely yours,

Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. ~~CWA-05-~~ 2005 0020
)
BP Products North America Inc.,) Proceeding to Assess an
Whiting, Indiana) Administrative Penalty
) under Section 113(d) of the
) Clean Air Act,
Respondent.) 42 U.S.C. § 7413(d)
_____)

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5, (U.S. EPA, or the Administrator), and BP Products North America Inc. (Respondent or BP) have agreed to a settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. § 22.13(b) and 22.18(b).

I. Preliminary Statement

1. This is a civil administrative penalty matter that is brought and resolved by U.S. EPA under the authority vested in the Administrator of U.S. EPA by Section 113(a)(1)(B) of the Clean Air Act, 42 U.S.C. § 7413(a)(1)(B) (the Act).
2. Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. EPA, Region 5.
3. Respondent is BP Products North America Inc., a corporation doing business in Indiana.
4. Complainant and Respondent enter this Consent Agreement pursuant to 40 C.F.R. § 22.13(b), which provides that where the parties agree to settlement of one or more causes of

action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order.

II. Statutory and Regulatory Background

5. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (hereinafter, the HWC MACT) at 40 C.F.R Part 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1211 and 63.1213, and the National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (hereinafter, the Refinery MACT) at 40 C.F.R Part 63, Subpart CC, 40 C.F.R. §§ 63.640 through 63.655.

A. HWC MACT

6. The HWC MACT applies to hazardous waste combustors: hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns.
7. The HWC MACT at 40 C.F.R. §§ 63.1200 through 63.1211 and 63.1213 requires the owner or operator of a hazardous waste incinerator to comply with emission standards and requirements pertaining to operating, performance testing, monitoring, recordkeeping, and reporting.
8. The Administrator may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for HWC MACT violations that occurred from January 31, 1997 to March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the

Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

B. Refinery MACT

9. The Refinery MACT applies to petroleum refining process units and to certain related emission points.
10. The Refinery MACT at 40 C.F.R. §§ 63.640 through 63.655 requires the owner or operator of a refinery to comply with emission standards and requirements pertaining to operating, performance testing, monitoring, recordkeeping, and reporting.
11. The Administrator may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for Refinery MACT violations that occurred from January 31, 1997 to March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

III. Self-Disclosure Policy

12. To encourage regulated entities to conduct voluntary compliance evaluations and to voluntarily discover, disclose and correct violations of environmental requirements, U.S. EPA promulgated the “Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations,” 60 Fed. Reg. 66706 (December 22, 1995) (the Self-Disclosure Policy). As an incentive for regulated entities to participate in the Self-Disclosure Policy’s voluntary disclosure process, U.S. EPA may eliminate or substantially reduce the gravity-based component of civil penalties to be assessed for

violations which are voluntarily disclosed in compliance with the conditions specified in the Self-Disclosure Policy. The conditions of the Self-Disclosure Policy are as follows:

- (1) Discovery of the violation(s) through an environmental audit or due diligence;
- (2) Voluntary disclosure;
- (3) Prompt disclosure;
- (4) Discovery and disclosure independent of government or third party plaintiff;
- (5) Correction and remediation;
- (6) Prevention of recurrence of the violation;
- (7) Absence of repeat violations;
- (8) Other violations excluded; and
- (9) Cooperation.

13. Pursuant to the Self-Disclosure Policy, U.S. EPA may reduce gravity-based penalties up to one-hundred percent if the disclosing entity satisfies all of the conditions listed above. U.S. EPA may reduce gravity-based penalties up to seventy-five percent if the disclosing entity satisfies conditions (2) - (9), above. However, U.S. EPA reserves the right to assess a civil penalty with regard to any economic benefit that may have been realized as a result of such violations, even in those instances when the disclosing entity has met all the conditions of the Self-Disclosure Policy. In its enforcement discretion, U.S. EPA may waive a civil penalty with regard to the economic benefit arising from such violations if U.S. EPA determines that such economic benefit is insignificant. Penalty reductions are not available under the Self-Disclosure Policy for violations that result in serious actual harm or may present an imminent and substantial endangerment to public health or the environment, nor are such reductions available for violations of any order or consent agreement.

III. Allegations

A. Emissions Violation

14. Pursuant to the HWC MACT at 40 C.F.R. § 63.1201(a), an existing source is any affected source that was constructed or reconstructed on or before April 19, 1996.
15. Pursuant to 40 C.F.R. § 63.1203(a)(3), the owner or operator, of an existing source, shall not discharge or cause to be emitted into the atmosphere combustion gases that contain lead and cadmium in excess of 240 $\mu\text{g}/\text{dscm}$ (micrograms per dry standard cubic meter), combined emissions, corrected to 7 percent oxygen. Hereinafter, lead and cadmium are referred to collectively as semi-volatile metals.
16. Pursuant to 40 C.F.R. § 63.1206(a), an existing source must comply with the standards of Subpart EEE no later than September 30, 2003, unless the Administrator grants the Source an extension of time under § 63.6(i) or § 63.1213.
17. Pursuant to 40 C.F.R. § 63.1207(b), the owner or operator of a hazardous waste incinerator existing source must conduct comprehensive performance tests to demonstrate compliance with the emission standards in § 63.1203.
18. Pursuant to 40 C.F.R. § 63.1207(c), the owner or operator of a hazardous waste incinerator existing source must commence the initial comprehensive performance test no later than six months after the compliance date of September 30, 2003.
19. BP owns and operates a petroleum refinery at 2915 Indianapolis Blvd, Whiting, Indiana.
20. The refinery includes a fluid bed incinerator which treats certain refinery waste streams.
21. The air pollution control system for the incinerator consists of a venturi scrubber, a wet ESP, and a carbon bed adsorber.

22. The incinerator burns hazardous wastes and thus is subject to the HWC MACT.
23. The hazardous waste incinerator BP owns and operates has been operating since 1972. Thus, because it was constructed or reconstructed on or before April 19, 1996, pursuant to 40 C.F.R. § 63.1201(a), the BP facility is an existing source subject to the requirements of 40 C.F.R. Part 63 Subpart EEE.
24. BP conducted its initial comprehensive performance test for all required pollutants including semi-volatile metals in March of 2004.
25. The results of the March 2004 testing show that during the test, BP's hazardous waste incinerator was discharging 507 micrograms of lead and cadmium per dry standard cubic meter corrected to 7 percent oxygen.
26. Thus, BP violated 40 C.F.R. § 63.1203(a)(3) by discharging from its hazardous waste incinerator lead and cadmium emissions in excess of 240 $\mu\text{g}/\text{dscm}$ corrected to 7 percent oxygen.
27. On September 24, 2004, U.S. EPA served a Finding of Violation (FOV) against Respondent BP Products North America Inc. for violating Section 112 of the Clean Air Act, 42 U.S. C. § 7412. Specifically, BP violated the HWC MACT at 40 C.F.R Part 63, Subpart EEE, at its facility in Whiting, Indiana, on the date of the test.
28. On November 4, 2004, U.S EPA and BP held a conference to discuss the September 24, 2004 Finding of Violation.

B. Self-Disclosure

29. Pursuant to the Refinery MACT at 40 C.F.R. § 63.641, a Group 1 miscellaneous process vent is a miscellaneous process vent for which the total organic HAP concentration is greater than or equal to 20 parts per million by volume, and the total volatile organic compound emissions are greater than or equal to 33 kilograms per day for existing sources and 6.8 kilograms per day for new sources at the outlet of the final recovery device and prior to any control device and prior to discharge to the atmosphere.
30. Pursuant to 40 C.F.R. § 63.643 (a), the owner or operator of a Group 1 miscellaneous process vent as defined in 40 C.F.R. § 63.641 shall comply with the requirements of either paragraph 63.643(a)(1) or (a)(2).
31. Pursuant to 40 C.F.R. § 63.643 (a)(1), the owner or operator of a Group 1 miscellaneous process vent shall reduce emissions of organic HAPs by using a flare that meets the requirements of 40 C.F.R. § 63.11(b).
32. BP is the owner or operator of a Group 1 miscellaneous process vent as that term is defined in 40 C.F.R. § 63.641.
33. BP uses an Alky flare meeting the requirements of 40 C.F.R. § 63.11(b) to reduce emissions of organic HAPs and meet its requirements under 40 C.F.R. § 63.643 (a)(1).
34. On May 21, 2004, BP notified U.S. EPA of a violation of 40 C.F.R. Part 63, Subpart CC at the Whiting facility.
35. The alkylation unit (Alky Unit) vents its emissions through drums to remove moisture and then vents the emissions either to a flare or the atmosphere.

36. Drum 22 (D-22) is a Knock-out drum in a Group 1 Miscellaneous Process Vent in the Alky Unit.
37. Prior to May of 2004, Drum 13 vented to D-22 which was properly controlled by a flare in compliance with the requirements of the National Emission Standards for Hazardous Air Pollutants for Refineries (hereinafter, the Refinery MACT) at 40 C.F.R Part 63, Subpart CC, 40 C.F.R. §§ 63.640 through 63.655.
38. The emissions from all Alky Unit drums (except for D-20 and D-21) pass through D-22 prior to venting to the Alky Flare.
39. D-13 contains 2,2,4 trimethylpentane, which is a HAP under the MACT. The D-13 emissions pass through D-22 prior to venting to the Alky Flare.
40. In May of 2004, BP discovered that the valve between D-13 and D-22 had corroded and shut off the flow of 2,2,4 trimethylpentane to D-22 and the Alky Flare. Thus, 2,2,4 trimethylpentane was venting to the atmosphere, and not to a flare, in violation of Section 63.643(a) of the Refinery MACT.
41. To remedy this situation, BP constructed new piping venting D-13 to D-20 and D-21, which vent to the Alky Flare. Thus, D-13 is now in compliance with Section 63.643(a) of the Refinery MACT..
42. The Self-Disclosure Policy is only applicable to the violations disclosed at the Whiting Facility.
43. For the Whiting Facility, BP provided information to U.S. EPA that its disclosed violations were discovered as the result of due diligence through a compliance management system.

44. For the Whiting Facility, BP provided information to U.S. EPA indicating that the violations were disclosed promptly and in writing within 21 days of discovery.
45. For the Whiting Facility, BP provided information to U.S. EPA indicating that the disclosed violations were identified and disclosed by BP prior to any commencement of a Federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, reporting of the violation to U.S. EPA by a “whistle blower” employee, or imminent discovery by a regulatory agency.
46. For the Whiting Facility, BP provided information to U.S. EPA indicating that the disclosed violations either have been promptly corrected or BP has taken steps to correct the violations and is working with state and local air agencies to expeditiously return to compliance.
47. For the Whiting Facility, BP provided information to U.S. EPA indicating that BP has taken steps to prevent a recurrence of the violations, including rerouting piping to tanks with control devices.
48. For the Whiting Facility, BP provided information to U.S. EPA indicating that the violations at issue or closely related violations have not occurred previously within the past three years at the same facility and are not part of a pattern of violations on the part of BP over the past five years.
49. For the Whiting Facility, BP provided information to U.S. EPA indicating that the violations at issue have not been the subject of a Federal, state or local agency judicial or administrative complaint, enforcement action or settlement, nor has BP or a parent organization received a penalty mitigation concerning the violations at issue during the three years preceding the issuance of this CAFO.

50. For the Whiting Facility, BP provided information to U.S. EPA indicating that the violations at issue have not resulted in serious actual harm to human health or the environment, nor have the violations presented an imminent and substantial endangerment to public health or the environment.
51. For the Whiting Facility, BP provided information to U.S. EPA indicating that the violations at issue do not violate the specific terms of any judicial or administrative order or consent agreement.
52. BP has cooperated with U.S. EPA and provided the information necessary for the Agency to determine the applicability of the Self-Disclosure Policy to BP's disclosure.
53. Thus, U.S. EPA finds that BP has fulfilled the nine conditions of the Self-Disclosure Policy.
54. As authorized by the Self-Disclosure Policy's voluntary disclosure process, U.S. EPA will eliminate one-hundred percent of the gravity-based component of any civil penalty that would otherwise have been assessed to BP for venting 2,2,4 trimethylpentane to the atmosphere, and not to a flare, in violation of Section 63.643(a) of the Refinery MACT.
55. Using its enforcement discretion, U.S. EPA further waives any civil penalty against BP with regard to the economic benefit arising from this violation because U.S. EPA has determined that such economic benefit is insignificant.

IV. Stipulations

56. BP admits the jurisdictional allegations in the complaint, and neither admits nor denies the factual allegations in the complaint.
57. BP waives its right to further contest the allegations in the complaint, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

58. BP certifies that it is complying fully with the HWC MACT.
59. The parties consent to the terms of this consent agreement and final order (CAFO).
60. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

V. Civil Penalty

61. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).
62. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$58,687.60. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy).
63. There is no mitigation of the proposed penalty of \$58,687.60.
64. BP must pay the \$58,687.60 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.
65. BP must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673
66. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

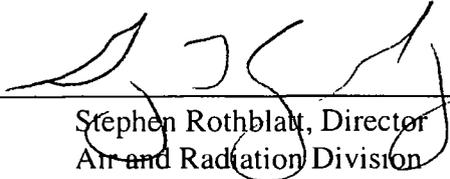
John Matson, Associate Regional Counsel, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

67. This civil penalty is not deductible for federal tax purposes.
68. If BP does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
69. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. BP will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. BP will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VI. General Provisions

70. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged above.
71. Nothing in this CAFO restricts U.S. EPA's authority to seek BP's compliance with the Act and other applicable laws and regulations.
72. This CAFO does not affect BP's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.
73. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine BP's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).
74. The terms of this CAFO bind BP and its successors, and assigns.
75. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.
76. Each party agrees to bear its own costs and fees in this action.
77. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection Agency, Complainant

Date: 4/21/05 By:  ACTING
Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

BP Products North America Inc., Respondent

Date: 4/11/05 By: 
[Name] Title
BP Products North America Inc.,

~~CAA-05~~ 2005 0020

CONSENT AGREEMENT AND FINAL ORDER

BP Products North America Inc.

Docket No. ~~CWA-05-~~ 2005 0020

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: 4/22/05


for Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of BP Products North America, Whiting Refinery
Docket No:

~~CA-05-~~ 2005 0020

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order (CAFO), docket number ~~CA-05-~~ 2005 0020 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that a second original of the CAFO was sent Certified Mail, Return Receipt Requested, to:

Linda Wilson
BP Products North America
Whiting Refinery
MC 122
2915 Indianapolis Blvd.
Whiting, Indiana 46394-0719

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 5

05 APR 25 PM 2:54

REGION 5

I also certify that a copy of the CAFO was sent by First Class Mail to:

David McIver, Chief
Office of Enforcement, Air Section
Indiana Department of Environmental Management
100 North Senate Avenue, Room 1001
Indianapolis, Indiana 46206-6015

on the 25th Day of April 2005

Betty Williams

Betty Williams
Administrative Program Assistant
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 0005 89097216