



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

**[JUN 11 2008]**

REPLY TO THE ATTENTION OF:

R-19J

The Honorable Richard J. Durbin  
United States Senate  
Washington, D.C. 20515

Dear Senator Durbin:

Thank you for your May 30, 2008, letter. In your letter, you expressed concerns with the May 1, 2008, construction permit issued by the Indiana Department of Environmental Management (IDEM) for the BP Whiting refinery expansion. I wish to assure you that we are committed to protecting air quality and drinking water for the millions of people living along the shores of Lake Michigan in Illinois and Indiana.

My office has worked closely with IDEM throughout the development of the construction permit and the proposed Title V operating permit which was submitted to the U.S. Environmental Protection Agency on May 1, 2008. Our combined efforts have focused on making sure that any permits issued to BP Whiting would ensure compliance with applicable requirements under the Clean Air Act (CAA) and are protective of air quality. In fact, the permits authorize no increase in allowable air emissions above previous permit limits. As required by the CAA, EPA plans to complete its review of the proposed Title V operating permit by June 15, 2008, to ensure that it appropriately addresses comments received on the draft permit.

In your letter, you expressed concerns with the accounting of emissions from three new flares, as well as the increased use of existing flares, in determining prevention of significant deterioration (PSD) and nonattainment new source review applicability for the project. Your letter notes that the CAA specifies that all (not just planned) startup, shutdown and malfunction emissions must be factored into netting calculations. As a clarification, please note that netting is not directly provided for by the CAA, but is authorized by our implementing regulations. These regulations specify that baseline actual emissions shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any legally enforceable emission limitations.

EPA engaged in extensive discussions with IDEM to ensure that the State addressed this distinction between normal and/or planned flaring emissions that are legally allowed under permit conditions/limits versus those that may arise as a result of noncompliant, unplanned shutdowns and malfunctions. It should be noted that, in conducting its netting analysis, IDEM chose to apply a more conservative approach by

not counting compliant “past actual” flare emissions in the baseline calculation, such as those that occur as part of the regular operations of the existing gas oil hydrotreater and coker. Had IDEM included these emissions in the baseline actual emissions calculations, they would have further offset the “projected future actual” side of the netting equation.

The netting analysis for the BP Whiting permit includes projected future flare emissions from planned shutdown and maintenance activities. BP plans to install the new flares on the gas oil hydrotreater, the hydrogen unit and the new coker unit. Two of these flares, for the hydrotreater and coker unit, will be state of the art flare gas recirculation system units. These units are designed to eliminate flare emissions during normal process unit operations of the hydrotreater unit and coker unit, as well as reduce or eliminate emissions during process malfunctions. The hydrogen unit flare will not have a recirculation system because this unit is designed only to operate during emergencies and malfunctions. The netting analysis includes the projected flare emissions from pilot and purge gas combustion from all three units, which are necessary for proper flare operations, as well as estimated emissions from planned shutdown and maintenance activities that would not be captured by one of the recovery systems. IDEM used these projections to create emissions limits for the flares, and these limits bound the netting calculation’s projected future emissions from the flares.

The permit does not provide blanket exclusion of any unplanned malfunction events, and strictly defines emissions limits for the flares. Any emissions beyond these limits would be considered noncompliant, and subject to potential enforcement action at the state and federal levels.

In addition, your letter further states that, under the CAA, carbon dioxide and other greenhouse gas pollutants must be considered in the permit review process following the United States Supreme Court’s decision in Massachusetts v. United States Environmental Protection Agency. EPA is currently evaluating the potential implications of the Supreme Court’s decision on the mobile and stationary provisions of the CAA. At this time, the federal regulations do not provide authority for EPA to establish emissions limitations for greenhouse gases in air construction permits under the PSD program because greenhouse gases are not pollutants regulated under the CAA.

Finally, you express concern that the proposed operating permit does not include a schedule for compliance to address the violations set forth in EPA’s November 2007, Notice of Violation (NOV) to BP Whiting. Please note that the mere fact that EPA’s issuance of an NOV is not necessarily enough to establish noncompliance. Consistent with the CAA provision you cite, a Title V permit must include a schedule of compliance to address provisions with which the source is in noncompliance. Section 503(b) of the CAA requires an operating permit applicant to submit a compliance plan “describing how the source will comply with all applicable requirements” of the CAA. 42 U.S.C. § 7661b(b)(1). When a source is in compliance, its plan must state that it “will continue to comply with such requirements.” 40 C.F.R. § 70.5(c)(8)(ii)(A). Where a source is not in compliance at the time of permit issuance, its plan must include “a narrative description of how [it] will achieve compliance with such requirements,” as well as a “schedule of

well as a "schedule of compliance" that includes a sequence of milestones. 40  
C.F.R. § 70.5(c)(8)(ii)(C) and (iii)(C).

During the Title V permitting process, EPA or the permitting authority may determine that the source is in noncompliance with an applicable requirement, and that a compliance schedule is required. An NOV is simply one early step in the EPA's enforcement process of determining whether a violation has, in fact, occurred. It does not in and of itself prove the facts alleged. While the permitting authority and EPA could consider the existence of an NOV as a relevant factor in determining whether the overall information is sufficient to determine noncompliance, such documents do not compel this conclusion. Notably, nothing in IDEM's issuance of the Title V permit would shield BP Whiting from any enforcement action related to issues we alleged in the NOV, and the permit may need to be reopened at a future time to incorporate a compliance schedule upon an affirmative finding that the facility is in noncompliance.

Again, thank you for your letter. If you have any further questions, please contact me, or your staff may contact Mary Canavan or Ronna Beckmann, the Regional Congressional Liaisons, at (312) 886-3000.

Sincerely,

A handwritten signature in black ink, appearing to read "B Mathur", written in a cursive style.

Bharat Mathur  
Acting Regional Administrator



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**JUN 11 2008**

REPLY TO THE ATTENTION OF:

**R-19J**

The Honorable Rahm Emanuel  
House of Representatives  
Washington, D.C. 20515

Dear Congressman Emanuel:

Thank you for your May 30, 2008, letter. In your letter, you expressed concerns with the May 1, 2008, construction permit issued by the Indiana Department of Environmental Management (IDEM) for the BP Whiting refinery expansion. I wish to assure you that we are committed to protecting air quality and drinking water for the millions of people living along the shores of Lake Michigan in Illinois and Indiana.

My office has worked closely with IDEM throughout the development of the construction permit and the proposed Title V operating permit which was submitted to the U.S. Environmental Protection Agency on May 1, 2008. Our combined efforts have focused on making sure that any permits issued to BP Whiting would ensure compliance with applicable requirements under the Clean Air Act (CAA) and are protective of air quality. In fact, the permits authorize no increase in allowable air emissions above previous permit limits. As required by the CAA, EPA plans to complete its review of the proposed Title V operating permit by June 15, 2008, to ensure that it appropriately addresses comments received on the draft permit.

In your letter, you expressed concerns with the accounting of emissions from three new flares, as well as the increased use of existing flares, in determining prevention of significant deterioration (PSD) and nonattainment new source review applicability for the project. Your letter notes that the CAA specifies that all (not just planned) startup, shutdown and malfunction emissions must be factored into netting calculations. As a clarification, please note that netting is not directly provided for by the CAA, but is authorized by our implementing regulations. These regulations specify that baseline actual emissions shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any legally enforceable emission limitations.

EPA engaged in extensive discussions with IDEM to ensure that the State addressed this distinction between normal and/or planned flaring emissions that are legally allowed under permit conditions/limits versus those that may arise as a result of noncompliant, unplanned shutdowns and malfunctions. It should be noted that, in conducting its netting analysis, IDEM chose to apply a more conservative approach by

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The netting analysis for the BP Whiting permit includes projected future flare emissions from planned shutdown and maintenance activities. BP plans to install the new flares on the gas oil hydrotreater, the hydrogen unit and the new coker unit. Two of these flares, for the hydrotreater and coker unit, will be state of the art flare gas recirculation system units. These units are designed to eliminate flare emissions during normal process unit operations of the hydrotreater unit and coker unit, as well as reduce or eliminate emissions during process malfunctions. The hydrogen unit flare will not have a recirculation system because this unit is designed only to operate during emergencies and malfunctions. The netting analysis includes the projected flare emissions from pilot and purge gas combustion from all three units, which are necessary for proper flare operations, as well as estimated emissions from planned shutdown and maintenance activities that would not be captured by one of the recovery systems. IDEM used these projections to create emissions limits for the flares, and these limits bound the netting calculation’s projected future emissions from the flares.

The permit does not provide blanket exclusion of any unplanned malfunction events, and strictly defines emissions limits for the flares. Any emissions beyond these limits would be considered noncompliant, and subject to potential enforcement action at the state and federal levels.

In addition, your letter further states that, under the CAA, carbon dioxide and other greenhouse gas pollutants must be considered in the permit review process following the United States Supreme Court’s decision in Massachusetts v. United States Environmental Protection Agency. EPA is currently evaluating the potential implications of the Supreme Court’s decision on the mobile and stationary provisions of the CAA. At this time, the federal regulations do not provide authority for EPA to establish emissions limitations for greenhouse gases in air construction permits under the PSD program because greenhouse gases are not pollutants regulated under the CAA.

Finally, you express concern that the proposed operating permit does not include a schedule for compliance to address the violations set forth in EPA’s November 2007, Notice of Violation (NOV) to BP Whiting. Please note that the mere fact that EPA’s issuance of an NOV is not necessarily enough to establish noncompliance. Consistent with the CAA provision you cite, a Title V permit must include a schedule of compliance to address provisions with which the source is in noncompliance. Section 503(b) of the CAA requires an operating permit applicant to submit a compliance plan “describing how the source will comply with all applicable requirements” of the CAA. 42 U.S.C. § 7661b(b)(1). When a source is in compliance, its plan must state that it “will continue to comply with such requirements.” 40 C.F.R. § 70.5(c)(8)(ii)(A). Where a source is not in compliance at the time of permit issuance, its plan must include “a narrative description of how [it] will achieve compliance with such requirements,” as well as a “schedule of

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Again, thank you for your letter. If you have any further questions, please contact me, or your staff may contact Mary Canavan or Ronna Beckmann, the Regional Congressional Liaisons, at (312) 886-3000.

Sincerely,



Bharat Mathur  
Acting Regional Administrator



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JUN 11 2008

REPLY TO THE ATTENTION OF:

R-19J

The Honorable Janice D. Schakowsky  
House of Representatives  
Washington, D.C. 20515

Dear Congresswoman Schakowsky:

Thank you for your May 30, 2008, letter. In your letter, you expressed concerns with the May 1, 2008, construction permit issued by the Indiana Department of Environmental Management (IDEM) for the BP Whiting refinery expansion. I wish to assure you that we are committed to protecting air quality and drinking water for the millions of people living along the shores of Lake Michigan in Illinois and Indiana.

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Again, thank you for your letter. If you have any further questions, please contact me, or your staff may contact Mary Canavan or Ronna Beckmann, the Regional Congressional Liaisons, at (312) 886-3000.

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Bharat Mathur  
Acting Regional Administrator



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**JUN 11 2008**

REPLY TO THE ATTENTION OF:

**R-19J**

The Honorable Melissa L. Bean  
House of Representatives  
Washington, D.C. 20515

Dear Congresswoman Bean:

Thank you for your May 30, 2008, letter. In your letter, you expressed concerns with the May 1, 2008, construction permit issued by the Indiana Department of Environmental Management (IDEM) for the BP Whiting refinery expansion. I wish to assure you that we are committed to protecting air quality and drinking water for the millions of people living along the shores of Lake Michigan in Illinois and Indiana.

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Acting Regional Administrator