

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CWA-05-2016-0015
)
BP Products North America Inc.) Proceeding to Assess a Class II Civil Penalty
Whiting, Indiana,) Under Section 311(b)(6) of the Clean Water
) Act, 33 U.S.C. § 1321(b)(6)
Respondent.)
_____)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(ii), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is BP Products North America Inc., a corporation doing business in Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

Spill prevention, control and countermeasure plan requirements

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (October 18, 1991).

10. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. 40 C.F.R. § 112.1(a)(1).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. 40 C.F.R. § 112.1(b).

12. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) in accordance with the requirements of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.7(c) requires the owner or operator of a subject facility to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b), and further requires that the entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system will not escape the containment system before cleanup occurs. In determining the method, design, and capacity for secondary containment, the owner or operator must address the typical failure mode, and the most likely quantity of oil that would be discharged.

General provisions and enforcement of the CWA

14. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as waters of the United States.

15. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

16. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2, define “oil” as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

17. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B) and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

18. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

19. Appendix A to 40 C.F.R. § Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines “non-transportation-related” facility to include: oil refining facilities including all equipment and appurtenances related thereto; oil storage facilities, including all equipment and appurtenances related thereto; fixed bulk plant storage and terminal oil storage facilities; and industrial, commercial, agricultural or public facilities which use and store oil.

20. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), under Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 3121(b)(6)(A)(ii).

21. EPA may assess a class II civil penalty of up to \$16,000 per violation for each day of violation up to a maximum of \$187,500 for violations that occurred after December 6, 2013, under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R.

Part 19.

Factual Allegations and Alleged Violations

22. Respondent owns and operates a petroleum refinery located at 2815 Indianapolis Boulevard, Whiting, Indiana (“the Facility”).

23. The Facility is located on the shore of Lake Michigan.

24. Respondent is a corporation, and is therefore a “person” as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

25. Respondent is an “owner” and “operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

26. Respondent engages in storing, processing, refining, transferring, using, distributing or consuming oil or oil products at the Facility.

27. The Facility is located on land within the United States, and is therefore an “onshore facility” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

28. The Facility is an oil refining facility and is therefore an onshore “non-transportation-related” facility within the meaning of 40 C.F.R. Part 112, Appendix A.

29. The Facility has a total oil storage capacity of more than seven million gallons.

30. The oil that Respondent stores, handles, refines and processes at the Facility, which due to the Facility’s location, could reasonably be expected to discharge to Lake Michigan.

31. Lake Michigan is a navigable in fact water, and is therefore a “navigable water” of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

32. Respondent is subject to the spill prevention, control and countermeasure plan regulations and is therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

33. At the Facility, Respondent operates the Number 12 Pipestill (No. 12PS), which Respondent began operating in June of 2013. No. 12PS fractionates crude oil into various products and sends these products to other refinery units for further processing.

34. Respondent operates a “Once Through Cooling Water (OTCW)” system at the Facility. The OTCW system is used as non-contact cooling water throughout the Facility.

35. The OTCW system flows through a piping system to Six Separator for treatment. Six Separator is open to the ambient air and works by allowing time for oil, if any, to float to the surface based on the difference in density between oil and water. The OTCW flow ranges from 55 to 85 million gallons per day and the residence time varies from 50 to 90 minutes.

36. On March 24, 2014, Respondent discharged oil from the Facility to Lake Michigan from the Facility’s OTCW system outfall located at Six Separator.

37. Respondent conducted an investigation into the March 24, 2014 discharge and issued an “Incident Investigation Report” (“Report”) dated August 20, 2014 that described the findings and recommendations from the investigation.

38. Respondent's Report explains that the cause of the discharge originated at No. 12PS due to the installation of a temporary quench line that connected the No. 12PS brine line to the OTCW system. Due to abnormal conditions at No. 12PS, pressure in the brine line exceeded the pressure in the OTCW system at which time the check valves on the temporary quench line failed, allowing a mixture of brine and crude oil to flow backwards through the quench line into the OTCW system, Six Separator and Lake Michigan.

39. Respondent installed the temporary quench line on October 11, 2013 and removed the temporary quench line on March 25, 2014.

40. Respondent's Report stated that a contributing factor to the March 24, 2014 oil discharge was, among other things, that the oil flowing into Six Separator from No. 12PS exceeded the oil removal capacity of Six Separator. The Report further stated that the accumulation of solids present in Six Separator had built up over time and reduced the effectiveness of Six Separator to remove oil entrained in the water.

41. At all times relevant to this CAFO, Respondent's SPCC Plan for the Facility was dated January of 2014 ("2014 SPCC Plan").

42. Respondent's 2014 SPCC Plan provides that the OTCW system passes through Six Separator prior to discharging to Lake Michigan.

43. Respondent's 2014 SPCC Plan provides that if oil is detected in the OTCW system, the facility personnel act to locate the source of the oil and can take steps to correct the problem at its source, such as deploying sorbent sheets and vacuum trucks.

44. Respondent's 2014 SPCC Plan provides that additional observation points were being identified to monitor oil in the OTCW system, and that Respondent was performing an assessment of the system to identify and evaluate options to prevent oil from entering Lake Michigan.

45. Respondent's 2014 SPCC Plan provides that secondary containment for No. 12PS is Respondent's wastewater treatment plant.

46. Respondent's 2014 SPCC Plan further provides that once-through cooling water has the potential to contain water with hydrocarbons and the direction of flow is the outfall at Six Separator, with secondary containment listed as "facility containment."

47. After the March 24, 2014 discharge, Respondent conducted a review of connections to the OTCW system and blocked and sealed several connections, including the temporary quench line connection. Respondent also installed additional alarms upstream of Six Separator to detect oil in the OTCW system.

48. In August of 2015, Respondent completed the removal of the sediment accumulated in Six Separator.

49. In December of 2014, BP updated its SPCC Plan. In September of 2015, Respondent amended the December 2014 SPCC Plan to include, for oil-filled equipment that has the potential to discharge to the OTCW system and Lake Michigan, the typical failure mode, the most likely quantity of oil to be discharged, and the capacity of Six Separator to recover that quantity of oil.

50. Respondent failed to maintain and implement the 2014 SPCC Plan so as to prevent the discharge of oil from the Facility to navigable waters, in violation of 40 C.F.R. § 112.3.

51. Respondent failed to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. § 112.1(b), and failed to address the typical failure mode and the most likely quantity of oil that would be discharged from the oil-filled equipment with the potential to discharge to Lake Michigan, in violation of 40 C.F.R. § 112.7(c).

Civil Penalty

52. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, and the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is \$151,899.

53. Within 30 days after the effective date of this CAFO, Respondent must pay a \$151,899 civil penalty by an electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

The comment or description field of the electronic funds transfer must state Respondent’s name and the docket number of this CAFO.

54. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Ellen Riley (SC-5J)
Enforcement Officer
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kasey Barton (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

55. This civil penalty is not deductible for federal tax purposes.

56. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

57. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a nonpayment

penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 33 U.S.C. § 1321(b)(6)(H).

General Provisions

58. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: barton.kasey@epa.gov (for Complainant); and Whiting.cd.tracker@bp.com (for Respondent).

59. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in this CAFO.

60. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

61. Respondent certifies that to the best of its knowledge and belief after reasonable inquiry it is complying with the requirements of 40 C.F.R. §§ 112.3, 112.7(c) and the SPCC Plan for the Facility.

62. This CAFO does not affect Respondent’s responsibility to comply with the CWA and other applicable federal, state and local laws. Except as provided in paragraph 59, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

63. This CAFO constitutes a “prior violation(s)” as that term is used in EPA’s Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act to determine Respondent’s “history of prior violations” under Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

64. The terms of this CAFO bind Respondent, its successors and assigns.

65. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

66. Each party agrees to bear its own costs and attorney fees in this action.

67. This CAFO constitutes the entire agreement between the parties concerning the violations alleged herein.

68. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO in accordance with Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b).

BP Products North America Inc., Respondent

CWA-05-2016-0015

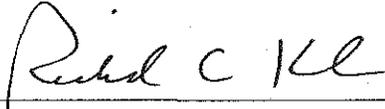
May 12, 2016
Date



Donald Porter
Whiting Refinery Manager
BP Products North America Inc.

United States Environmental Protection Agency, Complainant

5-31-16
Date



Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency, Region 5