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Via Certified Mail, Return Receipt Requested

September 22, 2021

Administrator Michael S. Regan
U.S. Environmental Protection Agency
Office of the Administrator (Mailing Code 1101A)
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Notice of Intent to Sue for Failure to Timely Grant or Deny a Petition to Object to the Title V Significant Permit Modification for BP Products North America Inc.'s Whiting Refinery (SPM No. 089-43173-00453)

Dear Administrator Regan,

Pursuant to 42 U.S.C. § 7604(b)(2) of the Clean Air Act, the Environmental Integrity Project and Sierra Club (collectively, "Petitioners") are writing to provide you with Petitioners' notice of intent to file suit against you in your official capacity as Administrator of the U.S. Environmental Protection Agency for failure to timely respond to our July 22, 2021 petition to object to the proposed Title V Significant Permit Modification 089-43173-00453 ("Proposed Permit" or "Permit") issued by the Indiana Department of Environmental Management ("IDEM") on June 2, 2021 to BP Products North America, Inc. ("BP") for the operation of Whiting Refinery located in Lake County, Indiana. Petitioners' July 22, 2021 petition to object is included with this notice letter (excluding the petition's attachments). *See* Attachment A.¹

Authority to Bring Suit

Section 304(a)(2) of the Clean Air Act provides that "any person may commence a civil action on his own behalf" against the EPA Administrator "where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2). The district courts have jurisdiction over these suits. 42 U.S.C. § 7604(a). Title V of the Clean Air Act imposes a nondiscretionary duty upon the Administrator to grant or deny a timely petition to object to the issuance of a federal operating permit on the basis that it is not in compliance with the requirements of the Clean Air Act, including the requirements of any applicable State implementation plan. 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed" and "shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements" of the Clean Air Act).

¹ The petition is also available on EPA's public Title V petition database, at the following direct link: https://www.epa.gov/system/files/documents/2021-07/bp-whiting-petition_7-22-21.pdf

Relief Requested

Pursuant to 42 U.S.C. § 7661d(b)(2), the deadline for the Administrator's response to the July 22, 2021 petition was September 20, 2021. As Petitioners have yet to receive a response from EPA to their petition, EPA has failed to respond to the petition within 60 days as required by 42 U.S.C. § 7661d(b)(2). In accordance with § 7604(b)(2), this letter serves to notify you that upon the expiration of the 60-day period after the postmarked date of this letter, Petitioners intend to file suit in a federal district court requesting the following relief:

- An order compelling you to grant or deny the petition within 60 days (or less) from the date of the court's order;
- Petitioners' costs of litigation, including attorneys' fees, filing fees, and other reasonable litigation costs; and
- Any other relief as may be just or appropriate.

Conclusion

If you believe any of the above information is incorrect, would like to discuss settlement of this matter prior to the initiation of litigation and take and steps to redress the allegations above, or have any questions concerning this letter, please contact me at your earliest convenience by phone at (202) 263-4441 or email at slee@environmentalintegrity.org.

Respectfully,

/s/ Sanghyun Lee

Sanghyun Lee

Attorney

Environmental Integrity Project

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Washington, DC 20005

(202) 263-4441

slee@environmentalintegrity.org

Enclosed:

Attachment A – July 22, 2021 Petition for Objection to Permit Number SPM 089-43173-00453

CC (via electronic mail):

Jenny Acker, Permits Branch Chief

Indiana Department of Environmental Management, Office of Air Quality

Jessica Gonzalez, Senior Counsel

US HSSE & Refining

BP America Inc.

Attachment A

July 22, 2021 Petition for Objection to Permit Number SPM 089-43173-00453
by the Environmental Integrity Project and Sierra Club Hoosiers Chapter

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF)
) PETITION FOR OBJECTION
)
Clean Air Act Title V Permit (Significant)
Permit Modification) No. 089-43173-00453)
) Permit Number SPM 089-43173-00453
Issued to BP Products North America Inc.)
)
Issued by the Indiana Department of)
Environmental Management)
)
_____)

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE
ISSUANCE OF PROPOSED TITLE V PERMIT NO. SPM 089-43173-00453 FOR BP
PRODUCTS NORTH AMERICA INC.'S WHITING REFINERY**

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Environmental Integrity Project and the Hoosiers Chapter of the Sierra Club (collectively, “Petitioners”) respectfully petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to the Title V Significant Permit Modification Number 089-43173-00453 (“SPM 43173”)¹ issued by the Indiana Department of Environmental Management (“IDEM”) on June 2, 2021 to the Whiting Refinery owned and operated by BP Products North America, Inc. (“BP”) in Lake County, Indiana. As required, Petitioners are filing this Petition with the Administrator via the Central Data Exchange, and providing copies via both e-mail and certified U.S. mail to IDEM and BP.

EPA must object to SPM 43173 because it is not in compliance with the requirements of the Clean Air Act. Specifically, SPM 43173 eliminates the hourly emission limit of 0.010 pounds per million British thermal units (“lbs/mmBtu”) for particulate matter smaller than 10 microns

¹ A full copy of final SPM 43173, including its supporting materials, is available online on IDEM’s Air Quality Permit Database: <https://permits.air.idem.in.gov/43173f.pdf>

Indiana. Petitioners respectfully request that EPA reopen the permit to require IDEM to conduct air modeling to determine the impact that SPM 43173 could have on maintaining compliance with these NAAQS requirements.

IX. CONCLUSION

For the reasons discussed above, EPA must object to SPM 43713. As clearly raised in Petitioners' Comments, SPM 43173's rolling 12-month limit for PM₁₀ is unenforceable as both a legal and practical matter, fails to assure compliance with and violates provisions of the federally enforceable SIP for the State of Indiana, contains numerous material mistakes, and allows BP to significantly increase emissions of PM₁₀ from Whiting Refinery without any justification or explanation from IDEM. Accordingly, Petitioners respectfully request that EPA object to the issuance of SPM 43173, and require Indiana to revise and reissue the permit in a manner that complies with the requirements of the Clean Air Act and Indiana's SIP by correcting the legal deficiencies identified.

DATED: July 22, 2021

Respectfully submitted,



Eric Schaeffer
Executive Director
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*On behalf of the Environmental Integrity Project
and the Hoosiers Chapter of the Sierra Club*

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EPA

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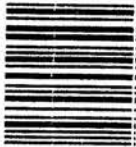
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