

of the CS. In addition, the CS CEMS needs to successfully pass the required relative accuracy test audit (RATA) and meet additional conditions outline in the determination letter for EPA approval.

*Abstract for [Z170003]*

Q: Does the EPA approve BP Product North America's (BP) alternative monitoring request to maintain the hourly oxygen concentration in the exhaust gas from the catalyst regenerator at or above one percent by volume on a wet basis, as opposed to a dry basis as required by 40 CFR 63 subpart UUU at the Whiting, Indiana refinery?

A: Yes. The EPA approves the request to maintain the hourly oxygen concentration in the exhaust gas from the catalyst regenerator at or above one percent by volume on a wet basis during periods of startup, shutdown, and hot standby. BP provided information that indicates catalyst fines can plug an analyzer that measures on a dry basis. In addition, the oxygen concentration on a wet basis will always yield a lower reading versus a dry basis oxygen reading.

Dated: May 7, 2018.

**David A. Hindin,**

*Director, Office of Compliance, Office of Enforcement and Compliance Assurance.*

[FR Doc. 2018-10463 Filed 5-15-18; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9977-09-OECA]

### National Environmental Justice Advisory Council; Notification of Public Teleconference and Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see **Registration** under **SUPPLEMENTARY INFORMATION**. Due to a limited number of telephone lines, attendance will be on a

first-come, first served basis. Pre-registration is required.

**DATES:** The NEJAC will convene a Thursday, May 31, 2018, starting at 3:30 p.m., Eastern Time. The meeting discussion will focus on several topics including, but not limited to, the discussion and deliberation of the final report from the NEJAC Youth Perspectives on Climate Change Work Group. One public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Thursday, May 31, 2018, starting at 5:00 p.m., Eastern Time. Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by 11:59 p.m., Eastern Time on Monday, May 28, 2018.

**FOR FURTHER INFORMATION CONTACT:** Questions or correspondence concerning the public meeting should be directed to Karen L. Martin, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW (MC2201A), Washington, DC 20460; by telephone at 202-564-0203; via email at [martin.karenl@epa.gov](mailto:martin.karenl@epa.gov); or by fax at 202-564-1624. Additional information about the NEJAC is available at <https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council>.

**SUPPLEMENTARY INFORMATION:** The Charter of the NEJAC states that the advisory committee "will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice."

#### Registration

Registration for the May 31, 2018, public teleconference will be processed at <https://nejac-may-31-2018-public-teleconference.eventbrite.com>. Pre-registration is required. Registration for the May 31, 2018, meeting closes at 11:59 p.m., Eastern Time on Monday, May 28, 2018. The deadline to sign up to speak during the public comment period, or to submit written public comments, is 11:59 p.m., Eastern Time on Monday, May 28, 2018. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written

comments before the Monday, May 28, 2018, deadline.

#### A. Public Comment

Individuals or groups making remarks during the public comment period will be limited to seven (7) minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by registration deadline, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Karen L. Martin, EPA, via email at [martin.karenl@epa.gov](mailto:martin.karenl@epa.gov).

#### B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, at (202) 564-0203 or via email at [martin.karenl@epa.gov](mailto:martin.karenl@epa.gov). To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: April 25, 2018.

**Matthew Tejada,**

*Designated Federal Officer, National Environmental Justice Advisory Council.*

[FR Doc. 2018-09556 Filed 5-15-18; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[CWA-05-2016-0014; FRL-9977-83-OARM]

### Notice of Order Denying Petition To Set Aside Consent Agreement and Proposed Final Order

**AGENCY:** Office of Administrative Law Judges, Environmental Protection Agency (EPA).

**ACTION:** Notice of order denying petition to set aside consent agreement and proposed final order.

**SUMMARY:** In accordance with section 309(g)(4)(C) of the Clean Water Act (CWA or Act), notice is hereby given that an Order Denying Petition to Set Aside Consent Agreement and Proposed Final Order has been issued in the matter styled as *In the Matter of BP Products North America Inc.*, Docket No. CWA-05-2016-0014. This document serves to notify the public of the denial of the Petition to Set Aside Consent Agreement and Proposed Final Order filed in the matter and explain the reasons for such denial.

**ADDRESSES:** To access and review documents filed in the matter that is the subject of this document, please visit [https://yosemite.epa.gov/oarm/alj/alj\\_web\\_docket.nsf/Dockets/CWA-05-2016-0014](https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf/Dockets/CWA-05-2016-0014).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Almase, Attorney-Advisor, Office of Administrative Law Judges (1900R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW; telephone number: (202) 564-6255 (main) or (202) 564-1170 (direct); fax number: (202) 565-0044; email address: [oaaljfling@epa.gov](mailto:oaaljfling@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Legal Authority**

Section 309(g)(1)(A) of the CWA empowers EPA to assess an administrative civil penalty whenever on the basis of any information available EPA finds that a person has violated certain sections of the Act or any permit condition or limitation implementing any such section in a permit issued under section 402 or 404 of the Act (33 U.S.C. 1319(g)(1)(A)). However, before issuing an order assessing an administrative civil penalty under section 309(g), EPA is required by the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Rules of Practice) to provide public notice of and reasonable opportunity to comment on the proposed issuance of such order (33 U.S.C. 1319(g)(4); 40 CFR 22.45(b)(1)).

Any person who comments on the proposed assessment of a penalty is then entitled to receive notice of any hearing held under section 309(g) of the CWA and at such hearing is entitled to a reasonable opportunity to be heard and to present evidence (33 U.S.C. 1319(g)(4)(B); 40 CFR 22.45(c)(1)). If no hearing is held before issuance of an order assessing a penalty under section

309(g) of the CWA, such as where the administrative penalty action in question is settled pursuant to a consent agreement and final order, any person who commented on the proposed assessment may petition to set aside the order on the basis that material evidence was not considered and to hold a hearing on the penalty (33 U.S.C. 1319(g)(4)(C); 40 CFR 22.45(c)(4)(ii)).

The CWA requires that if the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator shall immediately set aside such order and provide a hearing in accordance with section 309(g)(33 U.S.C. 1319(g)(4)(C)). Conversely, if the Administrator denies a hearing, the Administrator shall provide to the petitioner, and publish in the **Federal Register**, notice of and reasons for such denial. *Id.*

Pursuant to section 309(g) of the CWA, the authority to decide petitions by commenters to set aside final orders entered without a hearing and provide copies and/or notice of the decision has been delegated to Regional Administrators in administrative penalty actions brought by regional offices of EPA. Administrator's Delegation of Authority 2-52A (accessible at: <http://intranet.epa.gov/ohr/rmpolicy/ads/dm/2-52A.pdf>). The Rules of Practice require that where a commenter petitions to set aside a consent agreement and final order in an administrative penalty action brought by a regional office of EPA, the Regional Administrator shall assign a Petition Officer to consider and rule on the petition (40 CFR 22.45(c)(4)(iii)). Upon review of the petition and any response filed by the complainant, the Petition Officer shall then make written findings as to (A) the extent to which the petition states an issue relevant and material to the issuance of the consent agreement and proposed final order; (B) whether the complainant adequately considered and responded to the petition; and (C) whether resolution of the proceeding by the parties is appropriate without a hearing (40 CFR 22.45(c)(4)(v)).

If the Petition Officer finds that a hearing is appropriate, the Presiding Officer shall order that the consent agreement and proposed final order be set aside and establish a schedule for a hearing (40 CFR 22.45(c)(4)(vi)). Conversely, if the Petition Officer finds that resolution of the proceeding without a hearing is appropriate, the Petition Officer shall issue an order denying the petition and stating reasons for the denial (40 CFR 22.45(c)(4)(vii)). The Petition Officer shall then file the order with the Regional Hearing Clerk,

serve copies of the on the parties and the commenter, and provide public notice of the order. *Id.*

**II. Procedural Background**

In May of 2016, the Director of the Water Division of EPA's Region 5 (Complainant) and BP Products North America Inc. (Respondent) executed a Consent Agreement and Final Order (CAFO) in the matter styled as *In the Matter of BP Products North America Inc.*, Docket No. CWA-05-2016-0014.<sup>1</sup> The CAFO sought to simultaneously commence and conclude an administrative penalty action under section 309(g) of the CWA against Respondent for alleged violations found by EPA during an inspection of Respondent's petroleum refinery located at 2815 Indianapolis Boulevard in Whiting, Indiana (Facility), conducted from May 5 through May 9, 2014. Under the terms of the CAFO, Respondent admitted the jurisdictional allegations set forth in the CAFO but neither admitted nor denied the factual allegations and alleged violations. Nevertheless, Respondent waived its right to a hearing or to otherwise contest the CAFO, and agreed to pay a civil penalty in the amount of \$74,212. On May 31, 2016, Complainant and Respondent also entered into an Administrative Consent Order that incorporated a Compliance Plan setting forth the measures Respondent had already taken, as well as those it agreed it would take in the future, in response to the alleged violations.

On or about June 1, 2016, EPA provided public notice of its intent to file the proposed CAFO and accept public comments thereon. Carlotta Blake-King, Carolyn A. Marsh, Debra Michaud, and Patricia Walter (Petitioners) timely filed comments on the proposed CAFO (Comments). Complainant subsequently prepared a Response to Comments Regarding Proposed CAFO (Response to Comments), which indicated that EPA would not be altering the proposed CAFO. The Response to Comments was mailed to Petitioners, together with a copy of the proposed CAFO, on or about January 13, 2017, and each Petitioner received the materials by January 30, 2017. On or about February 24, 2017, Petitioners timely filed a joint petition seeking to set aside the proposed CAFO

<sup>1</sup> While titled jointly, the Final Order is actually a separate document, drafted to be signed solely by Region 5's Acting Regional Administrator. It is the execution of the Final Order and its subsequent filing with the Regional Hearing Clerk at Region 5 that will effectuate the parties' Consent Agreement and conclude the proceeding.

and have a public hearing held thereon (Petition).

A Request to Assign Petition Officer (Request) was issued by Region 5's Acting Regional Administrator on May 17, 2017, and served on Petitioners on May 30, 2017. In the Request, the Acting Regional Administrator stated that after considering the issues raised in the Petition, Complainant had decided not to withdraw the CAFO. Accordingly, the Acting Regional Administrator requested assignment of an Administrative Law Judge to consider and rule on the Petition pursuant to § 22.45(c)(4)(iii) of the Rules of Practice, 40 CFR 22.45(c)(4)(iii). By Order dated June 16, 2017, the undersigned was designated to preside over this matter, and Complainant was directed to file a response to the Petition. Complainant filed its Response to Petition to Set Aside Consent Agreement and Proposed Final Order (Response to Petition) on July 13, 2017.

### III. Denial of Petitioners' Petition

On May 8, 2018, the undersigned issued an Order Denying Petition to Set Aside Consent Agreement and Proposed Final Order (Order). Therein, the undersigned denied the Petition without the need for a hearing on the basis that Petitioners had failed to present any relevant and material evidence that had not been adequately considered and responded to by Complainant.

Specifically, Petitioners raised four issues.<sup>2</sup> First, Petitioners argued that the alleged violations warranted a higher civil penalty than that assessed in the proposed CAFO and that the occurrence of the alleged violations in a region designated as an Area of Concern warranted an additional penalty of five million dollars. The undersigned determined that while Complainant did not provide a detailed explanation of how the civil penalty assessed in the proposed CAFO had been calculated, it had considered and responded to Petitioners' arguments in its Response to Comments and Response to Petition. The undersigned further found that Petitioners had produced no evidence to support their position or rebut Complainant's position that it had properly implemented the applicable policy governing its calculation and negotiation of the penalty assessed in the proposed CAFO. The undersigned concluded that Petitioners had not met

the burden of demonstrating that the matters they raised with respect to the assessment of a higher penalty constituted material and relevant evidence that Complainant failed to consider in agreeing to the proposed CAFO. Thus, Petitioners' claim in this regard was denied.

Second, Petitioners urged that a Supplemental Environmental Project (SEP) be incorporated into the proposed CAFO and that local residents be included in the distribution of funds for SEP projects. The undersigned found that as Complainant had stated in its Response to Comments and Response to Petition, EPA lacks the legal authority to demand a SEP or control the distribution of civil penalty funds. The undersigned concluded that given this lack of authority, the issues raised by Petitioners with regard to a SEP were immaterial to the issuance of the proposed CAFO. Thus, this claim was denied.

Third, Petitioners urged that an independent advisory committee and environmental monitoring program for Respondent's wastewater treatment plant be created. Petitioners then questioned Respondent's community outreach activities, which Complainant had referenced in its Response to Comments. The undersigned found that as argued by Complainant in its Response to Petition, EPA lacks the legal authority under section 309(g) of the CWA to establish advisory committees or environmental monitoring programs or compel Respondent to engage in outreach activities. The undersigned concluded that given the absence of any material and relevant issue not considered by Complainant with respect to the course of action requested by Petitioners, their claim in this regard was also denied.

Finally, Petitioners referred in their Comments and Petition to Respondent having a history of violations. While a violator's history of prior violations is a statutory penalty factor to be considered under section 309(g)(3) of the CWA, the undersigned found that Petitioners had presented no specific claims of violations that were related to those set forth in the proposed CAFO, and presented no argument supporting the notion that any prior, unspecified infraction, had it been considered, should have led to a penalty different than that agreed upon by the parties. The undersigned also noted that Complainant had addressed claims concerning Respondent's history of violations in its Response to Comments, which suggested that to the extent any prior violations would be relevant to the proposed CAFO, Complainant had

adequately considered them. Accordingly, any claim in this regard was denied.

Having found that Petitioners failed to present any relevant and material evidence that had not been adequately considered and responded to by Complainant in agreeing to the proposed CAFO, the undersigned then addressed Petitioners' requests for a public hearing in their Comments and Petition. Noting that Petitioners appeared to seek a public forum, at least in part, for the parties to explain the meaning of the proposed CAFO to the public, the undersigned observed that section 309(g) of the CWA and the Rules of Practice provide, not for a meeting of that nature, but rather a hearing at which evidence is presented for the purpose of determining whether Complainant met its burden of proving that Respondent committed the violations as alleged and that the proposed penalty is appropriate based on applicable law and policy. The undersigned noted that Petitioners did not specifically identify any testimonial or documentary evidence that they would present at any such hearing. The undersigned further noted that Petitioners did not offer in either their Comments or the Petition any relevant and material evidence or arguments that had not already been adequately addressed by Complainant. For these reasons, the undersigned found that resolution of the proceeding by the parties would be appropriate without a hearing.

The undersigned thus issued the Order Denying Petition to Set Aside Consent Agreement and Proposed Final Order.

Dated: May 8, 2018.

**Susan L. Biro,**

*Chief Administrative Law Judge.*

[FR Doc. 2018-10460 Filed 5-15-18; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL ELECTION COMMISSION

[Notice 2018-09]

### Filing Dates for the Texas Special Election in the 27th Congressional District

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special election.

**SUMMARY:** Texas has scheduled a special general election on June 30, 2018, to fill the U.S. House of Representatives seat in the 27th Congressional District vacated by Representative Blake Farenthold. There are two possible

<sup>2</sup> Petitioners described the arguments set forth in the Petition as additions to the Comments they had previously submitted to EPA in response to the public notice of EPA's intent to file the proposed CAFO. Accordingly, the undersigned considered the arguments raised by Petitioners in both the Petition and the Comments.