CAUSE NO. 10CV2297

RETURN

PAMELA WATKINS, MICHAEL CRABLE, RALPH H JAMES, JR., THOMAS MCFARLAND, LILLIAN GOODEN, RAYMOND TREVINO, CRYSTAL NICOLES, DELORES GARZA, RITA LEE, and CHRIS KELEMAN	§	IN DISTRICT COURT OF
	§	GALVESTON COUNTY, TEXAS
Plaintiffs,	§	212 JUDICIAL DISTRICT
Vs.	§	
BP PRODUCTS NORTH AMERICA, INC., and KEITH CASEY	§	
Defendants.	§	JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs, PAMELA WATKINS, MICHAEL CRABLE, RALPH H JAMES, JR., THOMAS MCFARLAND, LILLIAN GOODEN, RAYMOND TREVINO, CRYSTAL NICOLES, DELORES GARZA, RITA LEE, and CHRIS KELEMAN, complain of Defendants BP PRODUCTS NORTH AMERICA, INC., and KEITH CASEY, and for cause would show as follows:

I.
SUMMARY OF THE CASE

This case demonstrates the human suffering caused when the drive for corporate profits is more valued than the safety of people. In order to avoid losing the profit from shutting down an operating unit, and in an attempt to avoid the publicity such a shutdown would have garnered in the financial press, BP instead intentionally spewed thousands of pounds of one of the most deadly and nastiest carcinogens into the atmosphere, along with other chemicals that formed what can only be called a "toxic soup," exposing unsuspecting onsite workers and nearby residents and workers.

This case deals with a large-volume release of 538,000 pounds[1] of chemicals and compounds, including an estimated 17,371.74 pounds of Benzene[2], that occurred from April 6, 2010 to May 16, 2010 at the BP Texas City Refinery (hereafter the "Refinery" or the "Facility"); although, such event must be viewed as part of a continued course of conduct whereby this Defendant has released more than one half billion pounds of chemicals into the atmosphere over the last twenty-two years, and must also be viewed in light of BP's long and tortured history of failure in the area of Process Safety Management. In this case, tens of thousands of individuals were injured and had his or her long-term health put in jeopardy after being exposed to extremely high levels of Benzene and other toxic chemicals while working at the BP Texas City Refinery or by simply living or working in Texas City and Lamarque. Plaintiffs seek remedy for this exposure, and also attempt to do, through this case, what none of the authorities thus far has been able to do—put an end to BP's continuous pollution of the air, ground, and water, and the continued exposure to harmful substances of workers at the BP Texas City Refinery and the residents of Texas City and Lamarque. In this effort, Plaintiffs seek punitive damages against BP in excess of **$10 billion**.

BP's Texas City Refinery, with a refining capacity of more than 460,000 barrels per day, is the third largest petroleum refinery in the United States. It has also been found to be the largest single polluter in the United States. On March 23, 2005, a series of fires and explosions at the refinery killed fifteen workers and injured more than 1,000 people. The incident was investigated by the United States Chemical Safety Board, which found that the explosion was

[1] These numbers are based on BP's own estimates.

[2] Each day, more than 400 pounds of benzene, a known human carcinogen, were released; a number 40 times the state reportable levels. BP estimates that, in addition to the Benzene, 37,519 pounds of nitrogen oxides, 189,000 pounds of carbon monoxide, 61,000 pounds of propane and 34,645 pounds of isobutene were released during this 40-day period. *See also* Texas Commission on Environmental Quality Investigation Report #824717, at p. 4, attached as **Exhibit A**.

caused by organizational and safety deficiencies at all levels of BP and multiple problems with Process Safety Management "PSM" (PSM simply means: "keeping the product in the pipes"). The various investigations that occurred also resulted in an enforcement action by the Occupational Safety and Health Administration (OSHA), resulting in a $21 million fine, and an OSHA settlement agreement. As part of BP's settlement with OSHA, BP was to undergo a process safety management audit and to incorporate the recommendations of the auditor. Further, as a result of the explosion, BP also ultimately pled guilty to one violation of the Clean Air Act, and agreed to a $50 million fine.

Since the 2005 explosion, **four more** people have died at the BP Texas City Refinery: one in 2006, one in 2007, and two in 2008. All of these deaths were related to failure to implement and follow proper procedures, failure to inspect and maintain equipment, or failures of PSM. In addition to the four additional people who were killed at the BP Texas City Refinery since the 2005 explosion, BP's history of failure to inspect and maintain, and failure at PSM have continued without abatement. For example:

- In just a four-year period, there were over 500 hundred leaks, spills, and releases at the BP Texas City Refinery. The great majority of these leaks, spills, or releases were the result of improper operation, poor maintenance, and lack of inspection of BP's piping and pumping system—otherwise known as PSM.

- According to BP's own Fire Chief, the BP Texas City Refinery averages **one** fire per week.

- From its own internal documents, BP averages 200 leaks and releases per year from valves, pumps, and connectors at the BP Texas City Refinery. These are just the leaks and releases that BP chooses to report.

- BP faced more than forty-five enforcement actions for pollution from the Texas Commission of Environmental Quality ("TCEQ"), as a result of unlawful quantities of pollutants released at the BP Texas City Refinery.

- On April 19, 2007, 110 workers were sent to the hospital following a release in or around the CAT3B and SRU Units at the BP Texas City Refinery. Yet, BP never

identified what was released. At the conclusion of a three-week trial, a federal jury awarded $100 million in damages to punish BP.

BP has an especially significant problem at its BP Texas City Refinery with Benzene releases and exposures. Following the 2005 explosion and fire, the Environmental Protection Agency ("EPA") conducted a series of inspections to determine BP's compliance with the terms of a 2001 Consent Decree. That Decree required that the BP Texas City Refinery comply with various Clean Air Act requirements. As a result of the investigation, the EPA concluded that BP had completely failed to live up to the terms of the 2001 Decree. The EPA thereafter began another enforcement action, ultimately reaching yet another agreement with BP in 2009. The new, 2009 agreement dealt specifically with the violations related to the mismanagement of Benzene, as well as two other categories of substances. In addition to a $12 million fine, the 2009 settlement required BP, among other things, to improve management controls to minimize Benzene wastes, plus implement major upgrades to the Facility and equipment. As the incident in this case proves, BP failed to live up to this agreement, like it has failed to live up to other agreements it has made with the various authorities.

BP's 2009 settlement with the EPA recognized the particularly dangerous nature of Benzene. Benzene is a hazardous air pollutant, and is a byproduct of the petroleum refining process. Benzene wastes are typically managed in a refinery's wastewater collection and treatment system, which is designed to prevent the Benzene contained in the wastewater from volatilizing to the atmosphere before the wastes are safely treated. The health effects related to Benzene exposure are many. The acute effects are drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and anemia in occupational settings. Further, reproductive effects have been

reported for women exposed by inhalation of high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidences of leukemia have also been observed in humans occupationally exposed to Benzene. Because of the many potentially adverse effects from exposure, the EPA has classified Benzene as a Group A human carcinogen. Some studies have shown that individuals exposed to high levels of Benzene may develop cancer many years later, as a result of a single exposure.

However, as this case demonstrates, despite BP's promises to prevent Benzene exposure, such exposures routinely continue to occur at the BP Texas City Refinery. Prior to the incident made the basis of this suit, on August 19, 2009, a group of contract workers were working at the Refinery when a vapor and strong odor completely enveloped their work area. Attempting to locate the source of the offending vapor, the workers discovered chemicals spewing out of a broken pipe – like water from a fire hydrant. Upon seeing the source of the leak, the workers quickly evacuated the area. After experiencing various symptoms, the workers sought medical treatment and were taken to a hospital. It was only then that the workers learned that they were exposed to Benzene.

In late 2009, BP was again cited by OSHA for more than 700 safety, health and PSM violations, many of which had been outstanding for more than four years. These violations included 411 instances of "individual relief device deficiencies," 28 instances of "failure to provide operating limits in procedures," and 28 instances of "failure to perform relief device studies." Several of these violations dealt specifically with underreporting, or failing to report, leaks, spills, and releases. The majority of the violations dealt specifically with the failure to inspect and maintain piping at the BP Texas City Refinery, which in turn fails to leads to leaks, spills, and releases. Based on BP's conduct and failure to comply with the earlier settlement

agreement, OSHA levied a fine of more than $87 million, by far the largest in the agency's history. BP recently agreed to pay $50 million of this fine, and continues to fight the remainder.

On July 31 and August 1, 2010, another release of Benzene occurred at BP's plant, sending at least two individuals to the hospital. This release occurred AFTER the release at issue in this case, demonstrating that this Defendant is consciously indifferent to the harm caused by its actions.

Despite the efforts of the EPA, OSHA, TCEQ, and other federal and state agencies, including even the United States Justice Department, and despite the massive fines that these agencies have assessed, BP simply has not changed, and continues to pollute the ground, water, and air, and continues to put both the workers, and nearby residents at risk. One can only fathom the death and sorrow that will result when these toxic chemicals wreak their ultimate havoc on those exposed in the future. Plaintiffs have all experienced the symptoms classically associated with Benzene exposure. More importantly, Plaintiffs bring this case seeking change.

II.
PARTIES

Plaintiff, PAMELA WATKINS, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Plaintiff, MICHAEL CRABLE, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Plaintiff, RALPH H JAMES, JR., is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Plaintiff, THOMAS MCFARLAND, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Plaintiff, LILLIAN GOODEN, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Plaintiff, RAYMOND TREVINO, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Plaintiff, CRYSTAL NICOLES, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Plaintiff, DELORES GARZA, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Plaintiff, RITA LEE, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Plaintiff, CHRIS KELEMAN, is a citizen of the State of Texas and worked in the Refinery and/or lived and/or worked within the city limits of Texas City, Texas between April 6, 2010 and May 16, 2010, inclusive.

Defendant BP PRODUCTS NORTH AMERICA, INC. is a Maryland corporation doing business in Texas and may be served process by serving its registered agent, Prentice Hall Corporation System, 211 East 7th Street, Suite 620, Austin, Texas 78701.

Defendant KEITH CASEY is the plant manager of the Refinery and citizen of the State of Texas. He can be served at his place of business: 2800 F.M. 519, East Texas City, Texas 77590.

III.
JURISDICTION AND VENUE

Venue is proper in this matter, in that a substantial number of the actions complained of occurred in this County.

The amount in controversy is within the jurisdictional limits of this Court.

Removal is not proper in this case because there is not complete diversity of citizenship.

IV.
FACTUAL ALLEGATIONS

This case deals with an intentional act. The forty (40) day chemical release that is the subject of this suit began on April 6, 2010 when the hydrogen compressor in the Ultracracker unit went offline at the Refinery. The hydrogen compressor is responsible for trapping noxious chemicals and, without it working, BP opted to send the gasses to a flare. BP did this, even though it knew the flaring process would be, at best, incomplete and allow some chemicals to escape into the atmosphere. BP followed this "procedure" until May 16, 2010 when the compressor was repaired or restarted; however, during this time period, BP continued to operate the Refinery's Ultracracker.

The Ultracracker processes 65,000 barrels of oil per day and each barrel during this time period would have resulted in $5 to $10 in profit for BP. With this much money at stake,

shutting down the Ultracracker, even for just a brief 24 hour period, would have garnered attention from the financial press and investors. Instead, BP continued operations in the Ultracracker while releasing over 500,000 pounds of chemical and compounds, including 17,000 pounds of benzene, into the environment. Amazingly, BP did not inform Texas City officials of the scale of the release until after the forty day release was over.

Regrettably, the Refinery has a long and tragic history of violations that have resulted in nearly 20 deaths since 2005, hundreds of injuries, hundreds of toxic releases and numerous environmental and safety violations.

Since BP's acquisition of the Refinery, there have been hundreds, if not thousands, of leaks, spills and releases at the Refinery. Indeed, BP has released a half billion of chemicals into the air since it tool it over. Many, if not all, of these events were the result of failures in process safety management and BP management was well aware of these releases. Further, prior to April 2007, internal investigations revealed to BP and its senior managers that repeated safety violations were occurring and that the company repeatedly disregarded safety and environmental rules. In addition, BP's management has repeatedly neglected the aging equipment at the Refinery. Most troubling, there are numerous accounts of BP pressuring employees and contractors to not report problem and to cut short or delay inspections to reduce production costs and intimidating workers who raise safety or environmental concerns.

The following are just a sampling of the numerous release events that have been reported at the Refinery:

- On March 15, 2002, numerous chemicals, including 365 pounds of Hydrogen Sulfide and 17,603 pounds of Sulfur Dioxide, were released when a thermocouple in the high pressure reactor section of the Ultracracker blew out.

- From May 3, 2002 to May 8, 2002, 58,344 pounds of Sulfur Dioxide were released as a result of improperly working and degraded equipment.

- On February 8, 2003, three different incidents resulted in the combined release of 139,473 pounds of Sulfur Dioxide.

- On March 23, 2003, BP failed to report the emission of thousands of pounds of chemicals and compounds, including 29,260 pounds of Volatile Organic Compounds ("VOCs").

- On May 16, 2003, failed to prevent a compressor to trip that caused a power outage that resulted in the release of 1144 pounds of Hydrogen Sulfide, among other chemicals and compounds, in six minutes.

- On September 8, 2003, BP failed to promptly detect and hydrocarbons in a cooling tower and repair a gas exchanger, as a result, 69,063 pounds of VOCs were released over a 702 hour period.

- On December 20, 2003, 1551 pounds of benzene and 455 pounds of toluene were released in to the atmosphere after BP failed to prevent a chemical spill during a barge unloading operation at the Refinery Docks.

- On May 28, 2004, BP released 106,706 pounds of Sulfur Dioxide and 222 pounds of nitrogen oxides over a 192 hour period after a release valve opened when BP failed to prevent an over pressurization.

- On April 1, 2005, a suction valve assembly malfunctioned and 56,949 pounds of Sulfur Dioxide were released over a 63 hour period.

- After a fire and explosion the previous day, 1,518 pounds of Hydrogen Sulfide, 142,834 pounds of Sulfur Dioxide and other chemicals were released on July 29, 2005 over a 97 minute period after a pressure controller failed in the open position.

- On April 10, 2007, there was a power dip that caused the shutdown of the FCCU3. During the restart, BP forgot to close an emergency bypass valve[3] that was opened just two hours prior. Immediately after restart, the unit started spewing spent catalyst and other materials in to the environment. Ninety three percent (93%) opacity, over 4.5 times what was allowable under the operating permit, was reached nearly instantaneously yet BP's operators treated the restart as "normal" and took no emergency action for more than 45 minutes. By the time this problem was resolved, 795 pounds of spent catalyst, 6,932 pounds of Sulfur Dioxide, 359.32 pounds of Nitrogen Oxides, 216.67 pounds of Nitrogen Oxide, 26.95 pounds of Nitrogen Dioxide, 1,830.94 pounds of Carbon Monoxide and thousands of pounds of other chemicals were released into the atmosphere.

[3] The operator manual in effect at the time did not have a step to ensure that the emergency bypass was closed prior to restart. BP changed the manual after the April 10, 2007 incident.

- On March 1, 2009, an emission lasting roughly 129 hours pumped 103,602 pounds of Sulfur Dioxide into the atmosphere.

- On April 4, 2009, an "upset" at the Coker C unit resulted in a "brief" 10 minute release that pumped 3900 pounds of Hydrogen Sulfide and hundreds of pounds of other chemicals into the environment.

Unfortunately, BP's poor safety record and practices are hardly isolated to the Refinery. The "Baker Report," authored by former U.S. Secretary of State James Baker, investigated the 2005 ISOM explosion and other BP facilities, identified a number of systemic process safety issues at BP facilities in the U.S. BP's similar conduct at its other facilities demonstrate a companywide pattern and practice of paying only lip service to safety and the environment:

- BP's operations in Alaska have been particularly problematic. A 2001 BP report noted that BP had neglected key equipment needed for an emergency shutdown, including shutoff valves and gas and fire detectors. The report to BP noted that it faced a fundamental culture of mistrust by its workers. The report found that managers used aging equipment long after the equipment should have been replaced. A 2004 report found that pipelines were badly maintained. The report also noted claims of BP's falsification of inspection data. The report also noted a pattern of BP's intimidation of workers who raised safety concerns. However, BP did not heed the warnings in these reports. As a result, its Prudhoe Bay pipeline ruptured, spilling more than 200,000 gallons of oil into the environment. With the exception of the *Exxon Valdez* disaster, this was the largest spill in Alaska's history and caused America's largest oil field to shut down. The spill occurred as a result of BP's lack of maintenance on the pipeline even though, two years prior to the spill, BP had been advised about corrosion problems in its pipes. In November 2007, BP was fined $20 million for the discharge pursuant to the Clean Water Act. But, even after that, reports have come out that BP's management criticized an employee who had stopped "hot work" around a cracked pipeline. It was thus no surprise when, in September 2008, another BP gas line exploded in Alaska, and three more incidents hit BP's Alaska operations in 2009.

- BP's Carson refinery in the area of Los Angeles, California had similar problems, particularly with falsification of reports. From 199 to 2002, that refinery reported no tank problems and no repairs to state regulatory officials. After the regulatory agency obtained a search warrant, it found equipment in severe disrepair.

- More recently, BP was the operator of the *Deepwater Horizon* when it caught fire, exploded and, ultimately, sank on April 20, 2010. The fire and explosion killed 11 workers aboard the rig and severely injured dozens of other workers. However, the damage went beyond the deaths and injuries as an oil started pouring from the well

after the *Deepwater Horizon* sank. As of the filing of this suit, it is estimate that upwards of 5.2 million barrels of oil has flowed into the Gulf. The effects of this spilled oil will impact the wildlife and the economies of the Gulf Coast for years to come. Further, despite multiple efforts, BP has yet to fully contain the leak. While the investigation is still ongoing, early reports indicate that BP officials demanded that drilling operations continue even after the well failed multiple critical safety tests.

Defendant Keith Casey has been the Business Unit Leader, the most senior position at the Refinery, of the BP Texas City facility since January 2007. Under his tenure, three people have died at the Refinery and hundreds of thousands, if not millions, of pounds of toxins were released into the environment. On August 9, 2010, nearly three months after the 40-day release officially ended, Mr. Casey wrote a letter to Matt Doyle, the mayor of Texas City, Texas, that discussed the 40-day release. *See* Letter from Keith Casey to Mayor Doyle, attached as **Exhibit B**. Through this letter, Defendant Casey writes "to share with … [Mayor Doyle] my understanding of that flaring event." *Id.* In this letter, Defendant Casey claims that, among other things, the release "caused no health impacts to our workers or the community," that BP's "site leaders took proactive steps to lessen the impact" of the release and that they timely and responsibly reported the release to the appropriate authorities. *Id.* Keith Casey lied, and is a liar.

V.
CAUSES OF ACTION

A. COMMON LAW ASSAULT AND BATTERY

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs further allege that Defendants' conduct was committed purposefully, or was committed with substantial knowledge that harm would result to Plaintiffs. Defendants purposefully contacted Plaintiffs' bodies, or had substantial knowledge that its actions would cause such contact, and the resulting harm that occurred. Such contact harmed Plaintiffs. Plaintiffs seek all damages allowed by law for such assault and battery.

B. NEGLIGENCE

Plaintiffs re-allege each and every allegation set forth above.

Upon information and belief, Plaintiffs aver that the numerous release events, and the injuries suffered by Plaintiffs were caused by the negligence and fault of the Defendants in the following non-exclusive particulars:

a. causing or permitting to be caused a release of numerous toxic substances, including benzene, at the Refinery between April 6, 2010 and May 16, 2010;

b. failure to maintain a safe work place;

c. failure to have a reliable system or device at its Refinery to prevent the release or warn of the release;

d. failure to perform work in a safe and prudent manner;

e. failure to exercise reasonable and prudent care in the operations which were occurring at the Refinery on the date of the incident in question;

f. failure to implement, follow and enforce proper operations procedures;

g. failure to implement, follow and enforce proper safety procedures; and

h. failure to implement, follow, and enforce proper hazard analysis.

Pleading further, as the most senior BP official at the Refinery, Defendant Casey is the person ultimately responsible for ensuring that there are no problems with PSM; therefore, any failures of PSM can be attributed directly to Mr. Casey's negligence and/or gross negligence, including, but not limited to, negligent and/or grossly negligent management and supervision.

Plaintiffs also specifically plead the doctrine of *res ipsa loquitor*. The character of the release is such that it would not ordinarily happen in the absence of negligence and the acts or omissions of the equipment and personnel that led to the release were under the control of Defendants at all relevant times.

C. PRIVATE NUISANCE

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs further allege that Defendants' acts and omissions with respect to the 40-day release of chemicals have caused and continue to cause a material, substantial and unreasonable interference with Plaintiffs' use and enjoyment of their properties and have materially diminished and will continue to diminish the value thereof.

Defendants' material, substantial and unreasonable interference with Plaintiff's use and enjoyment of their properties, and the continuing material, substantial and unreasonable interference with such use and enjoyment constitutes a private nuisance.

Defendants' creation and continuing creation of private nuisance proximately caused and continues to cause damage to Plaintiffs, in the form of property damage, physical harm and emotional distress.

D. FRAUD AND CONSPIRACY TO COMMIT FRAUD

Plaintiffs re-allege each and every allegation set forth above.

Plaintiffs further allege that Defendants have fraudulently underreported the amount of toxins that were actually released. As noted above, BP has a long history of underreporting or failing to report release events and this event is no different.

As noted above, Defendant Casey's tenure as the most senior BP official at the Facility has been marred by multiple deaths, hundreds of injuries, over $100 million dollars in fines and so many release events that they are almost too numerous to count. During this time, Defendant Casey has engaged in a continuing conspiracy and fraud to minimize and cover-up these events. The August 9, 2010 letter he sent to Mayor Doyle is simply another piece of evidence of this ongoing fraud and conspiracy to commit fraud.

E. VICARIOUS LIABILITY

Defendant BP Products North America In. and B.P. Corporation North America, Inc. is legally responsible to Plaintiffs for the negligent conduct of Keith Casey, and of the BP defendants' employees, agents, servants and representatives under the legal doctrines of respondeat superior, agency and/or ostensible agency because Keith Casey and the BP Defendants were at all times material hereto agents, ostensible agents, servants and/or emplyees of Defendants BP Products North America Inc. and B.P. Corporation North America Inc., and were acting within the course and scope of such agency, servitude or employment. As a result thereof, the BP Defendants are vicariously liable for all negligence of Keith Casey and of the BP Defendants, including their employees, agents, servants and representatives

VI.
PUNITIVE DAMAGES

Plaintiffs re-allege each and every allegation set forth above.

Defendants routinely underreports, or fails to report, to the authorities and victims, as it did with regard to Plaintiffs, the nature and quantity of chemical spilled at its Refinery. To avoid a more thorough investigation by authorities, Defendants falsified its own documents, and provided false information to the authorities to avoid formal investigations of the events leading up to the leak or spill—such was what occurred with regard to Plaintiffs. The injuries sustained by Plaintiffs resulted directly from Defendants' gross negligence, fraud and malice. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(a).

Any caps on punitive damages, under state or federal law, should not be applied because Defendants' conduct disqualifies it from any caps on exemplary damages. Specifically, Defendants' actions constitute the state law felony of aggravated assault, and, further,

Defendants' actions arose as a result of securing a document by deception, a state law felony. *See id.* at § 41.008(c).

VII.
REQUEST FOR RULE 194 DISCLOSURE

Pursuant to Texas Rule of Civil Procedure 194, Plaintiffs requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2(a)-(k), Tex. R. Civ. P.

VIII.
PRAYER

WHEREFORE, Plaintiffs demand judgment against Defendants BP Products North America, Inc. and Keith Casey as follows:

a. Economic and compensatory damages in amounts to be determined at trial;

b. Punitive damages;

c. Pre-judgment and post-judgment interest at the maximum rate allowable by law;

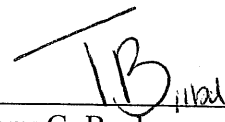
d. Attorneys' fees and costs of litigation; and

e. Such other and further relief available under all applicable state and federal laws and any relief the Court deems just and appropriate.

Plaintiffs demand a trial by jury.

Respectfully submitted,

THE BUZBEE LAW FIRM



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ATTORNEY FOR PLAINTIFFS

EXHIBIT

A

Texas Commission on Environmental Quality
Investigation Report
BP PRODUCTS NORTH AMERICA INC
CN600866800

BP PRODUCTS NORTH AMERICA
RN102535077

Investigation # 824714 **Incident #** 138052

Investigator: RYAN PERNA **Site Classification** MAJOR SOURCE

Conducted: 06/07/2010 -- 06/21/2010 SIC Code: 2911

Program(s): AIR NEW SOURCE PERMITS

Enforcement Request

Investigation Type : Compliance Invest File Review **Location :** 2401 5TH AVE S, TEXAS CITY, TX 77590

Additional ID(s) : 47256
GB0004L

Address: 2401 5TH AVE S; TEXAS CITY, TX 77590 **Activity Type :** REGION 12 - HOUSTON
UML3 - Upset Maintenance Level 3

Principal(s) :

Role	Name
RESPONDENT	BP PRODUCTS NORTH AMERICA INC

Contact(s) :

Role	Title	Name	Phone
Regulated Entity Contact	ENVIRONMENTAL AIR QUALITY SUPERVISOR	MR MARK CLINGAN	Work (409) 942-4134

Other Staff Member(s) :

Role	Name
Supervisor	LAURA BURNETT

Enforcement Request

Associated Check List

Checklist Name	Unit Name
Emissions Event Review (On or After 01/05/2006)	ULTRACRACKER

Investigation Comments :

INTRODUCTION/ INVESTIGATION SUMMARY

Introduction
On June 7, 2010, Ryan Perna of the Texas Commission on Environmental Quality (TCEQ), Houston Region Office, conducted an in-house emissions event investigation (Investigation No. 824714) in response to incident (Incident No. 138052) notification submitted on April 7, 2010 by BP Products North America, Texas City Facility (Attachment 1). The emissions event occurred on April 6, 2010 at the Ultracracker Unit. The final report was submitted on June 4, 2010. There were 3 facilities involved in this incident, namely the Ultracracker Unit, Refinery Flare #3 and Ultra Cracker Flare. An Upset/Maintenance Level 3 (UML3) investigation was conducted to determine compliance with the emissions events rules.

Daily Narrative
The following information was requested via email on May 7, 2010: Streamlining Questions. The following information was requested via email on June 7, 2010: Final Streamlining Questions, modeling report, fenceline monitoring data, and root cause analysis report.

The deadline date for receipt of the requested information was June 18, 2010. The information was received June 17, 2010 (Attachment 2).

Exit Interview
An exit interview form was emailed to BP upon the conclusion of this investigation (Attachment 3).

GENERAL FACILITY AND PROCESS INFORMATION

Process Description
The Ultra Cracker Unit is composed of two major sections, the Reaction Section and the Separation Section. In the Reaction Section, a mixture of Mid Virgin Distillate (MVD) and Light Catalytic Cycle Oil (LCCO) are converted into a mixture of lighter hydrocarbons (Reactor Effluent). This reaction takes place in a hydrogen rich atmosphere at 1800 psig and 760 F. The Separation Section distills Reactor Effluent, thus producing Naphtha for Ultraformer 3 and 4 feed, Pentane/Hexane product for blending, a butane product and an ethane/propane product. The 100-J makeup hydrogen gas compressor takes the 80%-95% hydrogen gas stream from the hydrogen manifold and compresses the gas into the high pressure system to make up the hydrogen consumed by the hydrocracking reaction.

BACKGROUND

According to BP Products, the incident was discovered when a board operator noticed erratic seal gas flows to the 100-J Compressor high pressure case. When it was determined there was a fire on the inboard seal of the compressor, the 100-J Compressor was tripped by the inside operator and the unit was shut down. During the fire and subsequent unit shutdown flaring emissions took place and continued until the 100-J could be restarted. The event ended upon restart of the 100-J Compressor.

Current Enforcement Actions
As a result of emissions event investigation No. 824714 conducted on June 7, 2010, the Texas Commission on Environmental Quality (TCEQ) Houston Region Office determined this event was an excessive emissions event. Additionally, a Notice of Enforcement (NOE) will be issued for this incident.

Agreed Orders, Court Orders, and Other Compliance Agreements
In the past five years there have been 14 Air Agreed Orders, Court Orders and other Compliance Agreements. They are:

1. Docket No. 2004-1532-AIR-E: effective 07/15/2005
2. Docket No. 2005-0284-AIR-E: effective 08/29/2005
3. Docket No. 2004-2128-AIR-E: effective 11/06/2005
4. Docket No. 2005-0818-AIR-E: effective 12/30/2005
5. Docket No. 2005-0706-AIR-E: effective 03/06/2006
6. Docket No. 2005-0224-AIR-E: effective 06/15/2005
7. Docket No. 2005-1027-AIR-E: effective 07/22/2006
8. Docket No. 2006-0196-AIR-E: effective 08/28/2006
9. Docket No. 2006-0262-AIR-E: effective 09/21/2006
10. Docket No. 2006-0310-AIR-E: effective 09/21/2006
11. Docket No. 2006-0400-AIR-E: effective 10/19/2006
12. Docket No. 2006-0557-AIR-E: effective 11/18/2006
13. Docket No. 2006-0099-AIR-E: effective 12/02/2006
14. Docket No. 2005-1839-AIR-E: effective 05/11/2007

Complaints
A database search confirmed that there were no complaints related to this incident.

Prior Enforcement Issues
There have been no NOVs or NOEs issued to BP in the past five years with same or similar violations.

ADDITIONAL INFORMATION

Conclusion and Recommendations
Based upon information received during Investigation No. 824714, it was determined Incident No. 138052 was an excessive emissions event. A detailed review of the excessive emission event criteria for this incident is included in this section.

Incident # 138052
Excessive Emissions Events Assessment-30 TAC §101.222(a). Excessive emissions event demonstrations:

1) the frequency of the facility's emissions events-

The following reportable emission events have occurred in the Ultra Cracker Unit during the past year:

Date	Incident	Cause
5/08/09	124010	A feed meter misred flows and defaulted, shutting off several unit furnaces.
5/11/09	124072	Exchanger leaked into cooling water system.
11/26/2009	132540	Broken internal pipe assembly on 100-J compressor
01/18/2010	134628	The Ultra Cracker's primary feed pump tripped offline.
04/06/2010	138052	The 100-J compressor caught fire and was bypassed while repairs were being completed.

Based on a review of the incidents that occurred during the past year, there appears to be a pattern of poor operation and maintenance practices.

2) the cause of emissions event-

BP Products failed to prevent a seal failure of the 100-J Compressor. According to BP Products, the incident was discovered when a board operator noticed erratic seal gas flows to the 100J high pressure case. When it was determined there was a fire on the inboard seal of the 100-J Compressor, it was tripped by the inside operator and the unit was shut down. During the fire and subsequent unit shutdown flaring emissions took place and continued until the 100-J Compressor could be restarted.

BP Products indicated that there were two potential causes for the inboard seal failure: liquid being present in the seal gas; and possible solids contamination in the seal.

Iron sulfide particles were found on the seal, seal piping and the seal filters. BP Products indicated that the seal filters may have failed allowing iron sulfide particles to break through. They also indicated a potential solution to prevent this is to periodically clean the seal piping to prevent iron sulfide buildup. There was no indication that BP Products had cleaned the seal piping prior to this event.

3) the quantity and impact on human health or the environment of the emissions event-

BP Products reported that the following compounds were released from the Refinery Flare #3 (EPN 321):

COMPOUNDS	QUANTITY (POUNDS)
Nitrogen Oxides	978.45
Butane, N-	669.92
Carbon Monoxide	4,985.76
Cis-2-butene	41.83
Ethylene, gaseous	10.53
Hydrogen Sulfide	5.25
Isobutane	499.09
Isobutene	169.48
Pentane	1,667.02
Propane	1,063.43
Propylene	225.61
Sulfur Dioxide	485.53
Trans-2-butene	66.80

BP Products reported that the following compounds were released from the Ultra Cracker Flare (EPN 351A):

COMPOUNDS	QUANTITY (POUNDS)
Nitrogen Oxides	36,541.14
Propylene	422.48
Butane	27,166.85
Carbon Monoxide	185,880.12
Cis-2-butene	0.14
Ethylene, gaseous	19.85
Hydrogen Sulfide	83.14
Isobutane	34,146.83
Pentane	117,716.75
Propane	60,490.40
Sulfur Dioxide	578.04
Trans-2-butene	1.08
1-Butene	327.84
Benzene	17,371.74
Ethylbenzene	1,980.03
M-Xylene	1,980.03
P-Xylene	1,980.03
Toluene	14,518.64
O-Xylene	1,721.87

VOCs are known precursors to the formation of ozone and Galveston County's status is "Non-Attainment" for ozone. Short-term exposure can cause eye, nose, and throat irritation; headaches, loss of coordination, nausea; damage to liver, kidney, and central nervous system. Actual impacts from these amounts, on human health or the environment, could not be immediately determined. The modeling results predicted that the fence line ambient air concentrations for all compounds did not exceed the TCEQ Property Line Standard or the E.P.A. National Ambient Air Quality Standards. In addition, no emissions exceeded their Effects Screening Levels (ESLs).

4) the duration of the emissions event-

The reported duration of the incident was: 959 hours 30 minutes

BP Products indicated that the compressor repair was scheduled to be completed in two weeks. However, they indicated that the repair was delayed by the long lead time required for the precision

parts needed to properly repair the compressor. It was also indicated that both units normally creating hydrogen rich streams removed by the 100-J Compressor were cut back to minimum rates and as much excess material as possible was routed to the sitewide fuel gas system for consumption across the refinery.

5) the percentage of the facility's total annual operating hours during which emissions events occur-

The combined duration of reportable emission events in the Ultra Cracker Unit for the past 12 months was 1024 hours. Based on 6,938 annual operating hours, reportable emissions events have accounted for 14.75% of the Ultra Cracker Unit's total annual operating hours.

6) the need for startup, shutdown, and maintenance activities-

Maintenance activities could have prevented this event. BP Products indicated that the seal filters may have failed allowing iron sulfide particles to break through. They also indicated a potential solution to prevent this is to periodically clean the seal piping to prevent iron sulfide buildup. There was no indication that BP Products had cleaned the seal piping prior to this event.

Conclusion: Based on a review of the findings and the criteria noted above, it was determined that this emissions event was an excessive emissions event. Additionally, a Notice of Enforcement will be issued for the unauthorized emissions released during this event.

Additional Issues
No additional issues.

Report Attachments
1. Initial Notification and Final Report
2. Additional Information
3. Exit Interview Form

NOE Date: 7/9/2010

OUTSTANDING ALLEGED VIOLATION(S)
ASSOCIATED TO A NOTICE OF ENFORCEMENT

Track No: 401468 **Compliance Due Date: To Be Determined**
Violation Start Date: 4/6/2010

30 TAC Chapter 116.715(a)
5C THSC Chapter 382.085(b)
ACC NUM GB0004L, Flexible Permit 47256, SC 1
This permit covers only the emission sources, associated equipment, and emission caps listed in the attached table entitled "Emission Sources - Emission Caps and Individual Emission Limitations," and those sources are limited to the emission limits specified in that table.
PERMIT 47256, SPECIAL CONDITION 1

Alleged Violation:
Investigation: 824714 Comment Date: 06/23/2010

As a result of the Emissions Event Investigation (Investigation No. 824714), conducted on June 7, 2010, the Texas Commission on Environmental Quality (TCEQ) Houston Region Office determined that the Emissions Event (Incident # 138052) that occurred on April 6, 2010 in the Ultracracker Unit at the BP Texas City Refinery (BP) could have been avoided by better operation and maintenance practices. BP failed to prevent the failure of a compressor seal which resulted in unauthorized emissions. The unauthorized emissions released from the Refinery Flare #3 and the Ultracker Flare were: 37,519.58 lbs of Nitrogen Oxides, 648.09 lbs of propylene, 27,836.77 lbs of Butane, 190,865.88 lbs of Carbon Monoxide, 41.97 lbs of Cis-2-butene, 30.38 lbs of Ethylene,88.39 lbs of Hydrogen Sulfide, 34,645.92 lbs of Isobutane, 119,383.78 lbs of Pentane, 61,553.82 lbs of Propane, 1,063.57 lbs of Sulfur Dioxide, 67.88 lbs of Trans-2-butene, 327.84 lbs of 1-Butene, 17,371.74 lbs of Benzene, 1,980.03 lbs of Ethylbenzene, 1,980.03 lbs of M-Xylene, 1,980.03 lbs of P-Xylene, 14,518.64 lbs of Toluene, and 1,721.87 lbs of O-Xylene. The duration of this

No. 47256 to emit contaminants to the atmosphere resulting from an emissions event. This constitutes a violation of TCEQ Flexible Air Permit No. 47256, Special Condition 1, which states, "This permit covers only the emission sources, associated equipment, and emission caps listed in the attached table entitled "Emission Sources - Emission Caps and Individual Emission Limitations," and those sources are limited to the emission limits specified in that table."

This also constitutes a violation of 30 TAC 116.715(a) and Texas Health and Safety Code 382.085(b).

Recommended Corrective Action: Implement procedures to ensure that seal integrity on Compressor 100J is maintained.

Signed _____ Date 7/8/2010
Environmental Investigator

Signed _____ Date 7/9/10
Supervisor

Attachments: (in order of final report submittal)

- ✓ Enforcement Action Request (EAR)
- ✓ Letter to Facility (specify type) : NOE, CAP Request
- Investigation Report
- ___ Sample Analysis Results
- ___ Manifests
- ___ NOR
- ___ Maps, Plans, Sketches
- ___ Photographs
- ✓ Correspondence from the facility
- ✓ Other (specify) : Incident Reports, Exit Interview Form

EXHIBIT

B

8/9/10

Keith Casey
Texas City Refinery – Business Unit Leader

BP Texas City Refinery
2401 5th Avenue South
Texas City, TX 77590

August 9, 2010

Dear Mayor Doyle:

As you know, a flaring event during April and May that occurred at the BP Texas City Refinery has attracted notable public attention in the City you lead. Given this public attention and the great deal of speculation we have heard, I thought it would be appropriate for me to share with you my understanding of that flaring event.

Before describing the event, there are three assurances I would like to offer you and your constituents. First, real time, scientific data monitored during the event indicates that the event did not have a health impact to our workers or the community. Second, we took steps to minimize the event's environmental impact. Third, BP made appropriate timely reports to our environmental regulators. I will describe each of those assurances in greater detail below.

The event occurred from April 6 to May 16, when the hydrogen compressor on the Refinery's Ultra cracker Unit was down. During this time frame, the feed that would normally go through that compressor was routed to a flare, a permitted safety and environmental device used at refineries to incinerate emissions.

The flare's positioning of 300 feet above the ground, its high combustion temperature, and gas exit velocity are important safety features. Flares burn off the vast majority of chemical constituents and disperse non-combusted materials in very small concentrations.

No Health Impact on Workers or Community

Our conclusion that the event caused no health impacts to our workers or the community is based on real time data from scientific instruments maintained by both BP and external parties. BP subsequently confirmed that evidence through the use of a TCEQ-approved modeling of the event.

During the entire 40-day period of this event, the site's recently enhanced fence line monitors, which measure for the presence of benzene and other constituents, did not signal elevated readings or ground level impact. These monitors will trigger an alarm at levels that are 5 to 10 times below the permissible exposure limits defined by state and federal regulatory agencies, as well as by the American Industrial Hygiene Association.

Similarly, air quality monitors in the community that are maintained by external parties did not show elevated readings throughout the 40-day period.

To further confirm the real time scientific readings of the monitors, site environmental leaders performed modeling of the event, using a TCEQ-approved modeling method.

That modeling did not indicate an exceedance of regulatory exposure limits to workers or the community at any time during the flaring.

In fact, in a communication from the TCEQ to BP Texas City about this event, the TCEQ summarized the modeling done by BP using the Agency's approved method, and noted:

> "The modeling results predicted that the fence line ambient air concentrations for all compounds did not exceed the TCEQ Property Line Standard or the E.P.A. National Ambient Air Quality Standards. In addition, no emissions exceeded their Effects Screening Levels (ESLs)."

Based on these facts and circumstances, and specifically, the stable readings of BP's fence line and the community monitors and the conclusion reached by using TCEQ's approved modeling method, BP does not believe there was a health impact associated with this event.

Limiting Production to Lessen Impact

Throughout the compressor outage, site leaders took proactive steps to lessen the impact, including running the unit at its minimal rate of 55 percent, reducing both production and emissions.

Appropriate Regulatory Notifications

Site environmental personnel made an initial notification to the Texas Commission on Environmental Quality (TCEQ) on April 7, the day that the site first knew it had exceeded a reportable quantity of nitrous oxide emissions.

Throughout the event, site environmental personnel provided updates to the TCEQ about the status of the unit. When site workers recognized the potential of a benzene reportable quantity exceedance, the site contracted an outside company to perform sampling and review the data, which confirmed the exceedance. Site environmental leaders then reported that information to the TCEQ on June 4, which was within the time frame required by the Agency.

As you know, BP also provided the City with notice of the hydrogen compressor issue on April 6, and further provided notice of the additional reportable quantity exceedance on June 4, prior to the filing with the TCEQ.

We will keep you informed as events warrant, and we look forward to further dialogue with you and other community leaders about this issue. Please do not hesitate to contact me with any questions that you or your constituents have.

Best wishes,

Keith Casey

Timeline and Key Facts:

- Compressor outage April 6 to May 16, leading to a flaring event
- First report to the TCEQ April 7, report was timely
- Compressor restart May 16 to May 22
- Updates from HSSE to TCEQ throughout the event
- Final, follow-up report to TCEQ June 4, report was timely
- BP recently enhanced fence line monitors, which measure specifically for benzene, showed no elevated readings or ground level impact throughout the event.
- Community monitors, which measure for benzene and VOC also showed no elevated readings or ground level impact throughout the event.
- Site performed modeling of the event using a TCEQ approved method. That modeling showed no health impact as noted by TCEQ in a letter to BP.