

U.S. Department of Labor

Occupational Safety & Health Administration
Houston South Area Office – Region VI
17625 El Camino Real, Suite 400
Houston, Texas 77058
Phone: 281-286-0583 Fax: 281-286-6352



October 15, 2009

CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

Keith Casey
Business Unit Leader
BP – Texas City Refinery
2401 5th Ave S
Texas City, TX 77590

Thomas H. Wilson
Vinson & Elkins
First City Tower
1001 Fannin Street, Suite 2500
Houston, Texas 77002-6760

RE: Secretary's Objections to BP's Petition for Modification of Abatement and Amended Petition for Modification of Abatement

Gentlemen:

We are in receipt of BP Products North America, Inc.'s ("BP"), original Petition for Modification of Abatement ("PMA") served September 21, 2009, as amended and served on October 5, 2009. The Agency objects to the PMA and the Amended PMA for the following reasons.

As an initial matter, BP avers that it has complied with all the terms of the settlement agreement ("Agreement") between BP and the Secretary of Labor that was signed September 22, 2005, and the amended citations. OSHA strongly disagrees that BP has complied. However, a PMA is not available to an employer that contends it has fully complied with a settlement agreement. 29 U.S.C. § 659(c). OSHA therefore objects to the PMA and Amended PMA on the ground that BP has failed to state a valid claim for a petition for modification of abatement.

To the extent that BP alleges that it needs additional abatement time, OSHA also objects to BP's request on the ground that BP has failed to demonstrate that its failures to comply are because of factors beyond its reasonable control. In addition, the PMA and Amended PMA do not commit BP to come into full compliance with the Agreement by a date certain. BP fails to commit to implementing abatement measures that would cure pressure relief systems deficiencies, or to address identified residual risks through implementation of ANSI/ISA S84.00.01. OSHA brought these concerns to BP's attention at various times, including the August 3, 2009 letter. Indeed, in the PMA and



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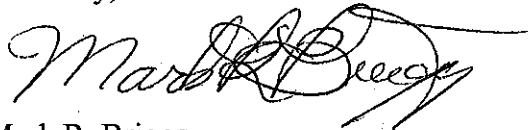
Amended PMA, BP does not commit to do anything more during the next eighteen (18) month period except to develop a procedure for studying the deficiencies and risks identified in OSHA's August 3, 2009 letter and generating a manual.

The PMA and Amended PMA also do not meet the requirements of the Department of Labor's regulation governing petitions for modification, 29 C.F.R. § 1903.14a. The PMA and Amended PMA fail to identify all steps taken by BP and the dates of such action to achieve actual compliance, the specific additional abatement time necessary in order to achieve compliance, the reasons such additional time is necessary, and all available interim steps being taken to safeguard employees against the hazards during the abatement period. Indeed, the PMA and Amended PMA merely provide a list of interim measures/items that may be in place. These measures are general and do not show how employees would be meaningfully protected from existing hazards.

In summary, OSHA objects to BP's PMA and Amended PMA in their entirety.

Pursuant to the Department of Labor regulations, the original Petition for Modification of Abatement, the Amended Petition for Modification of Abatement, and these objections are being mailed to the Occupational Safety and Health Review Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark R. Briggs", with a stylized flourish at the end.

Mark R. Briggs
Area Director
Houston South Area OSHA Office

CC: USW Local 13-1