

STATE OF INDIANA	)	BEFORE THE INDIANA OFFICE OF
	)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION	)	
	)	
IN THE MATTER OF:	)	
	)	
OBJECTION TO THE ISSUANCE OF	)	
SIGNIFICANT SOURCE MODIFICATION	)	
PERMIT NO. 089-25484-00453 TO	)	
BP PRODUCTS NORTH AMERICA INC.,	)	
WHITING BUSINESS UNIT	)	
	)	
SAVE THE DUNES COUNCIL, INC.,	)	
SIERRA CLUB, INC., HOOSIER	)	
ENVIRONMENTAL COUNCIL,	)	CAUSE NO. 08-A-J-4115
TOM TSOURLIS, SUSAN ELEUTERIO,	)	
	)	
Petitioners,	)	
	)	
BP PRODUCTS NORTH AMERICA, INC.,	)	
	)	
Respondent/Permittee	)	
	)	
INDIANA DEPARTMENT OF	)	
ENVIRONMENTAL MANAGEMENT,	)	
	)	
Respondent.	)	

**HOOSIER ENVIRONMENTAL COUNCIL'S RESPONSE TO  
BP PRODUCTS NORTH AMERICA, INC.'S FIRST SET OF INTERROGATORIES,  
REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

NOW COME Petitioners, Save the Dunes Council, Inc., Sierra Club, Inc., and Hoosier Environmental Council (“H.E.C.”) (collectively “Petitioners”)<sup>1</sup>, by counsel, and in response to Interrogatories, Requests for Admissions and Requests for Production of Documents propounded by BP Products, North America, Inc. hereby state as follows:

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<sup>1</sup> Save the Dunes, Inc., Sierra Club, Inc., and H.E.C. are providing one combined response to each of BP Products North American Inc.’s First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents propounded individually on each of the three organizational Petitioners.

## **General Objections**

Petitioners, by their counsel, object to the Respondent BP Products of North America's First Set of Interrogatories, Requests for Admission and Requests for Production of Documents (the "Discovery Requests") to the extent, if any, that they attempt to impose obligations on Petitioners beyond those authorized by the [law]. This objection is not limited by the more specific General Objections that follow. Petitioners may provide requested information in response to one or more objectionable Discovery Requests, or portions thereof, notwithstanding these General Objections. Such production is without prejudice to, and without waiver of, these objections with respect to any other interrogatory or information. Petitioners further reserve the right to object to future discovery on the same or related matters and do not waive any such objections by providing the information provided in these responses. Petitioners further reserve the right to object to the admissibility of any of these responses or related matters in full or in part at trial or other hearings in this action, on any grounds including but not limited to materiality and relevance, and reserve the right to supplement if and when additional documents or information is identified.

These objections and responses are based upon information now known. Petitioners reserve the right to amend, modify, or supplement the responses and objections stated herein. Specifically, Petitioners note their earlier objections to the pace of the public comment and permitting process, and the very limited opportunity for close analysis of the extremely complex CXHO permit that resulted. Petitioners specifically reserve their right to supplement these responses based on information currently in their possession but still undergoing review and analysis.

Petitioners make the following General Objections to the Discovery Requests:

1. Privilege. Petitioners object to the Discovery Requests to the extent, if any, that they call for any of the following:
  - a. Production of information protected by the attorney-client privilege,

- b. Production of information protected by the work product doctrine, or
- c. Production of information protected by other legal exemptions from discovery.

Where privilege is the sole basis on which documents are not produced, Petitioners will identify the documents withheld, generally by class, and will provide a brief description of the document or class of documents withheld, and will identify or describe their author(s) and their recipient(s). Petitioners specifically object to any request to list or enumerate documents in its or its counsel's litigation files that are privileged or work product. Without limiting the generality of the foregoing, Petitioners will not produce documents that constitute or memorialize: (1) communications between ELPC, NRDC, EIP, and/or LEAF attorneys and Save the Dunes, Sierra Club, and/or Hoosier Environmental Council members, employees and/or personnel, the subject of which is legal advice or facts communicated in connection with the rendering of legal advice, which documents have not been disclosed to any third party, and which communications did not constitute the basis of any witness' testimony; (2) communications between ELPC, NRDC, EIP, and/or LEAF attorneys and Tom Tsourlis and/or Susan Eleuterio the subject of which is legal advice or facts communicated in connection with the rendering of legal advice, which documents have not been disclosed to any third party, and which communications did not constitute the basis of any witness' testimony; and (3) work product of ELPC, NRDC, EIP, and/or LEAF attorneys, which documents have not been disclosed to any third party.

Petitioners assume, for purpose of providing responses, that the discovery requests do not seek information that is privileged or otherwise subject to this general objection. Accordingly, they do not in all instances separately identify this objection in response to each such request, but generally object to the requests to the extent they may call for the production of information covered by this objection.

2. Non-testifying experts. Petitioners object to the Discovery Requests to the extent, if any, that they seek facts known by, opinions held by, and/or documents or information relating to consulting experts whose testimony will not be offered into evidence, except insofar as such information is otherwise subject to discovery (e.g., it forms the basis of testimony).

3. Custody and control. Petitioners object to the Discovery Requests to the extent, if any, that they require Petitioners to produce information that is not in Petitioners' custody or control. Petitioners further object to the Discovery Requests to the extent that they require Petitioners to explain why requested information is not in Petitioners' custody and control, in the absence of some evidence that such information was ever in Petitioners' custody and control. Petitioners additionally object to the Discovery Requests to the extent, if any, that they require Petitioners to identify the current location and/or custodian of any document that is not in Petitioners' custody and control.

4. Cumulative and duplicative. Petitioners object to the Discovery Requests to the extent that they seek information that is unreasonably cumulative or duplicative and/or is obtainable from some other source that is more convenient and/or less burdensome.

5. Other objections. Petitioners object generally to the Discovery Requests to the extent that they:

- a. call for documents or analysis and opinions that are not yet due according to the schedule;
- b. are unduly burdensome;
- c. are overbroad, overly general, and/or all-inclusive;
- d. are vague, ambiguous, and/or fail to adequately define the terms used therein;
- e. call for information that is not relevant;
- f. call for information that is not reasonably calculated to lead to discovery of admissible evidence;
- g. are argumentative or speculative;
- h. call for legal conclusions or are questions of pure law;
- i. call for Petitioners to speculate regarding the knowledge, actions, opinions, conclusions, and/or policies of unaffiliated nonparties; and

j. seek information protected by agreements precluding disclosure in that they seek information from a third party under a non-disclosure agreement.

6. First Amendment. Petitioners object to the Discovery Requests to the extent that they seek information that would have the effect of chilling the Petitioners' First Amendment rights to freedom of association under *NAACP v. Patterson*, 357 U.S. 449 (1958).

7. Confidential Business Information. Petitioners object to the Discovery Requests to the extent that they seek information that is the confidential business information of Petitioners. .

## **RESPONSES TO DISCOVERY REQUESTS**

Request for Admission No. 1: Please admit that no [Petitioner]<sup>2</sup> member, personally, has or will sustain injury or harm, of any kind, specifically related to emissions from the CXHO project.

### **RESPONSE: Petitioners deny Request for Admission No. 1.**

Interrogatory No.1: If your response to Request for Admission No. 1 is anything other than an unqualified admission, please identify each [Petitioner] member whom you allege has or will sustain harm relating to the CXHO project and, as to each such member, the specific harm alleged.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objections 1, 5.b., 5.c., 5.e., 5.f, 6, and 7. Without waiving such objection, Petitioners are providing in response to this Interrogatory information regarding injury to individual members of the Petitioner organizations. Provision of this information shall not be construed as consent to further discovery concerning the identified persons, including but not limited to depositions; and shall further not be construed as a representation or admission concerning the type of showing necessary to support standing for the Petitioner organizations.**

**The organizational members identified below (the "Members") all reside in an area that has been determined to be in non-attainment for ozone and PM 2.5; and all were members of the identified Petitioner organizations at the time this petition was filed. All live in sufficient proximity to Respondent's refinery in Whiting, Indiana (the "Refinery") to be exposed to increased air emissions of SOx, VOCs, H<sub>2</sub>S, HAPs, PM<sub>2.5</sub>, CO and other pollutants as a result of the CXHO project. Thus, all will suffer environmental injury in the form of diminished air quality, which impacts, inter alia, their enjoyment of their natural environment and the value of their real property. Additionally, these pollutants are known to cause or aggravate respiratory disease (e.g., cough, shortness of breath, wheezing, bronchitis, asthma attacks) and cardiovascular disease, decline in lung function and capacity, changes to lung tissues and structure, altered respiratory defense mechanisms, cardiovascular problems, cancer and**

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<sup>2</sup> See footnote 1.

premature death. These impacts affect healthy adults, and may impact sensitive populations (inter alia, children, the elderly, and those with cardiovascular and respiratory illness) even more severely. Consequently, the health of the Members will or may be adversely impacted. Furthermore, the CXHO Project will result in a significant increase in emissions of greenhouse gases, including CO<sub>2</sub>, thereby exacerbating global climate change with adverse impacts for the Individuals. Finally, all of these Members, together with the Petitioner organizations, suffered a procedural injury in that they were deprived of the benefit of the additional procedures, and their attendant opportunity for public comment, associated with the prevention of significant deterioration permitting (“PSD”) requirements that are the subject of this proceeding.

The following is a list of the Members, including information regarding their place of residence and other circumstances:

**Save the Dunes Members:**

1. Dorothy Potucek (see H.E.C. Members, below).
2. Lin Chary, 7726 Locust Avenue, Gary, IN. Age: 57. Ms. Chary has mild asthma, for which she uses an inhaler; and has generally been susceptible to respiratory illness.
3. John Madeka, 1234 Davis Avenue, Whiting, IN. Age: 46. Mr. Madeka works at the Arcelor Mittal facility located at 3300 Dickey Road, East Chicago, IN. Mr. Madeka frequently engages in outdoor recreation at or near his home. His outdoor activities include, without limitation, hunting, fishing, bird watching, boating, and gardening; and the location of such activities includes, without limitation, Wolf Lake, George Lake, and Lake Michigan. Mr. Madeka has been diagnosed with sarcoidosis. Mr. Madeka is also concerned about the impact of poor air quality on elderly relatives who visit him.
4. Tom Anderson, 405 Hendrick Street, Michigan City, IN. Age: 53. Lives with wife, age 55. Mr. Anderson is Executive Director of Save the Dunes, as well as a member of the organization. He visits the Hammond area approximately once a week.. Save the Dunes Conservation Fund, an affiliated organization, owns property in that area. When visiting this property, Mr. Anderson spends most of his time outdoors.
5. Mary LeVan, 7406 Jackson Avenue, Hammond, IN. Age: 79. Ms. LeVan spends substantial time outdoors virtually every day, often in the vicinity of her home and often engaging in physical exercise including, inter alia, long walks.
6. Monica Johnston, 1070 North Warren St., Gary, IN. Age: 61. Lives with husband, age 65. Ms. Johnston is outside most days in the vicinity of her home, often engaging in physical exercise including, inter alia, gardening and walking.
7. Lorainne Stasek (see Sierra Club Members, below).

**Sierra Club Members:**

1. Lorainne Stasek, 4509 Tod Avenue, East Chicago, IN. Age: 76. Lives with adopted son, age 19. Ms. Stasek is concerned about the impact of poor air quality on her son,

who has asthma and avoids going outside for that reason. Ms. Stasek has diabetes, hypertension, and cardiac problems, and also has more difficulty breathing when air quality is poor.

**H.E.C. Members:**

1. Dorothy Potucek, 1608 Parkview, Whiting, IN. Age: 80. Resides with her sister age 82. Ms. Potucek engages frequently in outdoor activities, including but not limited to gardening and bicycle riding. She has been diagnosed with low level emphysema, and also takes medication for high blood pressure. Ms. Potucek avoids outdoor activity during times when air quality is poor, such as on ozone alert days.
2. Linda Luttringer, 7520 Jarnecke Avenue, Hammond, IN. Age: 61. Ms. Luttringer is diabetic, takes medication for high-blood pressure and is concerned about the impact of poor air quality on her health.
3. Carolyn Marsh, 1804 Oliver Street, Whiting, IN. Age: 64. Ms. Marsh lives alone and in close proximity to the BP Refinery. Ms. Marsh frequently engages in outdoor activities at or near her home including, without limitation, bird watching, gardening and walking. In the past she enjoyed jogging but stopped for fear of inhaling fine particle pollution into her lungs with deep breathing. In addition, she experiences shortness of breath which is exacerbated on days when air quality is poor.

Request for Production No. 1: If your response to Request for Admission No. 1 is anything other than an unqualified admission, please produce for inspection and copying any and all documents which substantiate, reflect or refer to any injury or harm you allege each identified [Petitioner] member has sustained relating to the CXHO project including, but not limited to, reports, tests, studies, invoices, correspondences, e-mails, tax returns, payroll records, etc.

**RESPONSE:** There are no documents that substantiate any injury or harm that any of Petitioners' members "ha[ve] sustained" because the CXHO Project has not yet commenced operation. Without waiver of the objections specified below, Petitioners respond based upon the assumption that Respondents intended to ask about harm or injuries that members will sustain. Petitioners object to this Request for Production on the grounds stated in General Objections 1, 5.b, 5.c, 5.e, 5.f, 6, and 7. Specifically, the requested information is not relevant to establishing future environmental injury from the CXHO Project, and the request is vague, overbroad, and burdensome.

Interrogatory No. 2: With reference to paragraph 13 of the Petition for Review, please identify each of the factual errors Petitioner alleges were made by IDEM in issuing the CXHO permit, and as to each factual error, please state the specific basis for the claim of factual error.

**ANSWER:** Petitioners object to this Interrogatory on the grounds stated in General Objections 1, 2, 4, and 5.a. The errors of which Petitioners are aware are set forth in the Amended Petition and the public comment documents identified in response to Request for Production No. 7, and additional errors may be identified during the course of discovery. To the extent that this Interrogatory applies to information that will be the subject of expert testimony, Petitioners will respond according to the discovery schedule set forth in the case management order.

Interrogatory No. 3: With reference to paragraph 13 of the Petition for Review, please identify each of the legal errors Petitioner alleges were made by IDEM issuing the CXHO permit and, as to each legal error, please state the specific basis for the claim of legal error.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objection 5.h.**

Request for Production No. 2: Please produce all documents which substantiate, reflect or refer to your answers to Interrogatories 2 and 3.

**RESPONSE: Petitioners object to this Request for Production on the grounds stated in General Objections 1, 2, 3, 4, 5.a, 5.b, 5.c, and 5.h. Without waiving such objection, Petitioners state that information responsive to this request is set forth in the public comment documents identified in response to Request for Production No. 7. Further without waiving such objection, and specifically without representation concerning the relevance of these documents to the subject matter of Interrogatories 2 and 3, Petitioners provide herewith documents obtained from IDEM in response to Public Records Act requests.**

Interrogatory No. 4: The Petition for Review references “increased PM2.5 emissions” from the CXHO project (paragraph 66). Please state:

- (a) the basis for the assertion that the CXHO project will result in “increased PM2.5 emissions”;

**ANSWER: Petitioners object to this interrogatory on the grounds set forth in General Objections 4 and 5.b. Without waiving such objection, Petitioners are aware that numerous emissions sources at the refinery, including both combustion and non-combustion sources, will emit PM2.5, including but not limited to those sources identified in the Permit as sources of condensable PM. Petitioners are also aware, as set forth in Count 1 of the Amended Petition, that the emissions analysis conducted in connection with the CXHO permit to determine potential to emit (“PTE”) and net emissions did not consider numerous significant sources of PM2.5.**

- (b) the specific increase in PM2.5 emissions Petitioner asserts will result from the CXHO project; and

**ANSWER: Petitioners object to this interrogatory on the grounds set forth in General Objections 2, 3, 4, 5.a, and 5.b. To the extent that this Interrogatory applies to information that will be the subject of expert testimony, Petitioners will respond according to the discovery schedule set forth in the case management order.**

- (c) the methodology used to calculate the alleged increase in PM2.5 emissions from the CXHO project.

**ANSWER: Petitioners object to this interrogatory on the grounds set forth in General Objections 2, 3, 4, 5.a, and 5.b. To the extent that this Interrogatory applies to information that**

will be the subject of expert testimony, Petitioners will respond according to the discovery schedule set forth in the case management order.

Request for Production No. 3: Please produce all documents which support your responses to Interrogatory No. 4(a), (b) and (c) including, but not limited to, any PM modeling records, tests or studies relating to emissions from the Whiting refinery.

**RESPONSE: Petitioners object to this interrogatory on the grounds set forth in General Objections 2, 3, 4, and 5.a, 5.b, and 5.c. Without waiving such objections, Petitioners refer to the documents produced in response to Request for Production No. 2.**

Request for Admission No. 2: Please admit that [Petitioner], as an organization, has not and will not sustain any injury or harm, of any kind, specifically related to emissions from the CXHO project.

**RESPONSE: Petitioners object to this Request on the grounds set forth in General Objection 5. Without waiving such objection, Petitioners deny Request for Admission No. 2.**

Interrogatory No. 5: If your response to Request for Admission No. 2 is anything other than an unqualified admission, please state the specific injury or harm alleged and the cause of the alleged injury or harm.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objection 5.h. Without waiving such objection, Petitioners' incorporate the Response to Interrogatory No. 1, and paragraphs 1 – 3 of the Amended Petition for Review (describing the Petitioner organizations' interest), and the documents provided in response to Request for Production No. 4.**

Request for Production No. 4: If your response to Request for Admission No. 2 is anything other than an unqualified admission, please produce for inspection and copying any and all documents which substantiate, reflect or refer to any alleged injury or harm which [Petitioner], as an organization, has itself sustained as reflected in your response to Interrogatory No. 5.

**RESPONSE: There are no documents that substantiate any injury or harm that any Petitioner organization "has itself sustained" because the CXHO Project has not yet commenced operation. Without waiver of the objections specified below, Petitioners respond based upon the assumption that Respondents intended to ask about harm or injuries that the organizations will sustain. Petitioners object to this Request for Production on the grounds stated in General Objections 5.a and 5.h. Without waiving such objection, Petitioners incorporate by reference the response to Request for Production Nos. 1 and 12. To the extent that this Interrogatory applies to information that will be the subject of expert testimony, Petitioners will respond according to the discovery schedule set forth in the case management order.**

Interrogatory No. 6: If any [Petitioner] member is claiming physical/medical injury or harm, of any kind, which specifically relates to the CXHO project, please identify each physician or medical

practitioner, of any kind, with whom such member has treated or been examined, for any reason, over the past 10 years.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objections 1, 5.b, 5.c, 5.e, 5.f, 6, and 7. Specifically, the requested information is not relevant to establishing future environmental injury from the CXHO Project, and the request is vague, overbroad, and burdensome.**

Interrogatory No. 7: If any [Petitioner] member is claiming physical/medical injury or harm, of any kind, which specifically relates to the CXHO project, please identify each hospital where any such member has treated, for any reason, on an inpatient or outpatient basis, for the past 10 years.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objections 1, 5.b, 5.c, 5.e, 5.f, 6, and 7. Specifically, the requested information is not relevant to establishing future environmental injury from the CXHO Project, and the request is vague, overbroad, and burdensome. Without waiving such objections, Petitioners refer to Interrogatory No. 1, above.**

Request for Production No. 5: If any [Petitioner] member is claiming physical/medical injury or harm, of any kind, which is specifically related to the CXHO project, please produce the complete medical records, including, but not limited to, any and all imaging studies, reports, tests, office records, correspondence, laboratory studies, etc. for each physician or other medical care practitioner, of any kind, with whom such member has treated or been examined, for any reason, for the past 10 years.

**RESPONSE: Petitioners object to this Request for Production on the grounds stated in General Objections 1, 5.b, 5.c, 5.e, 5.f, 6, and 7. Specifically, the requested information is not relevant to establishing future environmental injury from the CXHO Project, and the request is vague, overbroad, and burdensome.**

Request for Production No. 6: If any [Petitioner] member is claiming physical/medical injury or harm, of any kind, which is specifically related to the CXHO project, please produce the complete hospital records for each hospital where such member has been treated, or been seen, for any reason, on an inpatient or outpatient basis, for the past 10 years.

**RESPONSE: Petitioners object to this Request for Production on the grounds stated in General Objections 1, 5.b, 5.c, 5.e, 5.f, 6, and 7. Specifically, the requested information is not relevant to establishing future environmental injury from the CXHO Project, and the request is vague, overbroad, and burdensome.**

Request for Production No. 7: Produce for inspection and copying all documents that substantiate, reflect or refer to the factual averments contained in Paragraphs 23 and 24 of the Petition for Review.

**RESPONSE: Petitioners object to this request on the grounds set forth in General Objections 2, 3, 4, 5.a, 5.b, and 5.c. Without waiving such objection, Petitioners respond that the**

**basis for these and other factual averments in the Petition for Review, including relevant documents, is set forth in the comments submitted by the Petitioner organizations concerning the draft Permit and accompanying exhibits, including both (i) the comments by Natural Resources Defense Council, Environmental Law And Policy Center, Alliance For The Great Lakes, Environment Illinois, Environmental Integrity Project, Hoosier Chapter Of The Sierra Club, Legal Environmental Aid Foundation, and Save The Dunes Council dated March 24, 2008; and (ii) comments by Julia May dated March 21, 2008 (submitted by Natural Resources Defense Council). These documents are believed to be already in the possession of Respondent, but Petitioners will provide a copy upon request.**

Interrogatory No. 8: Identify each person having personal knowledge of any of the facts alleged in Paragraphs 23 or 24 of the Petition for Review.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objections 2, 3, 4, 5.a, 5.b, 5.e, 5.f, and 5.i. To the extent that this Interrogatory requests information concerning Petitioners' fact witnesses, and/or to the extent that this Interrogatory applies to material that will be covered by expert discovery, Petitioners will respond according to the discovery schedule set forth in the case management order. Without waiving such objection, Petitioners refer to their response to Request for Production No. 7.**

Request for Production No. 8: Produce for inspection and copying any documents, other than those produced in response to RFP No. 7, that relate to causes or circumstances of, or emissions from, refinery flares.

**RESPONSE: Petitioners object to this Interrogatory on the grounds stated in General Objections 2, 3, 4, 5.a, 5.b, 5.e, 5.f, and 5.i.**

Request for Admission No. 3: Admit that the netting calculation on which the Permit is based made no use of "projected actual emissions."

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objections 5.a, 5.h, and 5.i. To the extent that this Request applies to material that will be covered by expert discovery, Petitioners will respond according to the discovery schedule set forth in the case management order. Without waiving such objection, Petitioners refer to pages 3-1 and 3-2 of "CXHO Project – Operation Canadian Crude (OCC) Source Modification Application BP Products North America Inc. – Whiting Business Unit Whiting, IN," dated October 2007. This document is believed to be already in the possession of Respondent.**

Request for Admission No. 4: Admit that none of the new or existing flares at Whiting Refinery is a "stationary source".

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 5: Admit that the “stationary source” at issue in this appeal is the entire Whiting Refinery.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request For Admission No. 6: Admit that a malfunction is a failure of equipment to operate according to its physical and operational design.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 7: Admit that emissions resulting from malfunctions are not included in determining a stationary source's “potential to emit.”

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 8: Admit that Section D.0. of the Permit imposes a federally enforceable limitation on flaring emissions.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 9: Admit that Section D.0. of the Permit imposes a federally enforceable limitation on emissions of SO<sub>2</sub> from the Whiting Refinery.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Interrogatory No. 9: Identify each person having personal knowledge of any of the factual averments in Paragraph 43 of the Petition for Review.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objections 2, 3, 4, 5.a, 5.b, 5.e, 5.f, and 5.i. To the extent that this Interrogatory requests information concerning Petitioners’ fact witnesses, and/or to the extent that this Interrogatory applies to material that will be covered by expert discovery, Petitioners will respond according to the discovery schedule set forth in the case management order. Without waiving such objection, Petitioners refer to their response to Request for Production No. 7.**

Request for Production No. 9: Produce for inspection and copying all documents that substantiate, reflect or refer to the factual averments in Paragraph 43 of the Petition for Review.

**RESPONSE: Petitioners object to this request on the grounds set forth in General**

**Objections 2, 3, 4, 5.a, 5.b, 5.e, 5.f, and 5.c. Without waiving such objection, Petitioners refer to the Response to Request for Production No. 7.**

Request for Admission No. 10: Admit that a determination of “baseline actual emissions,” may be based on stack test data.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 11: Admit that determining “baseline actual emissions” from stack test data requires use of an “emission factor” that relates to emissions to some measure of actual operations.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 12: Admit that the emission factors in AP-42 are based on actual testing data.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objections 2, 5.a, 5.b, 5.d, and 5.i. Without waiving such objection, Petitioners respond that not all data in AP-42 emission factors is based on reliable and representative stack tests from representative (i.e., comparable) facilities under representative conditions. To the extent that this Request applies to material that will be covered by expert discovery, Petitioners will respond according to the discovery schedule set forth in the case management order. Petitioners further respond that the U.S. EPA provides the following statement as to the establishment of the AP-42 factors:**

An emission factor is a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant. These factors are usually expressed as the weight of pollutant divided by a unit weight, volume, distance, or duration of the activity emitting the pollutant (e. g., kilograms of particulate emitted per megagram of coal burned). Such factors facilitate estimation of emissions from various sources of air pollution. In most cases, these factors are simply averages of all available data of acceptable quality, and are generally assumed to be representative of long-term averages for all facilities in the source category (i. e., a population average)...

Emission factor ratings in AP-42 (discussed below) provide indications of the robustness, or appropriateness, of emission factors for estimating average emissions for a source activity. Usually, data are insufficient to indicate the influence of various process parameters such as temperature and reactant concentrations...

The extent of completeness and detail of the emissions information in AP-42 is determined by the information available from published references. Emissions from some processes are better documented than others.

**- U.S. EPA, “Introduction to AP-42, Volume 1, Fifth Edition, available at <http://www.epa.gov/ttn/chief/ap42/>**

Request for Admission No. 13: Admit that the emission factors used in determining baseline actual emissions for purposes of the Permit were based on testing of emission units similar to those covered by the permit.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objections 2, 5.a, 5.b, 5.d, and 5.i. Without waiving such objection, Petitioners respond that it is not possible to ascertain without further discovery whether the emission factors used in determining baseline actual emissions were based on testing of “similar” emission units. To the extent that this Request applies to material that will be covered by expert discovery, Petitioners will respond according to the discovery schedule set forth in the case management order.**

Request for Admission No. 14: Admit that using emission factors based on natural gas combustion will, if anything, understate emissions from combustion of refinery fuel gas.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objections 2, 5.a, 5.b, 5.d, and 5.i. Without waiving such objection, Petitioners respond that it is not possible to respond to this Request absent, inter alia, information concerning the composition and heating value of both natural gas and refinery fuel gas, both of which can vary in composition. To the extent that this Interrogatory applies to material that will be covered by expert discovery, Petitioners will respond according to the schedule as previously discovery schedule set forth in the case management order.**

Interrogatory No. 10: State fully the basis for any denial or qualification in your responses to Requests for Admissions Nos. 8-14.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objections 2, 5.a, 5.b, 5.d, 5.e, 5.f, 5.h, and 5.i. Without waiving such objection, Petitioners refer to their responses to Requests for Admission Nos. 8-14. To the extent that this Interrogatory requests information concerning Petitioners’ fact witnesses, and/or to the extent that this Interrogatory applies to material that will be covered by expert discovery, Petitioners will respond according to the discovery schedule set forth in the case management order.**

Request For Production No. 10: Produce for inspection and copying all documents that substantiate, reflect or refer to your response to Interrogatory No. 10.

**RESPONSE: Petitioners object to this Interrogatory on the grounds stated in General Objections 2, 3, 4, 5.a, 5.b, 5.d, 5.e, 5.f, 5.h, and 5.i. Without waiving such objection, Petitioners refer to the public comment documents referenced in response to Interrogatory No. 7, which contain further information regarding the basis for Petitioners’ claims regarding the subject matter of Request for Admission Nos. 8-14.**

Interrogatory No. 11: Identify each person having personal knowledge of any fact asserted in Paragraph 55 of the Petition for Review.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objections 2, 3, 4, 5.a, 5.b, 5.e, 5.f, and 5.i. Without waiving such objection, Petitioners refer to their response to Request for Production No. 7. To the extent that this Interrogatory requests information concerning Petitioners' fact witnesses, and/or to the extent that this Interrogatory applies to material that will be covered by expert discovery, Petitioners will respond according to the discovery schedule set forth in the case management order.**

Interrogatory No. 12: State the factual basis for the averments in Paragraph 56 of the Petition for Review.

**ANSWER: Petitioners object to this request on the grounds set forth in General Objections 2, 3, 4, 5.a, 5.b, 5.c, 5.e, and 5.f. Without waiving such objection, Petitioners refer to the Response to Request for Production No. 7.**

Interrogatory No. 13: Identify each person having personal knowledge of any fact asserted in Paragraph 56 of the Petition for Review or in your response to Interrogatory No. 12.

**ANSWER: Petitioners object to this Interrogatory on the grounds stated in General Objections 2, 3, 4, 5.a, 5.b, 5.c, 5.e, 5.f, and 5.i. To the extent that this Interrogatory requests information concerning Petitioners' fact witnesses, and/or to the extent that this Interrogatory applies to material that will be covered by expert discovery, Petitioners will respond according to the discovery schedule set forth in the case management order. Without waiving such objection, Petitioners refer to their response to Request for Production No. 7.**

Request for Production No. 11: Produce for inspection and copying all documents that substantiate, reflect or refer to any fact asserted in paragraph 56 of the Petition for Review or in your responses to Interrogatory Nos. 12 and 13.

**RESPONSE: Petitioners object to this request on the grounds set forth in General Objections 2, 3, 4, 5.a, 5.b, 5.e, 5.f, and 5.c. Without waiving such objection, Petitioners refer to their response to Request for Production No. 7.**

Request for Admission No. 15: Admit that the vanadium is not a "regulated NSR pollutant."

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 16: Admit that nickel is not a "regulated NSR pollutant."

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 17: Admit that selenium is not a "regulated NSR pollutant."

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 18: Admit that mercury and beryllium are the only metals that are “regulated NSR pollutants.”

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 19: Admit that the NSR rules do not require BP to limit increases in emission of any pollutant that is not a “regulated NSR pollutant.”

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request For Admission No. 20: With respect to the averments in Count 2 of the Petition for Review, admit that a BACT Analysis is not required for any pollutant for which the CXHO Project will not result in a significant net emissions increase.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 21: Admit that at the time the Permit was issued, USEPA's position was that it was appropriate to use PM10 as a surrogate for PM2.5 emissions in netting calculations.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objections 5.h and 5.i.**

Interrogatory No. 14: If your response to request for Admission No. 21 is anything other than an unconditional admission, state the factual basis for that denial or qualification.

**ANSWER: Petitioners object to this Request for Admission on the grounds stated in General Objections 5.h and 5.i.**

Request for Admission No. 22: Admit that, at the time the Permit was issued, no provision of the Clean Air Act imposed any limitation on the emissions of any “green house gas” from any source.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h. Notwithstanding this objection, Petitioners deny this Request for Admission.**

Request for Admission No. 23: Admit that, at the time the Permit was issued, no regulation adopted pursuant to the Clean Air Act imposed any limitation on the emissions of any “green house gas” from any source.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h. Notwithstanding this objection, Petitioners deny this Request for Admission.**

Interrogatory No. 15: Identify the what type of legal entity H.E.C is, the date of Save the Dune's incorporation or registration, and Save The Dune's state of incorporation or registration.

**ANSWER: H.E.C. is an Indiana Not-for-Profit corporation, incorporated on or about 1983. Save the Dunes is an Indiana Not-for-Profit corporation, incorporated in or about August, 1953. Sierra Club is a California Not-for-Profit corporation, incorporated on or about 1892.**

Request for Production No. 12: Produce the corporate bylaws, operating agreements, partnership agreements, or equivalent documents of [Petitioner].

**RESPONSE: Save the Dunes’, Sierra Club’s, and H.E.C.’s By-Laws are attached hereto.**

Request for Admission No. 24: Admit that [Petitioner] had the opportunity to submit written comments to IDEM prior to the issuance of the final permit.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objections 5.d, 5.e, and 5.h. Without waiving such objection, Petitioners deny the Request, except admit that there was a specified timeframe during which IDEM accepted the submittal of written comments prior to the issuance of the final permit.**

Request for Admission No. 25: Admit that the time allowed by IDEM for the public comment period was sufficient to meet all applicable laws and regulations.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objection 5.h.**

Request for Admission No. 26: Admit that [Petitioner] had the opportunity to speak at the public hearing held by IDEM related to the proposed issuance of the permit.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objections 5.d, 5.e, and 5.h. Without waiving such objection, Petitioners deny the Request, except admit that IDEM held a public hearing concerning the draft permit on March 14, 2008 at which members of the public were provided the opportunity to present oral comments.**

Interrogatory No. 16: If any of your responses to Requests for Admissions No. 24, 25, or 26 were anything other than an unqualified admission, please state the factual basis for your denial or partial denial to that Request or those Requests.

**ANSWER: Petitioners object to this Request for Admission on the grounds stated in General Objections 5.d, 5.e, and 5.h. Without waiving such objection, Petitioners refer to their answers to Requests for Admissions No. 24, 25 and 26.**

Request for Production No. 13: If any of your responses to Requests for Admissions No. 24, 25 or 26 were anything other than an unqualified admission, please produce all documents supporting your denial or partial denial to that Request or those Requests.

**RESPONSE: Petitioners object to this Request for Admission on the grounds stated in General Objections 4, 5.d, 5.e., and 5.h. Without waiving such objection, Petitioners respond that that, inter alia, letters submitted by the Natural Resources Defense Council to IDEM concerning the comment process dated February 6, 2008 and February 21, 2008 describe the basis for Petitioners' concerns regarding the public comment process. These documents are believed to be already in the possession of Respondent, but Petitioners will provide a copy upon request.**

I, Thomas Anderson, affirm under penalties for perjury that I have read the foregoing document and responses, and that the responses made therein are true and correct to the best of my knowledge and belief.

---

Thomas Anderson  
Executive Director  
Save the Dunes Council, Inc.

I, Bowden Quinn, affirm under penalties for perjury that I have read the foregoing document and responses, and that the responses made therein are true and correct to the best of my knowledge and belief.

---

Bowden Quinn  
Conservation Program Coordinator  
Sierra Club Hoosier Chapter

I, Jesse Kharbanda, affirm under penalties for perjury that I have read the foregoing document and responses, and that the responses made therein are true and correct to the best of my knowledge and belief.

---

Jesse Kharbanda, Executive Director  
Hoosier Environmental Council

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