



## Division of Materials and Waste Management

### Response to Comments

**Project: BP Toledo Refinery Permit Renewal**  
**Ohio EPA ID #: OHD 005 057 542**

#### Agency Contacts for this Project

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Ohio EPA initiated a comment period on August 14, 2012, regarding the draft Hazardous Waste Renewal Permit. This document summarizes the comments and questions received during the associated comment period, which ended on September 30, 2012.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health. Often, public concerns fall outside the scope of that authority. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format.

#### **Specific Comments from BP-Husky Refining, LLC Toledo Refinery:**

##### Module A – General Permit Conditions

**Comment 1:**           **A.16 Waste Shipments (OAC Rule 3745-53-11).** The comment requests that this be designated as reserved. The refinery ships out all waste within 90 days.

**Response 1:** This condition is standard permit language that is meant to ensure that only properly registered transporters are used when shipping hazardous waste. Since the facility generates and ships hazardous waste this permit condition still applies. No change has been made to the permit with respect to this comment.

**Comment 2a:** **A.28(a) Information to be maintained at Facility. The comment requests that the reference be to Post-Closure and not Closure.**

**Response 2a:** Closure includes Post-Closure. BP has completed Closure obligations, however, Post-Closure obligations remain. This language is standard and has not been changed.

**Comment 2b:** **A.28(a)(i) This condition specifically references OAC 3745-54-15, applicable to general inspections, OAC 3745-55-74 applicable to general containers and OAC 3745-55-95 applicable to tanks. The comment states that this is not applicable to Corrective Action or Post-Closure requirements. The comment states that inspections applicable to Corrective Action or Post-Closure are required in permit condition A.28(a)(ii) and A.28(a)(iv), therefore, this condition should be removed.**

**Response 2b:** Ohio EPA agrees that tanks and containers rules do not apply. Therefore, references to OAC 3745-55-74 and OAC 3745-55-95 in A.28(a)(i) have been removed. OAC 3745-54-15 is applicable and not specific to Corrective Action or Post-Closure. This condition has been retained with the references revised as noted above.

Module B – General Facility Conditions

**Comment 3:** **B.24 Manifest System. This condition references OAC Rules 3745-54-70, 3745-54-71 and 3745-54-72 and 3745-54-76. The comment requests that this condition should be removed since the Facility does not receive hazardous waste.**

**Response 3:** Ohio EPA agrees that OAC Rules 3745-54-70 through 54-72 and OAC Rule 3745-54-76 should be removed. However, B.24 also contains references to Chapter 3745-52. This condition will remain and the rules referenced have been changed to OAC Rules 3745-52-20 through 52-23.

**Comment 4:** **B.25 Annual Reports and Additional Reports.** The comment states that since BP-Husky does not act as a treatment, storage or disposal facility, that these requirements do not apply. The comment requests that this condition be designated reserved.

**Response 4:** Ohio EPA disagrees. Hazardous waste could potentially be generated at the facility. Additionally, BP-Husky is operating under a permit and is required to submit annual reports which include waste minimization information, financial assurance, and any additional reports required. Therefore, this condition has not been changed.

#### Module E - Corrective Action Requirements

**Comment 5a:** **E. 1 Corrective Action at the Facility.** The comment requests that language in the permit condition be revised to indicate that **Corrective Action will be instituted for all newly identified waste management units (WMUs).**

**Response 5a:** Sections 9(f), 10 and 11 of Module E of the permit already address the possibility of a new unit or units being discovered or identified. Section 9(f) states, "In case of a newly discovered waste management unit that requires corrective measures, Ohio EPA will initiate a permit modification, as provided by OAC Rule 3745-50-51...." Section 10 lists what information must be submitted to Ohio EPA when a potential SWMU is first identified. Section 11 indicates how to pursue corrective action for "Newly Identified WMUs and Releases."

The language in the permit is standard and customary for all permitted facilities. Corrective Action is not complete for all of the SWMUs or AOCs and the facility has not been released from all of its Corrective Action obligations. No change has been made to the permit with respect to this comment.

**Comment 5b:** **E. 1 Corrective Action at the Facility.** The comment requests that language in the permit condition be revised to indicate that **ground water investigation and monitoring will be performed as necessary for all newly identified WMUs.**

- Response 5b:** The permit condition language makes general statements to cover new or existing units. Changing the language to specify “newly identified WMUs” may appear to cause a potential exclusion and would not be considered as protective as the current language. No change has been made to the permit with respect to this comment.
- Comment 6:** **E.2. Corrective Action Beyond the Facility Boundary. The comment requests that language in the permit condition be revised to indicate that Corrective Action beyond the facility boundary will be instituted for all *newly identified WMUs*.**
- Response 6:** The permit condition language makes general statements to cover new or existing units. Corrective Action is not complete for all of the SWMUs or AOCs and the facility has not been released from all of its Corrective Action obligations. BP also continues its involvement with a watershed partnership for Otter Creek. No change has been made to the permit with respect to this comment.
- Comment 7a:** **E.5. RCRA Facility Investigation (RFI). The Condition states that the Permittee conducted an RFI for all applicable WMUs identified in Condition E.3. and Condition E.10. The comment requests that reference to Condition E.10 under this Condition should be removed because Condition E.10. is for Newly Identified WMUs or Releases which were not evaluated as part of the RFI because the unit(s) have not been identified yet.**
- Response 7a:** Ohio EPA regrets any confusion the new Condition language may have created. The Condition will be changed back to the present tense to say, “The Permittee must conduct an RFI to thoroughly evaluate the nature and extent of the release of hazardous wastes and hazardous constituents from all applicable WMUs identified in Permit Condition E.3 above and Permit Condition E.10.” Ohio EPA understands that RFI work for existing units identified in E.3 is complete. Therefore, Ohio EPA has changed the requested permit language.
- Comment 7b:** **E.5. RCRA Facility Investigation (RFI). The comment states that Conditions E.5(a) through E.5(c) provide the scope of work required to complete an RFI. The comment requests that since the RFI for units in Condition E.3 is complete, the Condition should be “Reserved” or revised to indicate that an RFI will be instituted for all newly identified WMUs.**

- Response 7b:** As the comment says, the Conditions “provide the scope of work required for completion of an RFI.” The permit language is standard and customary and provides part of the framework for progressing through Corrective Action. No change has been made to the permit with respect to this comment.
- Comment 8:** **E.7. Determination of No Further Action.** The comment states that since Corrective Action for all units identified in Condition E.3 is complete, that the permit condition should be changed to say “Reserved” or revised to apply only to newly identified WMUs.
- Response 8:** Corrective Action is not complete for all of the SWMUs or AOCs and the facility has not been released from all of its Corrective Action obligations. BP also continues its involvement with a watershed partnership for Otter Creek. No change has been made to the permit with respect to this comment.
- Comment 9:** **E.8. Corrective Measures Study (CMS).** The comment states that since the CMS for all of the units identified in Condition E.3 is complete, the permit condition should be changed to “Reserved” or revised to apply to only newly identified WMUs.
- Response 9:** The permit language is standard and customary and provides part of the framework for going through Corrective Action. Corrective Action is not complete for all of the SWMUs or AOCs and the facility has not been released from all of its Corrective Action obligations. No change has been made to the permit with respect to this comment.
- Comment 10a:** **E.9. Corrective Measures Implementation (CMI).** The comment states that since CMI activities are complete at all units identified in Condition E.3, then language in the permit condition should be changed to “Reserved” or revised to apply only to newly identified WMUs.
- Response 10a:** The permit language is standard and customary and provides part of the framework for going through Corrective Action. Ohio EPA understands that CMI work for the units identified in Condition E.3 is complete. No change has been made to the permit with respect to this comment.

**Comment 10b:** **Condition E.9(a)(1). Corrective Measures Implementation (CMI). The comment states that since CMI activities are complete, then the sentence should be deleted from the permit. The sentence states that based on the RFI Investigation and risk assessment reports conducted in 2001, Media Cleanup Standards (MCS) were developed to determine the specific areas of the Facility that required corrective measures.**

**Response 10b:** The Condition explains that the MCS were developed as part of a process defining how Corrective Measures were addressed. Ohio EPA does not see how keeping these standards in the permit represents a hardship to the facility. No change has been made to the permit with respect to this comment.

**Comment 10c:** **Condition E.9(a)(ii). Corrective Measures Implementation (CMI). The comment states that the condition describes completed activities for WMUs identified in Condition E.3. Since CMI activities are complete, then the paragraph should either be deleted from the permit or revised to apply only to newly identified WMUs.**

**Response 10c:** Corrective Action is not complete for all of the SWMUs or AOCs and the facility has not been released from all of its Corrective Action obligations. BP also continues its involvement with a watershed partnership for Otter Creek. No change has been made to the permit with respect to this comment.

**Comment 10d:** **Conditions E.9(b) and E.9(c). Corrective Measures Implementation (CMI). The comment requests that the Conditions be replaced with a summary table that provides information such as: SWMU name and number, history, COCs, final disposition, documentation of completion of Corrective Action and any on-going requirements. The summary table would be issued as an attachment to the permit.**

**Response 10d:** Ohio EPA is receptive to the suggestion, but does not see a summary table as necessary. If the facility wants to submit a (Class 1A) permit modification to include such a table, Ohio EPA will take it under consideration. No change has been made to the permit with respect to this comment.

- Comment 10e:** Condition E.9(c)(vi). Corrective Measures Implementation (CMI). The comment requests that the Construction Completion Report approval date for SWMU 36 be added to that description of SWMU 36.
- Response 10e:** Ohio EPA agrees with the clarification and has made the requested permit language change.
- Comment 10f:** Condition E.9(d). Corrective Measures Implementation (CMI), Monthly Progress Reports. The comment states that the condition requires the submittal of monthly progress reports and since Corrective Action is complete, the requirement for monthly progress reports should be removed from the permit or revised to apply only to newly identified WMUs.
- Response 10f:** Ohio EPA agrees that the monthly progress reports for Corrective Action are no longer necessary and can be removed from the permit. Other reporting requirements for remaining Corrective Action and Closure units still apply according to the schedules in the respective closure plan or CMI Construction Completion Report.
- Comment 10g:** Condition E.9(e). Corrective Measures Implementation (CMI), Corrective Measures Completion Report. The comment states that since Corrective Action is complete, then the requirement in the Condition to submit a Corrective Measures Completion Report should be "Reserved" or revised to apply only to newly identified WMUs.
- Response 10g:** The permit language is standard and customary and provides part of the framework for going through Corrective Action. Corrective Action is not complete for all of the SWMUs or AOCs and the facility has not been released from all of its Corrective Action obligations. No change has been made to the permit with respect to this comment.
- Comment 10h:** Condition E.9(g). Corrective Measures Implementation (CMI), Financial Assurance. The comment states that since Corrective Action is complete, then the Condition should be "Reserved" or revised to apply only to newly identified WMUs.
- Response 10h:** The permit language is standard and customary and provides part of the framework for going through Corrective Action. Corrective Action is not complete for all of the SWMUs or AOCs and the

facility has not been released from all of its Corrective Action obligations. No change has been made to the permit with respect to this comment.

Module F - Post-Closure Care

**Comment 11a:** **F. Post-Closure Care. The comment requests that the LTU 4 description be revised to include the date LTU 4's closure was certified by Ohio EPA.**

**Response 11a:** The comment would add clarification to the current status of the unit. Therefore, Ohio EPA has added the following sentence to the paragraph summarizing LTU 4. The permit will now read: "Ohio EPA issued a Final Closure letter for LTU 4 on June 14, 2005." In addition, the last sentence of the LTU 4 paragraph has been revised to show the current O&M obligations that remain at the unit. The last sentence now reads: "LTU 4 has on-going post-closure cap inspections, reporting and maintenance."

**Comment 11b:** **F.2.(b) Post Closure Procedures and Use of the Property. The comment points out that the Condition is about ground water monitoring requirements and references OAC 3745-54-90 through 3745-54-101. OAC 3745-54-100 and 3745-54-101 are Corrective Action rules and since this is a Post-Closure module, the request is made to exclude rules OAC 3745-54-100 and 3745-54-101.**

**Response 11b:** The permit language is standard and customary. Module J is to include all applicable ground water monitoring requirements for the detection monitoring program, compliance monitoring program, and corrective action program. OAC Rules 3745-54-100 and 3745-54-101 are ground water monitoring corrective action requirements that could be triggered and required to be implemented during Post-Closure. No change has been made to the permit with respect to this comment.

**Comment 11c:** **F.2.(c) Post-Closure Procedures and Use of the Property. The comment requests that the Condition be revised to reference the approved Post-Closure Plan for the North Stormwater Pond and that existing language within the Condition should be removed and replaced by reference to the approved Post-Closure Plan. The comment continues that the Condition is**

**redundant with the requirements of the Post-Closure Plan and that the Condition should be deleted.**

**Response 11c:** The Post-Closure plan describes the procedures to be followed to comply with the Post-Closure Care requirements listed in Permit Conditions F.2(c)(i) and F.2(c)(ii). Should future information or experience indicate that the procedures in the approved Post-Closure plan do not meet the requirements in Permit Conditions F.2(c)(i) and F.2(c)(ii), then to maintain compliance with the Permit Conditions, the Permittee must submit a permit modification revising the Post-Closure plan procedures to meet the requirements of Permit Conditions F.2(c)(i) and F.2(c)(ii). No change has been made to the permit with respect to this comment.

**Comment 11d:** **F.2.(d) Post Closure Procedures and Use of the Property.** The comment requests that the Condition is revised to reference the approved Post-Closure Plan for LTU 4 and that existing language within the Condition should be removed and replaced by reference to the approved Post-Closure Plan. The comment continues that the Condition is either redundant with the requirements of the Post-Closure Plan, or inconsistent with the approved closure of the unit and that the Condition should be deleted.

**Response 11d:** The Post-Closure plan describes the procedures to be followed to comply with the Post-Closure Care requirements listed in Permit Conditions F.2(d)(i) and F.2(d)(vi). Should future information or experience indicate that the procedures in the approved Post-Closure plan do not meet the requirements in Permit Conditions F.2(d)(i) and F.2(d)(vi), then to maintain compliance with the Permit Conditions, the Permittee must submit a permit modification revising the Post-Closure plan procedures to meet the requirements of Permit Conditions F.2(d)(i) and F.2(d)(vi).

Ohio EPA is concerned over the comment stating that certain sections of the Condition are "inconsistent with the final approved closure of the unit" and the Agency would like more information about this issue. No change has been made to the permit with respect to this comment.

**Comment 12:** **F.2.(g) Post-Closure Procedures and Use of Property.** The Condition states that post-closure care activities will be

conducted in accordance with the provisions of the post-closure plans.

**Response 12:** LTU 4 utilizes an *Engineering Control Maintenance Plan* for post-closure care activities. Therefore, to add clarification to this Condition, the second sentence has been revised to add, "or *Engineering Control Maintenance Plan*" to the end of the sentence.

Module J – Ground Water Monitoring

**Comment 13:** **J.5. Ground Water Surface Elevation – OAC Rule 3745-54-97(F)**  
This Permit Condition should be revised to read as follows to account for limited-scope, non-routine sampling events: "The Permittee must determine the ground water surface elevation at each monitoring well and piezometer identified in the table in Permit Condition J.3.(b) during each routine semi-annual sampling event using the methods in Section 3.2.1 of the UAGWDMP. Water Levels must also be measured at each well sampled during non-routine sampling events (e.g., resampling events)."

**Response 13:** The suggested language for Permit Condition J.5 clarifies the intended requirements for non-routine sampling events. Permit Condition J.5 was revised with the suggested language.

**Comment 14:** **J.7. Statistical Procedures – OAC Rule 3745-54-97 (H)&(I)**  
This Permit Condition should be revised to read as follows to clarify that only the monitoring wells (not piezometers) in Permit Condition J.3(b) are sampled: "The Permittee must use the following statistical procedures in evaluating ground water monitoring results for each hazardous constituent in Permit Condition J.9(b) in each monitoring well in Permit Condition J.3(b)..."

**Response 14:** The suggested language for Permit Condition J.7 clarifies that the sampling and statistical analysis requirements are intended to only apply to monitoring wells (not piezometers) listed in Permit Condition J.3(b). Permit condition J.7 was revised with the suggested language.

**Comment 15:** **J.9. Detection Monitoring Program – OAC Rule 3745-54-98**  
The permit Condition J.9(b) table footnote implies that there is a compliance issue when none exists and should be revised to

**read as follows: “\*Background based on PQL that has since been lowered. The background comparison standard will be updated when 8 analysis results using the lower PQL are available.”**

- Response 15:** The rule citation provides the justification for the permit condition. The asterisks identify the standards currently known not to meet the rule requirement and therefore, must be updated when sufficient background data is available. The issue would not become a compliance issue unless the Permittee failed to take action to revise the permit to comply with the requirements of OAC Rule 37-54-97(I)(5). However, the suggested language also makes it clear that the requirement to update a standard also applies in the future should a PQL be lowered. Therefore, Permit Condition J.9(b) table was revised as follows: An asterisk was also added to the column header of the table and the footnote was revised with the following language that is similar to the suggested language: “\*Background standards based on a PQL that have since been lowered or are lowered in the future must be updated when 8 analysis results using a lower PQL are available. Standards with an “\*” are currently known to have been lowered and must be updated within 90 days of receiving the eighth sampling and analysis result with the new lower PQL.”
- Comment 16:** Condition J.9(g)(ii) should be revised to define “immediately.” In addition, the Permit Condition should be revised to reflect the fact that (since 2002) the facility has an approved site-specific list of Appendix to OAC Rule 3745-54-98 constituents. The Permit Condition should be revised to read as follows: “Immediately (within 30 days) sample the ground water at the compliance well listed in Permit Conditions J.3(b) and determine whether constituents identified in Tables 5 & 6 of the UAGWDMP that were not analyzed during the most recent event in which the statistically significant increase occurred are present, and if so, in what concentration.”
- Response 16:** The suggested language clarifies that the Permittee does have an approved subset of compounds listed in Appendix to OAC Rule 3745-54-98. Permit Condition J.9(g)(ii) was revised with the suggested language.
- Comment 17:** Condition J.9(g)(iii) should be revised to be consistent with the above comment to Permit Condition J.9(g)(ii), to read as

follows to reflect the facility's use of an "approved subset" of OAC Rule 3745-54-98 constituents: "For any compounds listed in Tables 5 & 6 of the UAGWDMP found in the analysis pursuant to Permit Condition J.9(f)(ii), the Permittee may re-sample affected wells..."

**Response 17:** The suggested language clarifies that the Permittee does have an approved subset of compounds listed in Appendix to OAC Rule 3745-54-98. Permit Condition J.9(g)(iii) was revised with the suggested language.

**Comment 18:** Permit Condition J.9(g)(iv)(a): Consistent with the above comments regarding Permit Conditions J.9.(g)(ii) & (iii), this Permit Condition should be revised to read as follows to reflect the facility's use of a site-specific subset of OAC Rule 3745-54-98 constituents: "Identification of the concentration of any site-specific Appendix to OAC Rule 3745-54-98 constituent (Tables 5 & 6 of the UAGWDMP) detected in the ground water..."

**Response 18:** The suggested language clarifies that the Permittee does have an approved subset of compounds listed in Appendix to OAC Rule 3745-54-98. Permit Condition J.9(g)(iv)(a) was revised with the suggested language.

**Specific Comment from BP-Husky Refining, LLC's Legal Counsel:**

**Comment 19:** Legal counsel for BP-Husky Refining, LLC provided a comment regarding the language in condition E.9, *Corrective Measures Implementation*, of the draft renewal permit. Specifically, the comment requests that language in permit condition E.9(b)(i) addressing Otter Creek and the requirement to submit an annual report by May 1 of each year outlining any activities that the permittee has undertaken in support of a watershed partnership during the previous reporting period be removed from the permit.

**Response 19:** The language that the commenter has requested be removed was added to the permit in July 2006 pursuant to a Class 1A permit modification at the request of BP Products North America, Inc. The language added pursuant to the permit modification resolved an appeal to the Environmental Review Appeals Commission of a modification of the permit. The language has remained in the

permit since the July 2006 permit modification in the identical form as originally requested by BP Products North America, Inc. in the July 2006 permit modification. The commenter is requesting that Ohio EPA make changes to the permit as part of the permit renewal process. Changes to permits are processed as modifications in accordance with Ohio Administrative Code rule 3745-50-51. Ohio EPA has concluded that it is not appropriate to remove the language in permit condition E.9(b)(i) from the permit.

#### **Ohio EPA Revision:**

Please note: Due to Senate Bill 294, effective September 5, 2012, hazardous waste facilities are now required to submit their hazardous waste reports on a biennial basis rather than annually. To eliminate any possible misunderstandings between the timelines for submitting the biennial hazardous waste report and the annual ground water report the wording in Permit Condition J.8(b)(i) was changed. The primary change to Permit Condition J.8(b)(i) was the wording "annual report" was changed to "Supplementary Ground Water Monitoring report" to help differentiate the ground water report and the hazardous waste report..

**End of Response to Comments**

