April 18, 2014

Laura Fernandez, Acting EPA Suspension and Debarment Official U.S. Environmental Protection Agency Office of Grants and Debarment, MC 3901R 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460 fernandez.laura@epa.gov

Dear Ms. Fernandez:

On behalf of the millions of members of our organizations and millions of Americans concerned about how our tax dollars are spent, we call on the U.S. Environmental Protection Agency (EPA) to immediately suspend BP p.l.c. and its subsidiaries (BP) from receiving federal contracts.

On March 13, 2014, the EPA reached an administrative agreement with BP allowing the corporation to once again enter into new government contracts. The agreement, attained after BP sued the EPA claiming its suspensions was an abuse of the agency's authority, resolves all matters related to the suspension, debarment and statutory disqualification of BP following the Deepwater Horizon catastrophe. 2

We oppose the decision by the EPA, which undermines its own substantiated arguments and discretion, to cave to the pressure of BP by agreeing to lift the suspension in exchange for the same types of promises and ineffective procedures that have failed to reform or deter violations by BP in the past.

In fact, the EPA acknowledges that BP has avoided suspension in the past by promising to correct the conditions that gave rise to those prior convictions, noting in its July 2013 decision to continue suspension, "BP's past record in safety and risk management, notwithstanding numerous changes, renewed focus, and promises of 'lessons learned,' continued to result in the loss of human life and catastrophic damage to the environment."³

Allowing BP to resume business with the U.S. government is irresponsible and undermines the spirit and the letter of the laws intended to protect the public interest from reckless corporate contractors. We are calling on the EPA to right this wrong by using its authority to immediately initiate the disqualification of BP and its subsidiaries from federal contracting based on other instances of misconduct not resolved by EPA's recent agreement to lift the suspension imposed following the Deepwater Horizon disaster.

A mere 11 days after reaching the administrative agreement allowing BP to once again enter into new government contracts, BP North America Inc.'s petroleum refinery in Whiting, Indiana, spilled up to 1,638 gallons of crude oil into Lake Michigan, allegedly following a malfunction in a

¹ http://www2.epa.gov/sites/production/files/2014-03/documents/bpadmin-agreement-mar-13-2014.pdf

٤ Id.

http://www.citizen.org/documents/bp-lawsuit-against-epa-suspension-august-2013.pdf

distillation unit. BP originally reported that only 756 gallons had been spilled.⁴ It is unknown whether the initial misrepresentation of the spill was accidental, but BP has lied about the extent of spills in the past.

As part of its November 2012 plea agreement with the U.S. government, the corporation pleaded guilty to obstruction for lying to Congress about the scope of the Gulf oil spill.⁵ Investigation into the cause of the malfunction, the reporting of the spill, and whether BP was in violation of the U.S. Clean Water Act is under way.⁶

BP's Whiting refinery is no stranger to legal challenges and government action. In May 2012, the U.S. government reached a settlement with BP for violations of the Clean Air Act (CAA) in connection with construction and expansion of the refinery to process Canadian tar sands oil, as well as violations of a 2001 settlement agreement entered into with the EPA.⁷ The oil company was ordered to pay an \$8 million penalty and invest more than \$400 million to install new pollution controls for the facility.

Additionally, BP, along with four other corporations, are being sued by residents from Chicago's Southeast Side neighborhood, where they claim that black dust from BP's oil refinery is polluting the air and coating their homes and property with petroleum coke, a byproduct of refining gasoline and diesel from tar sands oil.

The lawsuit, filed in November 2013, asks a judge to prohibit BP and the other companies from bringing petcoke to the densely populated Southeast Side community. The suit also seeks reimbursement for environmental cleanup and any loss of value to properties.⁸

The regulatory framework allows agency officials to suspend government contractors when they suspect, upon adequate evidence, a lack of business integrity or honesty that seriously affect the present responsibility of a contractor, or when contractors are accused of offenses indicating a lack of business integrity.⁹

These laws are in place to protect the public interest. Failing to use this powerful tool on irresponsible corporate actors, especially chronic offenders like BP, puts the public's interest at risk, weakens debarment and suspension as a government enforcement action, and sends a clear message to contractors that no matter how egregious their actions, the U.S. government will continue to do business with them.

This latest spill is just more proof that fines and promises of corrective action alone won't change BP's culture of putting profits before people and the environment. Considering aggravating factors such as BP's history of malfeasance and criminal violations, as well as the oil company's record of noncompliance with remedial actions, the EPA should take immediate steps to exclude all BP entities from federal contracts.

⁴ http://midwest.construction.com/midwest_construction_news/2014/0331-us-sens-seek-meeting-with-bp-following-lake-michigan-oil-spill-.asp

⁵ http://www.justice.gov/opa/pr/2012/November/12-ag-1369.html

⁶ http://www.ogi.com/articles/2014/03/epa-leads-investigation-of-crude-discharge-at-bp-whiting-refinery.html

⁷ http://www.contractormisconduct.org/ass/contractors/61/cases/1793/2727/bp-amoco-whiting2012 epapr.pdf

⁸ http://www.nwitimes.com/business/local/petcoke-class-action-lawsuit-names-bp-four-other-defendants/article d8604d6a-a861-5434-b224-d50f2cd9572a.html

⁹ 48 C.F.R. §9.407-2(a)(1)-(9) (suspicion on adequate evidence) & 48 C.F.R. §9.407-2(b) (indictment).

Thank you for your consideration,

National Organizations

Beyond Nuclear Center for Biological Diversity CODEPINK

CREDO

Earthday Network

Food & Water Watch

Friends of the Earth

Greenpeace

Institute for Policy Studies, Climate Policy Program

Labor Network for Sustainability

Oil Change International

OneStop Business Institute

Public Citizen

Save the Manatee Club

Turtle Island Restoration Network

Unitarian Universalist Ministry for Earth

WildEarth Guardians

State Organizations

Alabama

Alabama Coast United

Operation HomeCare, Inc.

<u>Alaska</u>

Alaska's Big Village Network Alaska Inter-Tribal Council Center for Water Advocacy

California

Ocean Conservation Research The Ocean Foundation

Washington, D.C. area

Chesapeake Climate Action Network

<u>Florida</u>

Citizens Against Toxic Exposure, Inc Environmental Youth Council Floridian Aquifer Legal Defense Organization

Friends of Matanzas

Our Santa Fe River

Robert N. Hartsell, P.A.

Sea Turtle Oversight Protection

South Florida Audubon Society

South Florida Wildlands Association

Sunshine State Interfaith Power & Light

The CLEO Institute

Unitarian Universalist Justice Florida

Illinois

Little Village Environmental Justice Organization Southeast Environmental Task Force

Indiana

Citizens Action Coalition

<u>Louisiana</u>

Gulf Future Coalition

Gulf Restoration Network

Michigan

Alliance to Halt Fermi 3

Don't Waste Michigan

Ecology Center

Michigan Safe Energy Future, South Haven Chapter

Michigan Safe Energy Future, Kalamazoo Chapter

Physicians for Social Responsibility - Michigan Chapter

New Jersey

Clean Ocean Action

Puerto Rico

CORALations - Puerto Rico

South Carolina

Liberty Hill Missionary Bapt. Church

Wisconsin

Nukewatch