

July 1, 2013

**Submission on Enforcement Matters
Council for Environmental Cooperation**

Re: Lack of Enforcement following ExxonMobil Baton Rouge Refinery Benzene Spill and EPA Risk Management Plan Inspection

I. Background

The Louisiana Bucket Brigade (LABB) is an environmental health and justice organization that has been supporting grassroots communities all over the state in their fight to be free of industrial pollution since 2000. Louisiana is home to over 250 petrochemical refineries and 60,000 oil and gas wells that are increasingly vulnerable to severe tropical storms and hurricanes. Baton Rouge is the state capitol and home to 19 petrochemical facilities just 1.5 miles from downtown. LABB has been working with neighbors surrounding this complex since the 2003 Honeywell explosion blew out windows for miles and sent hundreds of nearby residents to local hospitals.

The U.S. Environmental Protection Agency has failed to use the Clean Air Act to enforce environmental hazards discovered in the agency's July 2012 Risk Management Plan inspection of the ExxonMobil Refinery in Baton Rouge, Louisiana (EMBRRF). The ExxonMobil Baton Rouge Refinery was built in 1909

Under the Clean Air Act 40 CFR Part 68 Accidental Release Prevention, the Risk Management Plan (RMP) rule is designed to prevent catastrophic accidents from extremely hazardous substances. In October 2010, the Louisiana Bucket Brigade reviewed the ExxonMobil Baton Rouge Refinery Risk Management Plan (RMP) while visiting EPA Region VI in Dallas. Our review shows that the RMP as written does not comply with CAA(r) 40 CFR Part 68 Accidental Release Prevention. Though the facility's RMP stated that they have no accident history to report for any of the processes covered by the RMP, the refinery's own upset reports show that EMBRR has reported 36 accidents totaling 926,286 pounds of pollution from units covered by the RMP to the LDEQ and/or State Police from 2005-2010. See Appendix A for an Excel workbook of these incidents organized by unit.

The proximity of the community to the sprawling petrochemical complex that includes ExxonMobil's Refinery and Chemical Plant is one of the most egregious cases of environmental injustice in the region. According to the American Community Survey 2010 there are 59,690 people living within two-miles of the refinery (Appendix B). Ninety-four percent of this population is African American, 41% are living below the poverty line and 50% of the children are living in poverty.

LABB warned EPA of all of the above in a joint LABB and United Steelworkers Local 13-12 letter dated January 18, 2012. (Appendix C)

II. June 14 Benzene Spill

On Friday June 14th, 2012, LABB Program Manager Anna Hrybyk led two EPA representatives from Region 6's Office of Environmental Justice on a tour through the neighborhoods surrounding the EMBRRF facility. During the entire tour, which consisted of visiting with neighbors in their homes, Ms. Hrybyk reports that the ambient air outside stank like burnt oil. EPA Environmental Justice official Israel Anderson questioned neighbors extensively about what they were doing to fight for cleaner air and yet covered his nose and ran to his car every time he entered the outside air. Ms. Hrybyk returned home with a splitting headache and woke the next morning to see a report from Exxon to the National Response Center stating that they had released 10 pounds of benzene and that the leak was contained. Ms. Hrybyk wrote to Cheryl Nolan, Assistant Secretary of LDEQ's Office of Compliance and to Esteban Herrera, EPA Compliance Assurance and Enforcement Division Section Chief on Friday June 15, 2012 stating that she did not believe it was 10 pounds because of the severity of the stench in the neighborhoods surrounding the plant.

The response from LDEQ was that the release was less than reportable quantities and that everything was under control by 5am on Thursday¹. LABB had firsthand information from being in the neighborhood between 1:30pm – 5:30 pm on Thursday (with two region VI employees who happened to be touring that day) as well as ongoing reports from neighbors. Despite this, LABB concerns on Friday evening were dismissed. "As always you guys are on top of it and respond to these types of releases within the time lines of LDEQ procedures," wrote Mr. Herrera to the LDEQ (with LABB cc:d), even as serious problems were underway. It may be helpful to recall that in December of 2012 the EPA Inspector General report on State Enforcement Oversight found that the LDEQ has a "culture of protecting industry."²

On Saturday June 16, 2012, Ms. Hrybyk received reports from workers inside the plant that approximately 700 barrels of naphtha had been released into the sewer system of the Exxon complex (over 2400 acres). The Wastewater Treatment Plant (WWTP) was evacuated and Exxon was operating from an offsite unit. The naphtha leaking into the trunk line that runs the length of the entire plant, connecting the tank on the Northeast side to the WWTP on the Southwest end close to the River. This trunk line includes the 13-14 separator tank (open to the atmosphere) on the west side of the tank close to the power plant.

¹ <http://theadvocate.com/home/3160236-125/deq-investigates-spill>

² <http://www.epa.gov/oig/reports/2012/20111209-12-P-0113.pdf>

The entire sewer line has vents that allowed benzene vapors from the naphtha to enter into the air. Workers were still applying firefighting foam to suppress the vapors on Saturday and had shifts scheduled to do this through Sunday. 400 workers were being monitored for benzene exposure.

In EMBRRF and EMBRCP's final report dated August 14, 2012 on the accident (Appendix D) the company admitted to spilling:

31,022 pounds of Benzene
14,022 pounds of Volatile Organic Compounds
13,081 pounds of Toluene
2,588 pounds of Hexane
1,421 pounds of Cyclohexane

That's nearly as much benzene from one accident as the whole Exxon refinery reported emitting over the previous two years, according to the EPA's Toxic Release Inventory³.

National Public Radio's All Things Considered and the Center for Public Integrity recently did two stories on this accident:

<http://www.npr.org/2013/05/30/187044721/baton-rouge-s-corroded-overpolluting-neighbor-exxon>
<http://www.publicintegrity.org/2013/05/21/12654/upset-emissions-flares-air-worry-ground>

III. Failure to Notify and Protect

Community members were not notified of the spill by emergency siren or from Exxon's First Call system because according to Exxon "there was no action for them to take."⁴ However, LABB received 21 reports from the Baton Rouge neighborhoods surrounding the plant to our [iWitness Pollution Map](#) concerning the horrible air quality and health effects residents experienced in the days and weeks following the spill (Appendix E). It took Exxon until August to fully clean up all the naphtha that had spilled in their sewer line.

"Bad smell on Thursday that continued into Friday. Baby got sick right after vomiting white fluid and a fitful sleep through Monday." 6/14/2012

³ http://www.rtknet.org/db/tri/tri.php?dbtype=C&facility_id=70805XXNBT4050S&rsei=y&sortp=D&reporting_year=2011&datype=T&reptype=f&detail=1&submit=GO

⁴ <http://theadvocate.com/home/3602499-125/plant-neighbors-complain-of-ailments>



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"Smelled burnt tar and it made me nauseous. I was outside at the time and had to go inside because the odor was so bad." 6/14/2012

"Friday June 15 my 14 year old told me while I was at work Friday he smelled gas bad at 2pm while he was inside. He couldn't go out because he was afraid of the smell. He tried to locate the news about the smell. He couldn't find any news on the leak. This is his second benzene exposure. The first leak when he was unborn caused him to be born at 5 months in April 1995. We still monitor for blood related cancers. Benzene is highly toxic and repeated exposures will be deadly to him." 6/15/2012

"Just about everyone in St. Gerard Church Rectory as well as people in the St. Gerard and Istrouma area/neighborhoods has complained of headaches, sinus problems, burning eyes and terrible fatigue. Father Marcel called his doctor but could not get an appointment. Father Matthew is not feeling well either. I worked several hours (4-5) outdoors on Saturday and Sunday at the Church and have been feeling the above symptoms as well." 6/20/2012

IV. Standard Heights Community Association

In the days following the spill, community members in the Standard Heights neighborhood began to organize themselves and demand accountability for the spill. They developed their short term and long-term goals which include holding Exxon accountable for the spill, getting a dependable alerts system and the provision of air monitors in the community (Appendix F).

On July 12, 2012, LABB Program Manager Anna Hrybyk along with Ms. Shirley Bowman and Ms. Tonga Nolan from the Standard Heights Community Association flew to Washington, D.C. to meet with senior EPA officials including Deputy Administrators of Enforcement, Air and Emergency Response, as well as the EPA Office of the Inspector General. The group presented three requests:

1. A criminal investigation of ExxonMobil for the Benzene release
2. An unannounced inspection of the ExxonMobil Refinery and Chemical Plant
3. An investigation into the LDEQ and EPA Region VI response

V. EPA Risk Management Plan Inspection

On July 16, 2012, Minerva DeLeon EPA Inspector showed up at the plant unannounced to conduct a Risk Management Plan inspection. The inspectors found that over 1,000 pipes were never inspected or tested. (Appendix G)

"The EPA inspection team observed several instances of piping, valve and vessel corrosion in the HCLA and PCLA unit blocks. Photographs #4 through #9 in Attachment B show examples of the corrosion that was pervasive in the area" (p.15)



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"There is a failure of the entire mechanical integrity program, which includes the mechanical integrity program inspections and correcting deficiencies in order to operate in a safe manner. BRRF failed to conduct appropriate checks and inspections to assure that equipment is installed properly and is consistent with design specifications and manufactures' instructions." (p.24)

"BRRF reported no accidents in its five-year accident history in the current RMP. Event [REDACTED] should have been reported as an accidental release from a covered process because nine people were transported to the local hospital due to a release from a covered process causing possible exposure (carbon monoxide). (p. 23)

"Failure to inspect underground piping, failure to have inspection records, and failure to correct deficiencies as required in the Prevention program 3." (p. 27)

VI. LDEQ Compliance Orders

Between July – September 2012, LDEQ issued two Compliance Orders and Notices of Potential Penalty to ExxonMobil Baton Rouge Refinery and Chemical Plant. The Compliance Order cited EMBRRF for several violations including: (Appendix H)

"The Respondent failed to provide notification of a change in the nature and rate of discharge. Specifically and according to the Respondent representatives on June 14, 2012, the Respondent was aware that the amount of pollutants discharged was substantially different (i.e. greater) than what was initially reported."

"The Respondent disposed and/or treated regulated hazardous waste without a permit or other authorization."

"The Respondent failed to control air pollutant emissions from a surface impoundment utilized for the treatment, storage and/or disposal of hazardous waste."

VII. Enforcement

To date, neither EPA nor LDEQ have brought fines or penalties against EMBRRF for this accident despite the potentially dangerous findings of their inspections. According to LDEQ records, EMBRRF has only been assessed a penalty one time, in 2004, for a total of \$7,368⁵. This despite EMBRRF having one of the highest rates of unauthorized discharges in the state. According to refinery reports to the LDEQ, they had 751 accidents between 2005-2011,

⁵ <http://edms.deq.louisiana.gov/app/doc/queryresults.aspx>



averaging two accidents per week, totaling over 4,353,274 pounds of pollution over and above their already large permitted amounts⁶.

LABB humbly requests the CEC to:

1. Pressure the EPA and LDEQ enforce the Clean Air Act by issuing the maximum penalties for this accident and the violations found during the Risk Management Plan inspection to deter failures to notify and inspect and replace corroded equipment in the future.
2. Pressure the EPA and LDEQ to use the general duty clause of the Clean Air Act to award no new permits to EMBRRF or EMBRCP until all findings in the 2012 RMP Inspection report are addressed. Specifically all corroded lines in the facility are replaced and a solid program of Leak Detection and Repair is established for all lines, including underground lines. This action will prevent future catastrophic accidents from occurring and harming the public.

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⁶ <http://www.louisianarefineryaccidentdatabase.org/refinery.php?refinery=BB009>

