

IN THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT
HENDERSON COUNTY, ILLINOIS

RICKY AND THAIS HARMON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 08-LL-0005
vs.)	
)	
ATLANTIC RICHFIELD CO., <i>et al.</i> ,)	JURY TRIAL DEMANDED
)	ON ALL CAUSES OF ACTION
Defendants.)	

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR SANCTIONS
AGAINST BP DEFENDANTS**

COME NOW Plaintiffs, by and through their undersigned counsel, and, pursuant to Supreme Court Rule 219(a) & (c), hereby submit this Reply in support of their Motion for Sanctions ("Motion for Sanctions") against BP Products North America Inc., BP Pipelines (North America) Inc. and Atlantic Richfield Company ("BP Defendants"). In further support of their Motion, Plaintiffs state and reply as follows:

I. History of BP's Decades Old Crude Oil Contamination in Lomax, Illinois

This case concerns a leaking underground, 8-inch, crude oil pipeline owned by BP. The pipeline traverses the community of Lomax, Illinois and rests a stone's throw away from the homes of Lomax residents. Decades ago, this pipeline leaked crude into the ground in Lomax and contaminated the ground water residents use for drinking, bathing, cooking and general use. By 1968, the pipeline had leaked so frequently and extensively that BP decided to "junk" the line altogether (BP's term for taking its pipeline out of service). While BP removed the pipeline on both sides of Lomax, it "junked in place" the portion of the line that rests under the surface of Lomax, and has ignored the line ever since.

As an initial matter, BP should have removed the portion of the line under Lomax in 1968 as it did with the remainder of the line. BP knew that the line had leaked on numerous occasions in and before 1968; but rather than incurring the expense of removing the leaky pipeline, it simply ignored it, allowing it to continue to contaminate the well water of Lomax residents. Further, BP disregarded its own policies that required monitoring, inspection and closure of its junked and abandoned pipelines. For decades, BP simply acted as if the line did not exist. As a result, Lomax residents unwittingly continued to ingest their contaminated well water for decades, inflicting irreversible harm upon themselves, their children and their grandchildren. Recent tap tests of the pipeline reveal that it still contains crude oil contaminated groundwater.

Though Lomax residents noticed that their water smelled, tasted and/or appeared different from water they consumed when visiting other towns, they believed the difference was due merely to the fact that their water was ground water rather than processed city water. BP's crude oil contamination within Lomax was not suspected until very recently. In 2005, the Illinois Environmental Protection Agency issued a notice of violation to BP. BP denied responsibility, claiming that it was not responsible for any crude contamination and that there was nothing wrong with the residents' drinking water (even though BP distributed free bottled water to some residents for their "peace of mind"). Subsequent testing revealed the contrary: the crude oil contamination found in the ground water of Lomax belonged to BP and contained dangerous levels of carcinogens and other toxins. It was this contaminated ground water that for years supplied the wells that provided water to the homes of the plaintiffs in this case.

Prior to learning of the contamination, Lomax was exclusively a well-water community, with residents drawing water from shallow sand-point wells, approximately thirty feet deep. The

use of sand point wells created a perfect storm for long term exposure as residents drew their water *directly* from the area where BP's contamination most affects the aquifer. BP's crude oil has contaminated Lomax's shallow source of drinking water for decades - exposing unknowing residents to decades of crude contaminated water and its many known carcinogenic chemical components. Residents used the contaminated well-water for drinking, cooking, bathing, showering, cleaning dishes, doing laundry, watering and bathing their pets, filling swimming pools, gardening, etc. In some instances, multiple generations of the same family have suffered from long term, daily exposure to BP's crude oil.

The residents who have been exposed to the contamination exhibit a strikingly similar pattern of medical issues. The chemicals found in crude oil attack the respiratory system, the gastrointestinal tract, the skin, and the nervous system. It is not surprising then, that most residents suffer from severe respiratory problems (e.g., chronic bronchitis, recurrent sinusitis), gastrointestinal ailments (e.g., diarrhea/constipation, acid reflux, abdominal pain), skin problems (e.g., cysts, redness, itching, eczema, rashes), and neurological issues (e.g., migraine headaches, extreme fatigue, insomnia, dizziness, learning impairments.). The cancer rate in Lomax already exceeds normal rates. All exposed residents are in need of medical monitoring as their exposure has increased the likelihood of suffering serious illnesses, including cancer.

II. BP Should be Sanctioned for its Egregious Conduct

It is in this context that BP asserted for years, as recently as March 16, 2010, and under oath, that BP had *no* record of any pipeline leaks near to Lomax from its lines. In fact, BP failed to produce any pipeline leak reports for its pipelines! BP confirmed the "non-existence" of such reports on at least **five** different occasions (two of which were under oath)! See Motion for Sanctions at 2. Yet, from March 16, 2010 to as recently as July 16, 2010, BP has produced over

two thousand five hundred pages of pipeline leak reports for its lines running through Lomax. BP only started producing these reports *after* Plaintiffs confronted BP with its own documents which referenced pipeline leak reports near to Lomax.^{1/} Only in response to Plaintiffs' Motion for Sanctions did BP finally produce over a thousand pages of additional pipeline leak reports on July 16, 2010 (the very same day BP filed its opposition to motion for sanctions in which BP claimed it finally had completed its production of these critically relevant documents). The leak reports which BP claims it has (finally) produced are clearly relevant as they show multiple significant leaks near to Lomax.

BP's "assurance" that it has produced all leak reports "that it knows to be in its possession, custody or control" is illusory. (BP Response at 2.) In fact, BP acknowledges that there may be "new or untapped source[s] of documents" which it has not searched. To be clear, the documents that BP refused to produce were *decades old*; they were not new documents that suddenly sprang into existence. BP cannot turn a blind eye to its own documents and then claim that it had no knowledge such documents existed in its effort to avoid responsibility for an age-old problem it created. Obviously, BP put its head in the sand and failed to search those locations where responsive documents were likely to be kept until confronted by Plaintiffs with evidence that undermined BP's sworn assertions to the contrary. This failure is sanctionable and has caused material prejudice to Plaintiffs.

At every turn, BP has turned a blind eye to a contamination mess it created, made assurances to residents that the water was safe – when it was not – and swore that it had no

^{1/} Plaintiffs found references to pipeline leak reports in over *ten thousand* (10,000) pages of pipeline alignment sheets and maintenance diagrams produced by BP. Like the leak reports, BP did *not* willingly produce the alignment sheets or maintenance diagrams. Amazingly, BP did not produce these documents until after its own corporate representative acknowledged their existence in a December 2009 deposition. In contrast, Plaintiffs' discovery requests were served on BP more than a year earlier in November 2008.

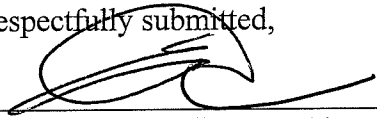
pipeline leak reports near to Lomax. BP's tactical decision to withhold critical documents that establish multiple leaks from its pipelines close to Lomax advanced BP's strategy to disavow responsibility and artificially diminish the dangers of a crude oil mess it created and failed to clean-up. While BP's tactics failed, unfortunately for Plaintiffs, BP's tactics also had the affect of materially delaying this litigation and significantly increasing Plaintiffs' costs and expenses. BP should be sanctioned.

CONCLUSION

WHEREFORE, Plaintiffs respectfully requests the Court impose reasonable sanctions on BP as requested in its initial motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via U.S. Mail and electronic mail this 6th day of August, 2010 to the following:

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