

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITGO PETROLEUM CORPORATION,
et al.,

Defendants.

Civil Action No.

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action against Defendant, CITGO Petroleum Corporation (“CITGO”), alleging that it produced gasoline without complying with the provisions of Sections 211(c) and (k) of the Clean Air Act, as amended, 42 U.S.C. §§ 7545 (c) and (k), and the fuels regulations promulgated thereunder at 40 C.F.R. Part 80, with respect to certain gasoline refined, distributed, and/or sold by it;

WHEREAS, the United States and Defendant (together, the “Parties”) agree, and the Court finds, that settlement of this action without further litigation is in the public interest, and that this Consent Decree is fair, reasonable, and an appropriate means of resolving this matter; and

WHEREAS, the Parties, without the necessity of trial regarding any issue of fact or law, and without any admission of liability by Defendant, consent to entry of this Consent Decree;

NOW, THEREFORE, WITH THE CONSENT OF THE PARTIES, IT IS HEREBY ADJUDGED, ORDERED AND DECREED AS FOLLOWS:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 205 and 211 of the Clean Air Act (the “Act”), 42 U.S.C. §§ 7524 and 7545, and over the Parties. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a) and Section 205(b) of the Act, 42 U.S.C.

§ 7524(b), because Defendant resides in this District. Defendant waives any objections they may have to jurisdiction and venue regarding this action and agree not to challenge the Court's continuing jurisdiction to enforce or to take any other action to effectuate this Consent Decree.

II. DEFINITIONS

2. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated under the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Act" means the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.;
- b. "Complaint" shall mean the complaint filed by the United States in this action;
- c. "Consent Decree" or "Decree" means this Consent Decree;
- d. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.
- e. "Defendant" shall mean CITGO;
- f. "Effective Date" shall have the definition provided in Section XIV (Effective Date);

- g. “EPA” shall mean the United States Environmental Protection Agency;
- h. “Interest” means interest at the rate specified for debts owed to departments or agencies of the United States pursuant to 28 U.S.C. § 1961;
- i. “Paragraph” means a portion of this Consent Decree identified by an Arabic numeral (“subparagraph” by letter).
- j. “Parties” means the United States and Defendant, and each shall be a “Party”;
- k. “Project Dollars” means the Defendant’s expenditure and payments incurred or made in carrying out the Mitigation Action identified in Paragraph 10 of this Consent Decree to the extent that such expenditures or payments both: (a) comply with the requirements in Paragraph 10 and Appendix A of this Consent Decree; and (b) constitute Defendant’s documented external costs for contractor, vendors, as well as equipment, and its internal costs consisting of employee time, travel, and other out-of-pocket expenses specifically attributable to the Mitigation Action.
- l. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral;
- m. “United States” shall mean the United States of America, acting on behalf of EPA.

III. APPLICABILITY - PARTIES BOUND

3. This Consent Decree applies to and is binding upon the United States and Defendant, and any successors and assigns, or other entities or persons otherwise bound by law.
4. Unless approved by the Parties in writing, any change in Defendant's ownership, operation or corporate status shall in no way alter Defendant's responsibilities under this Consent Decree, including its obligation to ensure that the terms of the Decree are implemented, particularly the requirements of the Mitigation Action (Appendix A). At least 30 Days prior to such transfer, CITGO shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and the United States Department of Justice, in accordance with Section XII of this Decree (Notices). Any attempt to transfer ownership or operation by the Defendant without complying with this Paragraph constitutes a violation of this Decree.
5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties include compliance with the terms of Appendix A of this Consent Decree in a supervisory capacity, as well as to any contractor retained to perform work required under the terms of Appendix A of this Consent Decree. Defendant shall condition any such contract for work required under the Consent Decree upon performance of such work in conformity with the terms herein.

6. In any action by the United States to enforce this Consent Decree, Defendant shall not raise as a defense the failure of any of its officers, directors, employees, contractors, agents, successors or assigns to take any actions necessary to comply with the provisions of this Consent Decree.

IV. CIVIL PENALTY

7. Within 30 Days after entry of this Consent Decree, Defendant shall pay to the United States a civil penalty in the amount of \$737,000 in the manner specified herein. Defendant shall pay the civil penalty by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Southern District of Texas. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall (a) state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. CITGO Petroleum Corporation, (b) reference the civil action number and DOJ case number 90-5-2-1-10162, and (c) contain a statement showing the calculation of any interest included in the civil penalty payment, to the United States in accordance with Section XII (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

8. Failure to timely pay the civil penalty shall subject Defendant to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C.

§1961, and shall render Defendant liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.

9. Payments made pursuant to this Section or Section VII (Stipulated Penalties) are civil penalties within the meaning of the Internal Revenue Code, 26 U.S.C. §162(f), and are not tax deductible for purposes of federal law.

V. INJUNCTIVE RELIEF

10. The Defendant shall install a geodesic dome on Tank 331TK-407 at Defendant's Lemont Refinery and carbon adsorption systems on Tanks F10 and F11 at Defendant's Lake Charles Manufacturing Complex ("Mitigation Action") as described additionally in Appendix A, in compliance with the applicable schedules set forth in Appendix A (including substantiation of the emission reductions or other environmental benefits achieved in accordance with Appendix A). The Defendant shall maintain, and present to the United States upon request, all documents to substantiate the environmental benefits of the Mitigation Action and the Action Dollars expended, and shall provide these documents to the United States within 30 Days of a request by the United States for such documents. The Defendant shall use good faith efforts to secure as much environmental benefit as possible from the Mitigation Action, consistent with the applicable requirements and limits of this Consent Decree. Any public statement, oral or written, in print, film, or other media, made by any Defendant making reference to the Mitigation Action under this Decree shall include the following language: "This action was undertaken in connection with the settlement of an enforcement action, United States v. CITGO Petroleum Corporation, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act."

11. Within 60 Days following the installation of the geodesic dome and carbon adsorption systems required under this Consent Decree (i.e., the latter of the completion dates for the respective tanks), the Defendant shall submit to the United States a Mitigation Action Completion Report that documents the date that the Mitigation Action was completed, the results of implementing the Mitigation Action, including substantiation of the emission reductions or other environmental benefits achieved in accordance with Appendix A, and the Project Dollars incurred by the Defendant in implementing the Mitigation Action, separated by facility. CITGO shall retain an independent third-party professional engineer (PE) who is licensed in the state where the Mitigation Action is being performed (Illinois or Louisiana) to review the Mitigation Action Completion Report. The PE for Lemont must certify that the geodesic domes were constructed and installed in accordance with the schedules, plans and specifications provided by CITGO to the EPA pursuant to Appendix A, and the PE for Lake Charles must certify that the carbon adsorption systems required by Appendix A were constructed and installed in accordance with the construction permit granted by LDEQ, and in accordance with the schedules, plans and specifications provided by CITGO to the EPA pursuant to Appendix A. With regard to the Mitigation Action, Defendant shall certify the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with the Mitigation Action is complete and accurate;
- b. that, as of the date of executing this Decree, Defendant is not required to install and maintain a geodesic dome on TK-407 at the Lemont Refinery or install and maintain the carbon adsorption systems on tanks F10 or F11 at Lake Charles by

any federal, state, or local law or regulation and is not required to install and maintain a geodesic dome on TK-407 at the Lemont Refinery or install and maintain the carbon adsorption systems on tanks F 10 or F11 at Lake Charles by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- c. that the Mitigation Action is not an action that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- d. that Defendant has not received and will not receive credit for the Mitigation Action in any other enforcement action; and
- e. that Defendant will not receive any reimbursement for any portion of the Mitigation Action from any person.

12. Beginning six (6) months after the Effective Date of this Consent Decree, and continuing until the Mitigation Action required by this Consent Decree is completed in accordance with this Decree, the Defendant shall provide the United States with semi-annual updates concerning the progress of, the environmental benefits and the costs incurred in implementing the Mitigation Action identified in, and in accordance with, Appendix A.

13. Subject to the conditions of Section XIII (Retention of Records), all plans and reports prepared by the Defendant pursuant to the requirements of this Section of the Consent Decree shall be publicly available without charge. However, Defendant may assert that any part of these plans or reports are protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seek to protect as CBI, the Parties agree that the procedures set forth in 40 C.F.R. Part 2 shall apply to such information.

14. In any instance where Defendant is required to secure a permit to authorize construction or operation of any Mitigation Actions required by this Consent Decree, including all preconstruction, construction, and operating permits required under state law, Defendant shall make such application in a timely manner. Defendant shall provide Notice to the United States under Section XII (Notices), each time Defendant submits an application for any permit described in this Paragraph, and in accordance with Appendix A.
15. When permits for any activities described in Appendix A are required, Defendant shall complete and submit applications for such permits to the appropriate authorities to allow time for all legally required processing and review of the permit request, including requests for additional information by the permitting authorities. Any failure by Defendant to submit a timely permit application under Appendix A shall bar any use by Defendant of Section VIII (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

VI. REPORTING REQUIREMENTS

16. The following submissions, notifications, and reports shall be signed and certified by an official of the Defendant:
- a. the proposed schedule for the installation of the geodesic dome at Lemont and associated submittals (Appendix A);
 - b. notification of the submittal of permit applications (Appendix A and Paragraph 14 of the Consent Decree);
 - c. the maintenance plan for the carbon adsorption systems (Appendix A);
 - d. the procedures for maintenance and monitoring of carbon adsorption canisters

(tanks F10 and F11 at Defendant's Lake Charles Manufacturing Complex) under Appendix A, which includes procedures for recycling and regeneration, or any substantially equivalent procedures as may be developed by CITGO.

- e. the Mitigation Action Completion Report (Paragraph 11 of the Consent Decree);
- f. the semi-annual updates (Paragraph 12 of the Consent Decree);
- g. any notification or submission relating to a Force Majeure event under Section VIII of this Consent Decree; and
- h. notice of any prospective transfer required by Paragraph 14 of the Consent Decree.

The certification shall include the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

- 17. All reports shall be submitted to the persons designated in Section XII of this Consent Decree (Notices).
- 18. The reporting requirements of this Consent Decree do not relieve either Defendant of any reporting obligations required by the Clean Air Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

19. Any information submitted pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

20. If Defendant violates any of the requirements of this Consent Decree, Defendant shall be liable for stipulated civil penalties to the United States. A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree and Appendix A, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

- a. Unless reduced by the United States in its unreviewable discretion, the amount of stipulated civil penalties for any violation or failure to comply with any requirements in Section IV of this Consent Decree (relating to Civil Penalty) shall be \$1,000 per Day for each Day that the payment is late during the first 15 Days, and \$3,500 per Day thereafter.
- b. Unless reduced by the United States in its unreviewable discretion, the amount of stipulated civil penalties for any violation or failure to comply with any requirements in Section V of this Consent Decree (relating to Injunctive Relief) shall be as follows:

Period of Failure
To Comply

Penalty Per Violation
Per Day

1 st through 15 th Day	\$1,000
16 th through 30 th Day	\$5,000
31 st Day and beyond	\$10,000

21. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Separate stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether the United States has notified Defendant that a violation of this Consent Decree has occurred.
22. Defendant shall pay stipulated penalties within 30 Days of receiving the United States' written demand, unless Defendant invokes Dispute Resolution pursuant to Section IX, in which case they shall pay stipulated penalties pursuant to Paragraphs 20, 21, and 23.
23. Stipulated penalties shall continue to accrue as provided in Paragraph 21, during any Dispute Resolution, but need not be paid until the following:
- a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with Interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.
 - b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c below.

- c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with Interest, within 30 Days of receiving the final appellate court decision.
24. Defendant shall pay the full amount of any stipulated penalties due in the manner set forth and with the confirmation notices required by Paragraph 7, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.
25. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided in 28 U.S.C. § 1961, accruing as of the date payment became due.
26. Stipulated penalties paid pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax deductible expenditures for purposes of federal law.
27. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the rights of the United States to seek other remedies or sanctions available by virtue of Defendant's violation(s) of this Consent Decree or of the statutes or regulations upon which it is based.

VIII. FORCE MAJEURE

28. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, which delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The

requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Depending upon the circumstances and Defendant’s response to such circumstances, failure of a permitting authority to issue a necessary permit in a timely fashion may constitute a “Force majeure” event where the failure of the permitting authority to act is beyond the control of Defendant and Defendant has taken all steps available to it to obtain the necessary permit, including, but not limited to: submitting a complete and timely permit application; responding to requests for additional information by the permitting authority in a timely fashion; and accepting lawful permit terms and conditions after expeditiously exhausting any legal rights to appeal terms and conditions imposed by the permitting authority. “Force majeure” does not include Defendant’s financial inability to perform any obligation under the Consent Decree.

29. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally and by electronic or facsimile transmission to the Director of the Air Enforcement Division, U.S. Environmental Protection Agency, and the EPA attorney advisor assigned to this matter (currently Natalie Firestine), within 14 business days of when Defendant first knew that the event might cause a delay. Within 5 Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or

mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment of public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstances of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

30. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

31. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

32. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), they shall do so no later than 10 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance

of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 28 and 29 of this Section, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

33. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.
34. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one Party sends to the other a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of dispute shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 5 Days after the conclusion of

the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

35. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.
36. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.
37. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

38. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.
39. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 35 (Formal Dispute Resolution), Defendant shall bear the burden of demonstrating that their position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and to argue that its position must be upheld unless arbitrary and capricious or otherwise not in accordance with law.
40. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 23. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

41. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of the Consent Decree.
42. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or

implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 41.

43. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 41.
44. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, State, or local laws, regulations, or permits.
45. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third

parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

46. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XI. COSTS

47. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XII. NOTICES

48. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
PO Box 7611
Washington, D.C. 20044-7611
Ref: 90-5-2-1-10162

Phillip Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 2422A
Washington, D.C. 20460

Natalie Firestine
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, Colorado 80202
Telephone: (303) 312-7165
Telefax: (303) 312-6003
Email: Firestine.Natalie@epa.gov

To EPA:

Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 2422A
Washington, D.C. 20460

Natalie Firestine
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, Colorado 80202
Telephone: (303) 312-7165
Telefax: (303) 312-6003
Email: firestine.natalie@epa.gov

To Defendant:

Jeffrey Bonnette
HSSE General Manager
CITGO Petroleum Corporation
1293 Eldridge Parkway
Houston, Texas 77077
Telephone: 832-486-1528
jbonnel@citgo.com

Christopher Newcomb
Senior Corporate Counsel
CITGO Petroleum Corporation

1293 Eldridge Parkway, N5016
Houston, Texas 77077
Telephone: 832-486-5704
cnewco1@citgo.com

49. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

50. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, including by electronic mail, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIII. INFORMATION COLLECTION AND RETENTION OF RECORDS

51. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data; and
- d. assess Defendant's compliance with this Consent Decree.

52. Until 5 years after the termination of this Consent Decree, Defendant shall preserve and retain all records and documents now in their possession or control, or which come into their possession or control, that relate to Defendant's performance of the requirements of this Decree, regardless of any corporate records retention policy to the contrary. The records retention requirement imposed under this Consent Decree does not affect, modify or excuse

Defendant from compliance with any other records retention requirements imposed by federal, state or local laws or regulations.

53. After the conclusion of the document retention period in Paragraph 52, Defendant shall notify the United States at least 90 Days prior to the destruction of any such records or documents, and, upon request by the United States, Defendant shall deliver any such records or documents to the United States. Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, they shall provide the United States with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only. Defendant shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim before this Court and any such dispute has been resolved in Defendant's favor.
54. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws,

regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIV. EFFECTIVE DATE

55. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

56. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Section IX (Dispute Resolution) and Section XVI (Modification), or effectuating or enforcing compliance with the terms of this decree.

XVI. MODIFICATION

57. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

58. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided in Paragraph 39, the Party seeking the modification bears the burden of demonstrating that it is

entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

59. This Consent Decree may be terminated 5 years after the Effective Date if the United States determines that Defendant has satisfactorily completed their obligations under this Decree, including payment of the civil penalty under Section IV, injunctive relief under Section V and any outstanding stipulated penalties under Section VII. Once these conditions have been met, the Parties shall file with the Court an appropriate stipulation reciting that the requirements of the Consent Decree have been met and Request for Termination of the Decree.
60. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Consent Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 35 of Section IX, until 120 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

61. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. §50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent decree is inappropriate, improper or inadequate. Defendant consents to the entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to

challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

62. Each undersigned representative of each Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.
63. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. The Parties agree that Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. INTEGRATION

64. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and Appendix A, and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of

this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

65. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

XXII. APPENDICES

66. The following appendix is attached to and part of this Consent Decree: "Appendix A" is the Geodesic Dome Emissions Mitigation Action and the Carbon Adsorption Tank Emissions Mitigation Action.


JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THIS CONSENT DECREE THIS ___ DAY OF _____, 2013.

UNITED STATES DISTRICT COURT JUDGE
District of Texas

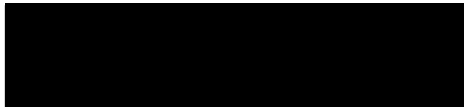
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. CITGO Petroleum Corporation, Civil Action No. _____ relating to alleged violations of the Fuels Regulations.

For Plaintiff United States of America:

9/13/2013
Date



NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

9/13/2013
Date



SAM BLESIV
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

For the United States Environmental Protection Agency:


9/13/13
Date


SUSAN SHINKMAN
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

9/13/2013
Date


PHILLIP A. BROOKS
Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 2422A
Washington, D.C. 20460

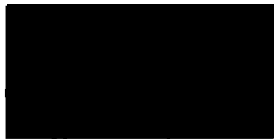
Sept. 9, 2013
Date


NATALIE FIRESTINE
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, Colorado 80202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. CITGO Petroleum Corporation, Civil Action No. _____ relating to alleged violations of the Fuels Regulations.

For Defendant CITGO Petroleum Corporation:

09/04/2013
Date



(Handwritten mark)

EDUARDO ASSEF
Vice President, Refining
CITGO Petroleum Corporation
1293 Eldridge Parkway
Houston, Texas 77077

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITGO PETROLEUM CORPORATION,
et al.,

Defendants.

Civil Action No.

CONSENT DECREE

Appendix A

*CITGO Geodesic Dome Emissions Mitigation Action
And Carbon Adsorption Tank Emissions Mitigation Action*

APPENDIX A

MITIGATION ACTION

GEODESIC DOME EMISSIONS MITIGATION ACTION

CITGO Petroleum Corporation (CITGO) shall install and maintain a geodesic dome on Tank 331TK-407 (an external floating roof tank) at its Lemont Refinery (Lemont) located at 135th St. & New Ave., Lemont, Illinois 60439 (geodesic dome mitigation action). The geodesic dome mitigation action shall be designed to reduce emissions of volatile organic compounds (VOCs) from Tank 331TK-407 by approximately 13.29 tons per year (calculated using AP-42 Chapter 7.1 estimate of emissions).

The geodesic dome shall be installed within 1 year of the Effective Date of the Consent Decree. Within 60 days of the Effective Date of the Consent Decree, CITGO shall submit a proposed schedule for the installation of the geodesic dome at Lemont. Along with the schedule, CITGO shall submit:

- (1) a list and description of the project activities, which, at a minimum, must include tank cleaning, if necessary, for the installation of the dome; tank inspection and dome installation; projected maintenance; and the anticipated date of any tank inspections or surveys;
- (2) a statement that CITGO does not anticipate the geodesic dome mitigation action will have an impact on gasoline supplies by Tank 331TK-407 at Lemont;
- (3) the specifications of the geodesic dome to be installed;
- (4) a description of the tank rim seal(s) and a copy of the most recent inspection reports prepared under 40 C.F.R. 60.113b; and
- (5) a copy of the most recent engineering inspection report of Tank 331TK-407 conducted per API Standard 653, "Tank Inspection and Repair, Alteration, and Reconstruction," or equivalent (as of the date of publication of this Appendix A, the current edition of the API Standard is the 4th edition (April 1, 2009), Addendum 1 (2010), Addendum 2 (2012)). If the inspection has not been conducted within the time frame required by API Standard 653, CITGO must schedule and conduct the inspection before installation of the dome.

The planned start date of the project installation activities shall be no more than 90 days after CITGO submits to the EPA the project schedule. The installation schedule is incorporated by reference herein and is enforceable as a part of this Consent Decree. CITGO shall promptly inform the United States, in writing, if it encounters any significant problems which result in any substantial delay to implementing the project. The notification shall be provided to the EPA no

less than 14 business days after CITGO reasonably determines that there will be a substantial delay, and must include a statement of how CITGO intends to address each problem and proceed with the installation, including a revised projected estimated completion date, which is subject to review and approval by the EPA.

In order to substantiate the emissions reductions of the geodesic dome mitigation action, CITGO shall:

- (1) Conduct emissions estimates based on the AP-42 Chapter 7.1 of the pre-and post-installation emissions rate;
- (2) Prior to installation of the dome, CITGO shall evaluate the tank condition by conducting a floating roof inspection, which includes inspecting the fittings and rim seals of Tank 331TK-407 at Lemont in accordance with 40 C.F.R. 60.113b; and
- (3) CITGO shall notify the EPA no later than 14 days before installation of the dome is to commence, and within those 14 days, grant access to an EPA inspector to use a gas-imaging camera in Manual and High Sensitivity Mode to examine Tank 331TK-407 at Lemont to determine if there are leaks in the tank's fittings and rim seals.
 - a. If the EPA inspector determines that the gas-imaging survey indicates the presence of significant gaseous emissions, the leaks or items shall be repaired before installation of the dome; and
 - b. As soon as practicable after the tank has been repaired, the tank shall be evaluated by conducting an additional floating roof inspection in accordance with the requirements provided above.

CITGO shall promptly inform the United States, in writing, if it encounters any significant problems with the installation or maintenance of the geodesic dome mitigation action that could impact public health or the environment. The notification shall be provided to the EPA promptly after CITGO first learns of the problem, and shall include a statement of how CITGO intends to address each problem.

CARBON ADSORPTION TANK EMISSIONS MITIGATION ACTION

Lake Charles' fuel storage tanks F10 and F11 are fleet tanks at the end of their useful life and are scheduled to be replaced in 2013. Tank F10 is a diesel storage tank and tank F11 is a gasoline storage tank. CITGO shall install and maintain carbon adsorption systems on the replacement tanks F10 and F11 at its Lake Charles Refinery Complex (LCMC) located at 4401 Highway 108, Westlake, LA 70669-8018 (carbon adsorption mitigation action). The carbon adsorption systems shall be designed to reduce emissions of VOCs from these tanks. The installation and operation of the carbon adsorption systems shall result in emissions reductions from tank F10 by approximately 0.04 tons of VOCs per year and from tank F11 by approximately 8.1 tons of VOCs per year (calculated using AP-42 Chapter 7.1 estimate of emissions).

Within 60 days of the Effective Date of the Consent Decree, CITGO shall submit a construction permit application for the carbon adsorption systems on tanks F10 and F11 to the Louisiana Department of Environmental Quality (LDEQ). CITGO shall simultaneously submit a copy of the permit application to the EPA. Within 3 business days from the date that CITGO receives a draft permit from LDEQ, CITGO shall submit a copy of the draft permit to EPA. Within 3 business days from the date that CITGO receives the final approval granting the construction permit from LDEQ, CITGO shall submit a copy of the final permit to the EPA; along with a statement that CITGO does not anticipate the installation of the carbon adsorption systems will have an impact on gasoline supplies by Tanks T10 and T11.

The carbon adsorption systems shall be installed within 1 year of the Effective Date of the Consent Decree. If the LDEQ fails to grant the construction permit within 6 months of the effective date of the Consent Decree, CITGO shall be entitled to assert a claim of Force Majeur pursuant to the Consent Decree. Within 30 days of receipt of the LDEQ construction permit, CITGO shall submit a maintenance plan for the carbon adsorption systems to the EPA. The maintenance plan must provide a description of the various activities that comprise the maintenance of the carbon adsorption systems.

The maintenance plan and schedule is incorporated by reference herein and is enforceable as a part of this Consent Decree. CITGO shall promptly inform the United States, in writing, if it encounters any significant problems which result in any substantial delay to implementing the project. The notification shall be provided to the EPA no less than 14 days after CITGO reasonably determines that there will be a substantial delay, and shall include a statement of how CITGO intends to address each problem and proceed with the installation, including a revised projected estimated completion date.

In order to substantiate the emissions reductions of the carbon adsorption mitigation action, CITGO shall:

- (1) conduct emissions estimates based on the AP-42 Chapter 7.1 of the pre-and post-installation emission rate; and
- (2) Periodically monitor the carbon adsorption systems for the lifetime of each tank F10 and F11, following the Lake Charles procedures for maintenance and monitoring of carbon adsorption canisters under Section 6 of CITGO's *Benzene Waste Organic NESHAP (BWON) Oily Water Sewer Vent Carbon Canisters* (No. ENV-373-055) or a substantially equivalent procedure as may be developed for each tank F10 and F11. Specifically, the procedures must include and CITGO shall:
 - a. Monitor the outlet concentrations of the carbon adsorption material (filter) on a weekly basis for the first 90 days in service. This initial monitoring will establish the required monitoring frequency, confirm the design basis, and satisfy the performance testing requirement for the carbon canister system.

- b. After design confirmation and performance testing has been completed, the frequency of monitoring will be based on the historical failure frequency with a maximum frequency not to exceed once per day and a minimum frequency requirement not to exceed once every four weeks.
- c. CITGO will review and update the monitoring frequency for carbon canisters at least semi-annually. The monitoring frequency is determined by using 20% of the mean time between breakthrough, as monitored between the primary and secondary canister in a system. The mean time between breakthrough, as measured between the primary and secondary canister, shall be calculated for the last 1 year period. The minimum monitoring period frequency is one day while the maximum monitoring period frequency is one month (or 4 weeks).
- d. All spent carbon adsorption material will be sent back to the manufacturer for recycling and regeneration. Recycling and regeneration of the spent carbon adsorption material shall be performed according to the applicable Lake Charles' procedures for storage and shipment of spent carbon canisters: e.g., under Section 6 of CITGO's *BWON Oily Water Sewer Vent Carbon Canisters* (No. ENV-373-055) or a substantially equivalent procedure as may be developed for each tank F10 and F11 that will include recycling and regeneration.

CITGO shall promptly inform the United States, in writing, if it encounters any significant problems with the installation or maintenance of the carbon adsorption systems that could impact public health or the environment. The notification shall be provided to the EPA promptly after CITGO first learns of the problem, and shall include a statement of how CITGO intends to address each problem.