

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA, and)
THE STATE OF INDIANA,)
)
Plaintiff,)
)
and)
)
THE SIERRA CLUB, SAVE THE DUNES,)
THE NATURAL RESOURCES DEFENSE)
COUNCIL, THE HOOSIER)
ENVIRONMENTAL COUNCIL, SUSAN)
ELEUTERIO and TOM TSOURLIS,)
)
Plaintiff-Intervenors)
)
v.)
)
BP PRODUCTS NORTH AMERICA INC.,)
)
Defendant)
_____)

Civil No. 2:12-CV-207

FIRST AMENDMENT TO CONSENT DECREE

WHEREAS, the United States of America (“United States”), and the State of Indiana (hereinafter “Plaintiffs”); the Sierra Club, Save the Dunes, the Natural Resources Defense Council, the Hoosier Environmental Council, Susan Eleuterio, and Tom Tsourlis (hereinafter “Plaintiff-Intervenors”); and BP Products North America Inc. (hereinafter “BPP”) are parties to a Consent Decree entered by this Court on November 6, 2012;

WHEREAS, Paragraph 213 of the Consent Decree provides in pertinent part that “[n]on-material modifications to this Consent Decree will be effective when signed by the United States and BPP. The United States will file non-material modifications with the Court on a periodic basis. For purposes of this Paragraph, non-material modifications include, but are not limited to, modifications to the frequency of reporting obligations and modifications to schedules that do

not extend the date for compliance with emissions limitations following the installation of control equipment, provided that such changes are agreed upon in writing between the United States and BPP”;

WHEREAS after the Consent Decree was lodged, certain technical errors or omissions were identified that the United States and the other Parties to the Consent Decree agreed to correct in the version of the Decree that would be entered;

WHEREAS, when the United States moved for entry, it provided the Court with a revised version of the Decree that included the corrections, and its motion for entry identified the changes and advised the court that the revised version, which was attached to the Motion, was the version of the Decree that should be entered;

WHEREAS, although the Court in its November 6, 2012 Opinion and Order entering the Decree [DE-9] stated that the corrected version of the Consent Decree [DE-7-1] should be entered. However, through an apparent and inadvertent omission, the version of the Consent Decree that had been originally lodged without the intended changes [DE 10] was entered;

WHEREAS, the United States and BPP have identified additional technical errors or omissions after the Consent Decree was entered;

WHEREAS, in addition to these technical corrections, an adjustment to certain interim deadlines for installation of pollution controls that do not affect the final compliance deadlines is needed because the Whiting Refinery turnaround schedule for the Alkylation Unit has shifted from 2015 to 2016, necessitating a change in the date by which the Alkylation Unit flare will be connected to a Flare Gas Recovery System;

WHEREAS, BPP will accelerate by one year the date by which the UIU flare will be connected to a Flare Gas Recovery System, the net result of which will be to decrease overall flare emissions from the adjustment to the schedule for delayed connection of the Alkylation Unit flare;

WHEREAS, under Paragraph 213, the technical corrections are considered “non-material modifications” to the Consent Decree, and because the adjustments to the interim compliance dates for each of the four flare gas recovery hubs do not affect the final compliance date for compliance with the numerical limitations on flaring, the schedule adjustment is also considered to be “non-material modifications” under Paragraph 213;

NOW THEREFORE, the United States and BPP hereby file with the Court the following non-material modifications to the Consent Decree:

1. Paragraph 42.c is revised to read as follows:

c. The Total Sulfur Continuous Analyzers required by this Paragraph shall be installed, operated and calibrated pursuant to ASTM D7166-10 and 40 C.F.R. Part 60 Appendices A and F, and the applicable performance specification test of 40 C.F.R. Part 60, Appendix B, except that in lieu of the requirements of 40 C.F.R. Part 60, Appendix F §§ 5.1.1, 5.1.3 and 5.1.4, BPP must conduct either a RAA or RATA on each Total Sulfur Continuous Analyzer at least once every three (3) years. BPP must also conduct Cylinder Gas Audits each Calendar Quarter during which a RAA or a RATA is not performed. For RATA and RAA reference method comparisons, EPA Methods 15A or 16C shall be used as the reference method. In addition, BPP may use the principles of EPA Method 7E, section 8.3, to dilute the fuel gas samples used for the reference method as necessary to render the samples safe for analysis. BPP shall make total sulfur analyzer data available to EPA and IDEM (as applicable) upon request.

2. Paragraph 52.b.iv is revised to read as follows:

iv. Canister Replacement. Single carbon canisters may be replaced with a dual carbon canister or carbon bed system at any time provided EPA is notified and the monitoring requirements for single canisters are continued until the second canister or bed is installed. BPP shall comply with the monitoring requirements for dual-carbon canisters or dual-carbon beds provided in sub-paragraph 52.a upon installation of such system, and BPP shall notify EPA of such replacement in its next semi-annual report submitted pursuant to Part VIII of the Consent Decree.

3. Paragraph 61.a is revised as follows:

a. Applicability. In complying with the National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries, 40 C.F.R. Part 63, Subpart CC, BPP may only claim that a heat exchange system is not in “organic HAP service” pursuant to 40 C.F.R. § 63.641 if the heat exchange system only cools process fluids that contain less than 2.5% by weight of total HAPs (as listed in Table 1 to Subpart CC).

4. The equation in Paragraph 66.a is revised to read as follows:

$$E = \left(\frac{F \times C \times MW}{V_m \times 2000 \times 10^6} \right)$$

5. Paragraph 183 is revised by replacing the first column of the fourth row of the table, to read as follows:

Heaters, boilers, and other units listed in Subparagraph 185.b

6. Appendix B, Paragraphs 27 and 28 are revised to read as follows:

27. BPP shall conduct LDAR audits pursuant to the schedule in Paragraph 28 and the requirements of Paragraph 29 of this Appendix. BPP shall retain a third-party auditor with experience in conducting LDAR audits to conduct no less than the initial audit and follow-up audits every two (2) years until termination of the Consent Decree. To perform the third-party audit, BPP shall select a different company than its regular LDAR contractor.

28. Until termination of this Consent Decree, BPP shall ensure that an LDAR audit at the Whiting Refinery is conducted by an independent contractor with expertise in LDAR program requirements to perform a third party audit for all regulatory LDAR requirements and this ELP every twenty-four (24) months in accordance with the following schedule: for the first LDAR audit at the Whiting Refinery, the LDAR Audit Commencement Date shall be no later than the second calendar quarter after the Date of Entry. For each subsequent LDAR audit, the

LDAR Audit Completion Date shall occur within the same calendar quarter that the first LDAR Audit Completion Date occurred.

7. Appendix B, Paragraph 31.a is revised to read as follows:

- a. Requirements of a CAP. By no later than 30 days after each LDAR Audit Completion Date, BPP shall develop a preliminary corrective action plan (“CAP”) if the results of an LDAR audit identify any deficiencies or if (i) the Comparative Monitoring Leak Ratio calculated pursuant to Subparagraph 29.c is 3.0 or higher and (ii) the Comparative Monitoring Audit Leak percentage is 0.5% or higher. The CAP shall describe the actions that BPP shall take to correct the deficiencies and/or the systemic causes of a Comparative Monitoring Leak Ratio that is 3.0 or higher and a Comparative Monitoring Audit Leak Percentage that is 0.5% or higher. The CAP also shall include a schedule by which those actions shall be undertaken. BPP shall complete each corrective action as expeditiously as possible with the goal of completing each action within 90 days after the LDAR Audit Completion Date. If any action is not completed or is not expected to be completed within 90 days after the LDAR Audit Completion Date, BPP shall explain the reasons in the final CAP to be submitted under Subparagraph 31.b, together with a proposed schedule for completion of the action(s) as expeditiously as practicable.

8. Appendix D, Paragraph 22 is revised to read as follows:

22. Overlapping Requirements: Flare Management Plan Provisions of the NSPS Subpart Ja that are Stayed as of the Date of Lodging. To the extent that currently-stayed provisions of Subpart Ja of the NSPS that prescribe affirmative work practice requirements for flare management plans, see 73 Fed. Reg. 78522, 78538-39 (December 22, 2008), are finalized after the Date of Lodging of this Consent Decree, and to the extent compliance with those provisions overlaps with compliance with Paragraphs 18 – 21 and 43, BPP shall comply with the requirements of the finalized Subpart Ja and also comply with each requirement in

Paragraphs 18 – 21 and 43 that is not inconsistent with the requirements of a finalized Subpart Ja.

9. Appendix D, Paragraph 23.b is revised to read as follows:

b. BPP shall complete the tie-in of the Alky Flare to FGRS 3 by no later than December 31, 2016, and commence recovery of Waste Gas by that time.

10. Appendix D, Paragraph 43 is revised to read as follows:

43. Waste Gas Minimization for LPG Flare. Commencing thirty days after the installation of the flow meter required pursuant to Subparagraph 42.a, and continuing through December 31, 2014, BPP will identify and implement Prevention Measures for the minimization of Vent Gas flow to the LPG Flare. In the first semi-annual report due after the installation of the flow meter required pursuant to Subparagraph 42.a and continuing through the semi-annual report due in February of 2015, BPP will provide, for the time period covered by the semi-annual report, the following information: (i) the volumetric flow of Waste Gas, in scfm, on a 30-day rolling average, and the mass flow rate, in pounds per hour, on a 30-day rolling average, vented to the LPG Flare; (ii) the Prevention Measures implemented for the reporting period; and (iii) the Prevention Measures expected to be implemented in the future, together with a schedule for prompt implementation.

11. Appendix D, the first sentence of Paragraph 72 is revised to read as follows:

72. Monitoring Instrument/Equipment Downtime, Override of Automatic Control System, and Emissions Exceedances. On and after the date of applicability of any work practice or standard, BPP shall provide a summary, in the semiannual reports required by Part VIII of the Consent Decree, of the following per Covered Flare and the LPG Flare per calendar quarter (hours shall be rounded to the nearest tenth):

12. The terms LFL_i and LFL_{vg} in the “Definitions” and the “Key to the Abbreviations” sections of Appendix D, FLR-3 are revised to read as follows:

a. Definitions:

“Lower Flammability Limit of Vent Gas” or “ LFL_{vg} ” shall mean the weighted average of the LFLs of each of the individual compounds in Vent Gas, weighted by their volume fraction in the Vent Gas. LFL_{vg} is represented by and shall be calculated according to Equation 1 in Appendix FLR-3 of this Consent Decree.

b. Key to the Abbreviations:

LFL_i = lower flammability limit of individual compound (volume fraction)

LFL_{vg} = lower flammability limit of vent gas (volume fraction)

13. The definition of “Net Heating Value of Hydrogen as Adjusted” in the “Definitions” section of Appendix D, FLR-3 is corrected to read as follows:

“Net Heating Value of Hydrogen as Adjusted” or “ NHV_{H2-adj} ” shall mean 1212 BTU/scf. NHV_{H2-adj} represents an adjustment to hydrogen’s actual Net Heating Value for use, consistent with Step 3 of Appendix FLR-3, in the calculation of the Net Heating Value of Vent Gas.

14. Appendix D, FLR-11, Paragraph V.A.b. is revised to read as follows:

b. 8-Hour Repeatability (applies to all measured components except water):

± 0.5% of full scale for full scale ranges from 2-100%;

± 1% of full scale for full scale ranges from 0.05-2%;

± 2% of full scale for full scale ranges from 50-500 ppm;

± 3% of full scale for full scale ranges from 5-50 ppm;

± 5% of full scale for full scale ranges from 0.5-5 ppm.

The 8-Hour Repeatability range for water shall not be more than ± 3% of full scale.

15. Appendix D, FLR-15, Equation 6 is revised to read as follows:

Step 6: Ensure that during flare operation, the following is met:

$$\dot{m}_{air-assist} < 10 \cdot \dot{m}_{air-stoich-vg} \quad \text{Equation 6}$$

16. The following revisions to Appendix D, FLR-18:

a. Equation 1 in Paragraph 1.a is revised to read as follows:

$$\text{Tons of SO}_2 = [\text{FR}][\text{TD}][\text{ConcS}][8.31 \times 10^{-5}] \quad (\text{Equation 1})$$

b. Equation 2 in Paragraph 2.a is revised to read as follows:

$$\text{ER} = [\text{FR}][\text{ConcS}][0.166] \quad (\text{Equation 2})$$

c. The following meanings of variables and derivation of multipliers used in Equations 1 and 2 in Paragraph 3 are revised to read as follows:

$$8.31 \times 10^{-5} = [\text{lb mole S}/385 \text{ scf S}][64 \text{ lb SO}_2/\text{lb mole S}][\text{Ton}/2000 \text{ lb}]$$

$$0.166 = [\text{lb mole S}/385 \text{ scf S}][1.0 \text{ lb mole SO}_2/\text{lb mole S}][64 \text{ lb SO}_2/1.0 \text{ lb mole SO}_2]$$

d. Equation 3 in Paragraph 5 is revised to read as follows:

$$\text{ER}_{\text{TGI}} = \sum_{i=1}^{\text{TD}_{\text{TGI}}} [\text{FR}_{\text{Inc}}]_i [\text{Conc. SO}_2 - 250]_i [0.166 \times 10^{-6}]_i [(20.9 - \% \text{ O}_2)/20.9]_i$$

(Equation 3)

e. The term “0.166 x 10⁻⁶” used in Equation 3 in Paragraph 5 is revised as follows:

$$0.166 \times 10^{-6} = [\text{lb mole of SO}_2/385 \text{ SO}_2] [64 \text{ lbs SO}_2/\text{lb mole SO}_2] [1 \times 10^{-6}]$$

17. The signature page for Hoosier Environmental Council that was inadvertently omitted from the entered version of the Consent Decree (and which is attached hereto as Exhibit A) is hereby added to the Consent Decree.

WE HEREBY AGREE to the stipulated modification of the Consent Decree in *United States, et al. v. BP Products North America Inc.*, No. 2:12-cv-00207-PPS-APR (N.D. Ind. Nov. 6, 2012).

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

JOHN C. CRUDEN
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Date: _____

4-2-15



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WE HEREBY AGREE to the stipulated modification of the Consent Decree in *United States, et al. v. BP Products North America Inc.*, No. 2:12-cv-00207-PPS-APR (N.D. Ind. Nov. 6, 2012).

FOR DEFENDANT BP PRODUCTS NORTH
AMERICA INC.:

Date: 3-23-2015



JESSICA GONZALEZ
Senior Counsel
BP America Inc.

Exhibit A

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of *United States, et al., v. BP Products North America* (N.D. Ind.).

**FOR PLAINTIFF-INTERVENOR THE
HOOSIER ENVIRONMENTAL COUNCIL:**

Date: March 15, 2012


JESSE KHARBANDA
Executive Director
Hoosier Environmental Council