UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

UNITED STATES OF AMERICA	:	**CRIMINAL NO. 2:11-cr-00227**
	:	
v.	:	**JUDGE HAIK**
	:	
PELICAN REFINING COMPANY, LLC	:	**MAGISTRATE JUDGE HILL**

JOINT FACTUAL STATEMENT

The United States of America and the Defendant, Pelican Refining Company, LLC ("PRC"), hereby agree (i) that this Joint Factual Statement is a true and accurate statement of the Defendant's criminal conduct, (ii) that it provides a sufficient basis for the Defendant's plea of guilty to the charges in the above-captioned matter and as set forth in the Plea Agreement signed this same day, and (iii) had this matter proceeded to trial, the United States would have proven the facts contained in this Joint Factual Statement beyond a reasonable doubt. The Defendant further agrees that this document does not represent the totality of facts and evidence that could have been brought against it, but instead consists of a summary sufficient to support the charges.

1. At all relevant times, PRC operated the Pelican Refinery, a crude oil and asphalt refining facility located in Lake Charles, Louisiana. PRC was owned in equal shares by Nucoastal Refining & Marketing Company LLC and Bayoil USA Limited. In accordance with the principles of *respondeat superior*, vicarious liability, and collective knowledge, the Defendant agrees that criminal liability is premised on the acts and omissions of its agents, officers, and employees, who acted within the scope of their agency and employment, for the benefit of the PRC.

2. At all relevant times, refinery operations at the Pelican Refinery were regulated by Part 70 Title V operating permits, a program set up by the federal Clean Air Act and its regulations. Operation of the Pelican Refinery was authorized only under the terms and conditions of the Permit, which details the specific point sources, emissions limits, pollution prevention equipment, and processes of the facility. Knowingly operating a refinery in violation of a Title V permit is a felony pursuant to 42 U.S.C. § 7413(c)(1). Moreover, under Part 70 of Title 40 of the Code of Federal Regulations, the state of Louisiana administers the bulk of the federal Clean Air Act-regulated activities in the state. The Louisiana Department of Environmental Quality ("LDEQ") approved a transfer of the refinery's Title V Permit that had been originally obtained by PRC's predecessor. LDEQ then subsequently renewed the Permit at PRC's request. PRC's Vice-President was PRC's designated point of contact and signatory for Pelican Refinery's LDEQ Permit.

3. Pelican Refining Company did not operate according to industry best practices, nor did it adhere to basic safeguards in corporate organization and governance that would be expected for refineries that operate in the United States. For example, PRC operated without a company budget or an environmental budget. PRC did not have an environmental department, nor did it have an environmental manager, regulatory specialist, or anyone tasked with complying with environmental regulations. There was insufficient safety equipment at the facility, and employees, at best, received minimal training on the use of that equipment. PRC contracted at least three different firms to advise it regarding environmental matters. None of these outside consultants were responsible for, nor did they provide adequate resources for assuring environmental compliance prior to the execution of a federal search warrant of the refinery in November 2007.

4. From approximately August 2005, through December 2006, the Pelican refinery processed crude oil only sporadically. Processing involved the heating of crude oil to distill various hydrocarbon groups or "cuts." In order to comply with the Permit and detect and mitigate the release of harmful pollutants into the ambient air, the facility was required to utilize certain key pollution prevention equipment. However, as detailed further below, this equipment was either not functioning, poorly maintained, improperly installed, improperly placed into service and/or improperly calibrated, such that there were releases of pollutants into the atmosphere and at the refinery.

5. In 2005 and 2006, the Pelican refinery processed "sour" crude that had high concentrations of hydrogen sulfide, also known as "H2S." Hydrogen sulfide ("H2S") is a highly toxic and flammable gas inherent to sour crude refining. H2S is classified as an "extremely hazardous substance" pursuant to 42 U.S.C. § 11002(a)(2). Louisiana has classified hydrogen sulfide as a Class III toxic air pollutant (acute and chronic toxin). H2S is colorless and flammable. It has a characteristic odor of "rotten eggs" at low concentrations. Refinery workers reported smelling H2S as well as having their personal H2S monitors "go off" from time-to-time. PRC had no procedure to record, track, report, or mitigate H2S releases. At higher concentrations H2S paralyzes the sense of smell so that its odor is no longer perceived. At very high concentrations it paralyzes the respiratory center of the brain so that the exposed individual stops breathing, and loses consciousness and dies unless removed from exposure and resuscitated. It is not known whether there was any injury to any person. Crude oil also contains benzene, toluene, ethylbenzene, and xylene (collectively known as "BTEX"). These compounds are each listed as hazardous air pollutants and extremely hazardous substances. Louisiana has classified benzene as a Class I toxic air pollutant (known and probable carcinogen), ethylbenzene and xylene as Class II toxic air pollutants (suspected carcinogen and known or suspected human reproductive toxin), and toluene as a Class III toxic air pollutant (acute and chronic toxin). Sources of H2S and BTEX emissions at the Pelican Refinery included the main refinery stack, leaks at pipes and joints, the barge loading dock, and tanks with roofs that were improperly certified and fitted and which also failed.

6. The Pelican refinery stored crude oil in tanks with floating roofs that go up and down with the volume of petroleum inside the tank. The floating roofs have seals around the perimeter. The purpose of the sealed floating roofs was to prevent pollutants, including volatile organic compounds and H2S, from escaping. At the time the refinery was purchased by PRC, Tank 110-16 had a failed roof. PRC filed a lawsuit and obtained a settlement based upon the undisclosed failure of the tank roof. In October 2005, the owner of Nucoastal Refining & Marketing Company notified the refinery manager at the time that oil would be arriving at the facility and directed that it should be placed in Tanks 55-17 and 110-16 since other tanks were in use with oil that the owner of BayOil USA Ltd had helped to arrange. The refinery manager refused to do so based on the grounds that the roof had failed and that filling the tanks with oil would be unlawful. The refinery manager resigned, and a new refinery manager was not hired until January 2006. On or about October 13, 2005, after a contractor refloated the roof of Tank 110-16, PRC introduced and caused the introduction and storage of sour crude oil, a volatile organic liquid that also contained Hydrogen Sulfide, into Tank 110-16. In filling the tank, PRC violated the Clean Air Act because it did so: (a) without first repairing holes, tears, and other openings in the seal or the seal fabric of Tank 110-16's primary and secondary seals so that these conditions no longer existed before filling and refilling; (b) without properly determining the gap areas and maximum gap widths between the primary and secondary seals and the tank wall within 60 days; and (c) without notifying LDEQ or the EPA at least 7 days prior to filling. On or about December 12, 2005, the repaired roof of Tank 110-16 failed again. PRC's Vice-President was notified of the failure at the time. No one reported the roof failure to LDEQ or EPA as required. On December 13, 2005, LDEQ conducted an inspection of the facility and found that the roof had failed and that oil was pooled on top. LDEQ instructed that the oil must be removed from the tank. Instead of the required timely removal, the oil was removed from the tank by processing. The removal was not accomplished within 45 days as required, nor prior to the inspection on March 1, 2006, by LDEQ and EPA which found crude oil still remaining in the tank. An e-mail from the new refinery manager to the PRC Vice-President on March 23, 2006, advised him that the tanks had still not been emptied. The prolonged storage of sour crude in Tank 110-16 resulted in an unlawful release of H2S and BTEX into the environment.

7. Another Clean Air Act violation occurred with the placement of high H2S asphalt in Tank 80-02. Tank 80-02 was not permitted to release any H2S into the atmosphere. On or about August 19, 2007, PRC received a load of high-sulfur, PG 64-22 asphalt. The load of approximately 39,438 barrels nearly filled half of Tank 80-02. Tank 80-02 was a conical roof tank that was vented to the air. Even though the asphalt was in a liquid phase while in the tank, because the asphalt was heated, H2S accumulated in the tank's head space and escaped through the vents into the atmosphere.

8. In addition to the tank violations, PRC violated the Clean Air Act by failing to properly use, maintain, or repair the refinery's pollution prevention equipment. For example, the caustic scrubber is a large device that is designed to remove H2S by spraying a caustic solution over off gas produced by the distillation unit. In order to determine whether the scrubber was removing a sufficient quantity of H2S, the outflow was measured by a continuous emissions

monitoring system or "CEMS." Neither the caustic scrubber nor the CEMS worked as required by the Title V permit. The operations log indicates that the caustic scrubber was "bypassed" without obtaining a variance from LDEQ. At one point repairs were made after the scrubber was determined to be corroded. The CEMS was supposed to record the level of H2S on a circular paper chart for each day. However, the circular chart indicated that the levels were always "0" even when the facility was processing sour crude. Lower level managers informed upper management in 2005 that both systems were not working properly and required repairs. In addition, LDEQ and EPA discovered both of these permit violations during an unannounced inspection of the refinery on March 1, 2006. Even so, the facility processed crude oil in 2005 and 2006, and operated for brief periods in April and August of 2006, without (i) the use and proper use of caustic to treat and remove non-condensable toxic pollutants, including H2S, from gases produced during the refining process, without (ii) the use and proper use of a continuous monitoring system to monitor H2S concentration in the refinery fuel gas, and without (iii) the use and proper use of calibration and maintenance of the continuous monitoring system.

9. The last piece of pollution prevention equipment on the production line was the process flare. The flare was designed to burn off gasses at a high enough temperature such that any remaining H2S would be chemically converted to sulphur dioxide (SO2). The process flare is also a safety device since it provides for the safe combustion of potentially explosive chemicals. The flare was not continuously functioning properly between at least approximately October 2005 and January 2007. The primary problem was that the pilot light at the top of the flare stack was not always working. This allowed the flame to blow out during storms or high winds. The flame is not visible during the day, so daylight processing would continue unless anomalies were discovered in a circular chart used to display flare temperature levels or an alarm was heard that was supposed to sound if the pilot light was out; neither of these two indicators were operated properly. Because the caustic scrubber and CEMS were not working or not working properly, the failure of the flare created the potential that any H2S not flared off would escape into the ambient air. There were instances when the flare went out during processing. A regular and routine practice was for PRC employees to re-light the flare with the use of a flare gun. The flare gun and flares were regularly purchased at Walmart in the fall of 2005 and in 2006 so that PRC employees could re-light the flare when it went out. PRC employees also turned up the flow of natural gas to the stack in an attempt to keep the flame going. PRC managers at the refinery informed upper management on multiple occasions of the problems with the process flare and that a flare gun was being used to light the flare when it would go out. On multiple occasions, including approximately November 2005 and July 2006, PRC's Vice-President asked the employees to obtain repair estimates for the flare. However, upper management did not approve the estimates and told the refinery employees that there was insufficient money to make the needed repairs. LDEQ conducted a site visit on December 13, 2005, and during deployment of an infrared "Hawk" camera, observed vapors coming from the flare stack while the flare was unlit, although the makeup of the vapors was not identified. PRC's Vice-President and other management received an internal document summarizing in a page the results of the inspection. This document states that after LDEQ found the flare not operating, it was subsequently ignited with the use of a flare gun. The problems with the process

flare were also cited by LDEQ as a permit violation in a report of an inspection that took place on March 1, 2006. As a result, PRC knowingly operated the Pelican refinery without the use and proper use and continuous operation of a process flare at all times when emissions might have been vented. The facility continued to operate sporadically, despite the failure to replace the pilot light for the flare until January 2007.

10. Another avenue for releases into the ambient air came from the barge loading dock portion of the facility. PRC, in its permit application, which was later approved by LDEQ, certified it would utilize carbon beds to scrub for volatile organic compounds at the loading dock when product was loaded and offloaded. However, Pelican never installed carbon beds at the barge loading dock, although in some instances it rented a portable scrubber to accomplish the same purpose. Four volatile organic compounds are benzene, ethylbenzene, toluene, and xylene ("BTEX"). Each of the BTEX compounds are "hazardous air pollutants" pursuant to the Clean Air Act. On certain occasions, with PRC Vice-President's knowledge, PRC utilized neither carbon beds, nor a portable scrubber at the loading dock, thus resulting in emissions of BTEX into the ambient air. Both a refinery manager and the Vice-President signed and submitted deviation reports to the LDEQ that falsely stated: "A contractor is currently working on building a treater system that will have carbon canister controls." These false statements obstructed the government.

11. Nearby residents complained to PRC and to the LDEQ about odors emanating from the Pelican Refinery. For example, LDEQ visited the facility September 12, 2005, after a nearby resident complained of a strong distillate smell on the morning of September 11, 2005, and that he had experienced a headache and nausea as a result. An LDEQ representative spoke with the then-refinery manager who stated a barge was in fact loading at the dock at the same time the resident experienced physical symptoms. The refinery manager did not disclose to LDEQ that a reading of high reading of H2S (851 parts per million) had been detected at the loading dock. The refinery manager contacted PRC's Vice-President and told him of the citizen complaint which led to the LDEQ visit. A citizen also complained to LDEQ on October 15, 2005, after she and her husband became nauseated from unusual odors.

12. In June 2006, the second refinery manager quit. No new refinery manager was hired until after federal agents with the Environmental Protection Agency Criminal Investigation Division served search warrants at PRC's corporate headquarters and PRC refinery in November 2007. In the interim, the operations manager reported directly to PRC's Vice-President. In an email dated August 14, 2006, the operations manager wrote an email to the Vice-President: "I have been looking over the 39 count list of DEQ/EPA violations that were given to us by [LDEQ]. There are many items that need to be done for us to be in compliance. I talked to [Pelican's environmental consultant] about this[.] He told me that the fines that we are already facing might-might not be increased by restarting of the vacuum unit. [Pelican's environmental consultant] said that He will be out of the office but gave me his cell in case we might want to talk to him concerning this." The operations manager advised "if we as a company put forth a good faith effort to try and get in compliance it would help us in the long run with the DEQ, who

can really give us hell and cost us a ton of money if we ignore them." The operations manager also warned upper management that "it would be extremely difficult to come up with a good excuse for not fixing the mechanical items on as to why we have not addressed the mechanical items on the list that need to be corrected here at the refinery after being down so long." Despite this warning, upper management was involved in restarting the facility at the end of August 2006, when problems such as the CEMS monitor and flare remained uncorrected.

13. PRC provided false information to the State of Louisiana and the State of Texas concerning the sale of asphalt as set forth below. PRC sold asphalt within programs established by the State of Louisiana and the State of Texas. In both states, PRC asphalt was sold to suppliers under the State approved programs for use on highways constructed with federal highway grants. In both states, PRC was required to certify that the asphalt that was being produced met the State's specifications. This was done by submitting documentation showing the analysis of a sample of the asphalt that was on hand to sell, and by providing the State authorities with a quart size sample of the asphalt itself. The laboratory results tested various qualities of the asphalt to assure that it was the particular type authorized for sale. The factors included, among others, tests for flash point, viscosity, and ductility. Once purchased, asphalt from Pelican was typically mixed with asphalt from other sources before being used in highway projects. It was also subject to further testing. If the asphalt did not meet specifications, it could not be sold or used. It is not known whether any asphalt was ever rejected on the job site in Louisiana or Texas.

14. In Louisiana, Pelican received a laboratory number from the Louisiana Department of Transportation and Development once the State verified the quality of the sample submitted. The approval would allow Pelican to ship the amount that had been certified to be in a tank at that time. However, in certain instances, Pelican's lab submitted an analysis that was performed on asphalt that was not in the tank, but rather was created in the lab itself. A "lab blended" sample was also sent to Louisiana without disclosing that it was not actually from a tank. Lab blended asphalt samples of asphalt grade PG 70-22 were sent to Louisiana, and the asphalt that was sold was actually blended in trucks. This was because Pelican lacked serviceable tanks in which to make the asphalt. The form used to submit the certificate of analysis had a box indicating the tank sampled which was either left blank, or contained a false tank number. For example, a form dated October 25, 2007, submitted by the Defendant to the State of Louisiana Department of Transportation and Development indicated that a sample had been successfully tested of 190,000 gallons. On October 31, 2007, the asphalt facilities manager received a laboratory number from the Louisiana authorizing the sale of 190,000 gallons of PG 70-22 asphalt from tank 5-36. In other instances, where the asphalt sold did originate from tanks, there were other irregularities such as selling product that had been altered after it had been certified and without re-certifying the asphalt.

15. In Texas, Pelican submitted analysis of asphalt along with samples for the State to test. However, there were instances where false paperwork and samples were submitted to Texas. For example, there were instances where Texas received a lab blended sample rather than

a sample of asphalt existing in any tank. One reason that this was done was that the analysis of what was in the tank failed the test in some respect and thus could not be sold without modification and additional testing. The sample was modified and submitted to the State as reflective of what was on hand, when at the time, there had been no modification of the contents of the tank. In other instances, Texas was sent an old sample from a stockpile that the asphalt facilities manager maintained in his office. The old saved samples were examples of passing grades of asphalt. They were then submitted to Texas with a certificate of analysis with false information indicating the date sampled and the date tested. The approval given by Texas would allow PRC and PRC Asphalt to sell the approved product for a month before a new test and sample was required to be submitted. Old quart samples of asphalt that had been drawn and tested months before were submitted to Texas along with an analysis which, while accurate for what was in the can, actually had been performed at a prior point in time when the sample was taken.

16. In pleading guilty, the Defendant acknowledges that it violated its Title V Permit as set forth herein during the period including August 2005 through 2006. Defendant further acknowledges that there were releases of hazardous air pollutants including H2S, benzene, ethylbenzene, toluene, and xylene from the Pelican refinery in Lake Charles, Louisiana, and that it negligently released and caused the release into the ambient air extremely hazardous substances. The Defendant further acknowledges that its negligence in overseeing operations at the refinery and failing to provide adequate funding for environmental compliance were a proximate cause of the releases and associated risks and failure to comply with permit requirements.

I have read this Joint Factual Statement and have carefully discussed every part of it with counsel for the Pelican Refining Company, LLC. I hereby stipulate that the above Joint Factual Statement is true and accurate to the best of my knowledge, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt. I am authorized under the principles of corporate and business association law to bind the Defendant to the foregoing Joint Factual Statement.

Dated: July 29, 2011

Don C. Nelson
Authorized Corporate Representative
Defendant Pelican Refining Company, LLC

I am counsel for Pelican Refining Company, LLC. I have carefully discussed every part of this Joint Factual Statement with my client's corporate representative. To the best of my knowledge, it is a true and accurate factual statement and provides a sufficient factual basis for charges set forth in the Bill of Information and Plea Agreement.

Dated: July 30, 2011

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