

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES of AMERICA,)	
)	
Plaintiff,)	
v.)	Civil Action
)	No. H-01-0978
Deer Park Refining)	Judge Melinda Harmon
Limited Partnership,)	
)	
Defendant.)	
_____)	

SECOND ADDENDUM TO CONSENT DECREE

Plaintiff, the United States of America (hereinafter "Plaintiff" or "the United States"), on behalf of the United States Environmental Protection Agency (hereinafter, "EPA"), and Defendant, Deer Park Refining Limited Partnership ("DPRLP"), hereby execute this Second Addendum to the Consent Decree in the above-styled action. By the agreement of the United States and DPRLP, and pursuant to the provisions of Paragraph 183, this Second Addendum hereby modifies the Decree by modifying certain provisions with regard to the requirements applicable to DPRLP's flaring devices, leak detection and repair monitoring, reporting under the Consent Decree, and the procedures for material and non-material modifications to the Consent Decree.

The amended provisions to the Consent Decree are as follows, and shall be binding on all parties and signatories to the Decree in this action.

1. Paragraph 105A and Section P shall be added to Part IX. Program Enhancements re: Leak Detection and Repair, as follows:

P. New Monitoring Technologies.

105A. New Monitoring Technologies. DPRLP may propose a protocol for a pilot project at DPRLP's refinery to demonstrate that an optical imaging-based LDAR program is an equivalent or better means than a Method 21-based program in reducing VOC emissions from Refinery equipment and in monitoring for emissions of VOCs at the internal leak definition levels of Paragraphs 86 and 87. This protocol may include a modified schedule for implementing the provisions of this Section for specified process units. Any schedule modification shall be only to the extent needed to gather comparative data necessary for implementation of the pilot project and shall be in effect only for the duration of the data-gathering under the protocol. EPA has sole discretion to approve or disapprove all or parts of this protocol. Upon receiving EPA's approval of the entire protocol, DPRLP may implement the pilot project. Any such implementation must be in strict accordance with the approved protocol and must not be inconsistent with the requirements of 40 C.F.R. §§ 60.18, 63.11, and 65.7, as amended on December 22, 2008. After any such pilot project is conducted, DPRLP must submit the full results, including complete data sets, to EPA. EPA will review the results. After EPA's review, EPA may, in its sole discretion, approve a change to a part or all of this Section to take advantage of the new leak detection technology if EPA has determined that the completed pilot project has demonstrated that an optical imaging-based LDAR program is an equivalent or better means than a Method 21-based program in reducing VOC emissions from Refinery equipment using the internal leak definition levels of Paragraphs 86 and 87. Any such

modification to these LDAR provisions will be filed with the Court in accordance with the requirements of Paragraph 183.

2. Paragraph 107(a) of Part X. Program Enhancements re: NSPS Subparts A and J SO₂ Emissions from Sulfur Recovery Plants and Flaring, shall be deleted and restated in its entirety to read as follows:

107(a). By no later than December 31, 2012, DPRLP shall comply with Subpart J at the Ethylene Plant, East Property, CCU, and South Property flares through installation and operation of flare gas recovery. DPRLP shall apply to remove the LHT flare, which has not been operational since March 2006, from the facility's air quality permit and will provide updates to EPA of the status of this permit revision effort in its quarterly reports. DPRLP shall submit notifications required by 40 C.F.R. § 60.7 to EPA when it has achieved compliance with Subpart J at the Ethylene Plant, East Property, CCU, and South Property flares. Such notifications shall be included in DPRLP's next semi-annual report following compliance, as required under Part XII.

(i) If, prior to termination of the Consent Decree, any flare(s) at the refinery that is subject to NSPS Subpart J becomes subject to NSPS Subpart Ja due to a modification (as defined in the final Subpart Ja regulation), such modified flare(s) shall be subject to NSPS Subpart Ja in lieu of NSPS Subpart J as a result of the modification. In the event the work undertaken by DPRLP to comply with NSPS Subpart J is determined to be a modification (as defined in the final Subpart Ja regulation), the modified affected facility shall be subject to and

comply with NSPS Subpart Ja in lieu of NSPS Subpart J for that regulated pollutant to which a standard applies as a result of the modification.

(ii) If, prior to the termination of this Consent Decree, any flare(s) at the refinery that is subject to NSPS Subpart J becomes subject to NSPS Subpart Ja due to a “reconstruction” (as that term is defined in the final Subpart Ja rule), the reconstructed facility shall be subject to and comply with NSPS Subpart Ja for all pollutants in lieu of Subpart J.

3. Paragraph 142 of Part XII, General Recordkeeping, Record Retention and Reporting, shall be deleted and replaced with new Paragraphs 142A and 142B, as follows:

142A. DPRLP shall submit semi-annual reports to EPA. Semi-annual reports shall be submitted by August 31 (covering the period from January 1 to June 30) and February 28 (covering the period from July 1 to December 31). In the semi-annual report required to be submitted on August 31 of each year, DPRLP will provide a summary of annual emissions data for the prior calendar year to include:

- (a) NO_x emissions in tons per year for each heater and boiler greater than 40 mmBTU/hr maximum fired duty;
- (b) NO_x emission in tons per year as a sum for all heaters and boilers less than 40 mmBTU/hr maximum fired duty;
- (c) SO₂, CO and PM emissions in tons per year as a sum for all heaters and boilers;
- (d) NO_x, SO₂, CO and PM emissions in tons per year for each FCCU;
- (e) SO₂ emissions in tons per year from all Sulfur Recovery Plants;
- (f) SO₂ emissions in tons per year from all acid gas flaring and tail gas incidents;

- (g) NO_x, SO₂, PM and CO emissions in tons per year as a sum at each Refinery for all other emissions units for which emissions information is required to be included in the Refinery's annual emissions summaries and are not identified above; and
- (h) for each of the estimates in (a) through (d) above, the basis for the emissions estimate or calculation (i.e., stack tests, CEMS, emission factor, etc.).

To the extent that the required emissions summary data are available in other reports generated by DPRLP, such other reports can be attached, or the appropriate information can be extracted from such other reports and attached to the semi-annual report to satisfy the requirement. Any time during the life of the Consent Decree, DPRLP may submit a request to EPA to terminate the requirements of this Paragraph, and if EPA approves, DPRLP shall no longer be required to provide this additional information.

142B. In addition to any other information specifically required to be submitted per other Sections of this Consent Decree, each semi-annual report shall contain the following:

- (a) progress report on the implementation of the requirements of Parts IV-XI, (Compliance Programs);
- (b) a summary of all Hydrocarbon Flaring Incidents;
- (c) a description of any problems anticipated with respect to meeting the Compliance Programs of Parts IV-XI of this Consent Decree; and
- (d) a summary of all exceedances of emission limits required or established by this Consent Decree, which will include:
 - (i) for operating units emissions limits that are required by the Consent Decree and monitored with CEMS or PEMS, for each CEMS or PEMS:
 - (A) total period during which the emissions limit was exceeded, if applicable, expressed as a percentage of operating time for each calendar quarter;

- (B) where the operating unit has exceeded the emissions limit more than 1% of the total time of the calendar quarter, identification of each averaging period that exceeded the limit by time and date, the actual emissions of that averaging period (in the units of the limit) and any identified cause for the exceedance (including startup, shutdown, maintenance, or malfunction), and, if it was a malfunction, an explanation and any corrective actions taken;
 - (C) total downtime of the CEMS or PEMS, if applicable, expressed as a percentage of operating time for the calendar quarter;
 - (D) where the CEMS or PEMS downtime is greater than 5% of the total time in a calendar quarter for a unit, identify the periods of downtime by time and date, and any identified cause of the downtime (including maintenance or malfunction), and, if it was a malfunction, an explanation and any corrective action taken.
 - (E) if a report filed pursuant to another applicable legal requirement contains all of the information required by this Subparagraph in similar or same format, the requirements of this Subparagraph may be satisfied by attaching a copy of such report.
- (ii) for any exceedance of an emissions limit required by the Consent Decree from an operating unit monitored through stack testing:
- (A) a summary of the results of the stack test in which the exceedance occurred;
 - (B) a copy of the full stack test report in which the exceedance occurred;
 - (C) to the extent that the Company has already submitted the stack test results, the company need not resubmit them, but may instead reference the submission in the report (e.g., date, addressee, reason for submission).

4. Paragraph 143 of Part XII, General Recordkeeping, Record Retention and Reporting, shall be deleted and restated in its entirety to read as follows:

143. The semi-annual report shall be certified by a refinery manager or company official responsible for environmental management and compliance at the refinery/refineries covered by the report, as follows:

“I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for

gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.”

5. The Notice provisions of Paragraph 178 shall be further amended to include the following information:

As to the United States Environmental Protection Agency:

Director, Air Enforcement Division (2242A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Director, Air Enforcement Division
c/o Matrix New World Engineering, Inc.
120 Eagle Rock Ave., Suite 207 East Hannover, NJ 07936-3159

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As to DPRLP:

Aamir Farid
Shell Deer Park Refining Company,
A Division of Shell Oil Products, US
5900 Highway 225, Shell Deer Park Center, Room 6036
Deer Park, TX 77536

:

_____ [com](#)

6. Paragraph 182 of Part XVIII, General Provisions shall be deleted and replaced in its entirety with:

182. **Approvals.** All EPA approvals will be made in writing.

7. Paragraph 183 of Part XVIII, General Provisions, shall be deleted and restated in its entirety to read as follows:

183. Modification. The Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or

understanding. Prior drafts of the Consent Decree shall not be used in any action involving the interpretation or enforcement of the Consent Decree.

a. Material modifications to this Consent Decree shall be in writing, signed by the Parties, and shall be effective upon approval by the Court.

b. Non-material modifications to this Consent Decree shall be effective upon signature by the Parties, in writing, signed by the Parties, and need not be filed with the Court. 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 or the completion of a catalyst additive program, provided that such changes are agreed upon in writing between EPA and DPRLP.

So entered in accordance with the foregoing this ____ day of _____, 20__.

Melinda Harmon
United States District Court Judge
Southern District of Texas

SIGNATORIES

Each of the undersigned representatives certifies that he or she is fully authorized to enter into the Second Addendum to Consent Decree on behalf of such Parties, and to execute and to bind such Parties to this Second Addendum. This Second Addendum to Consent Decree may be signed in counterparts.

WE HEREBY CONSENT to the entry of the Second Addendum to Consent Decree entered in the matter of *United States v. Deer Park Refining Limited Partnership*, Civil No. H-01-0978, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: Nov. 14, 2010

/s/ Ignacia S. Moreno
IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

/s/ Robert D. Brook
ROBERT D. BROOK
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v
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Date: Nov. 23, 2010

/s/ John Fogarty
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JOSÉ ANGEL MORENO
United States Attorney
Southern District of Texas

WE HEREBY CONSENT to the entry of the Second Addendum to Consent Decree entered in the matter of *United States v. Deer Park Refining Limited Partnership*, Civil No. H-01-0978, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:

Date: May 10, 2010

/s/ Pamela J. Mazakas for
ADAM M. KUSHNER
Director, Office of Civil Enforcement
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

WE HEREBY CONSENT to the entry of the Second Addendum to Consent Decree entered in the matter of *United States v. Deer Park Refining Limited Partnership*, Civil No. H-01-0978, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR DEFENDANT DEER PARK REFINING
LIMITED PARTNERSHIP:

Date: Dec. 21, 2009

/s/ Michael P. Gallagher
MICHAEL P. GALLAGHER
HSSE Manager, Americas
Shell Oil Products US
910 Louisiana Street
Houston, TX 77002

CERTIFICATE OF SERVICE

I hereby certify that this 13th day of December, 2010, a copy of this Second Addendum to Consent Decree was filed with the Clerk of the U.S. District Court for the Southern District of Texas using the Court's CM/ECF system, and was served first class via U.S. Mail upon:

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