

JAN 11 2006

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Michael N. Milby, Clerk of Court

UNITED STATES of AMERICA, )  
)  
Plaintiff, )  
and the )  
NORTHWEST AIR POLLUTION )  
AUTHORITY of the STATE OF )  
WASHINGTON )  
Plaintiff-Intervener, )  
)  
v. )  
)  
EQUILON ENTERPRISES LLC, )  
Defendant. )  
\_\_\_\_\_ )

Civil Action  
No. H-01-0978  
Honorable Melinda Harmon

**SECOND ADDENDUM TO CONSENT DECREE**

WHEREAS, the United States of America (hereinafter "the United States"); the Northwest Air Pollution Authority of the State of Washington and Equilon Enterprises LLC ("Equilon," doing business as Shell Oil Products US) are parties to a Consent Decree entered by this Court on August 20, 2001, and amended on May 29, 2002 (hereinafter "the Consent Decree"); and

WHEREAS, Big West of California, LLC. (hereinafter "Big West") has purchased certain refinery assets from Equilon, which assets are covered by the Consent Decree and located in Bakersfield, California (hereinafter the "Bakersfield Refinery").

WHEREAS, Big West has contractually agreed to assume the obligations, rights and benefits, and to be bound by the terms and conditions of the Consent Decree as it pertains to the Bakersfield Refinery; and

WHEREAS, each of the undersigned has reviewed and hereby consents to this Second Addendum; and

NOW THEREFORE, the United States, the Northwest Air Pollution Authority of the State of Washington, Equilon, and Big West hereby agree that, upon approval of this Second Addendum by the Court, the Consent Decree shall thereby be amended as follows:

1. In accordance with Paragraph 3 of the Consent Decree, Big West, by its purchase of the Bakersfield Refinery, assumes the obligations and liabilities, and secures the rights and benefits, of the Consent Decree as it pertains to the Bakersfield Refinery.

2. Except as provided herein, upon entry of this Addendum, Equilon is released from its obligations and liabilities but retains all rights and benefits under the Consent Decree as it pertains to the Bakersfield Refinery.

3. Nothing in this Addendum affects the provisions of the Consent Decree pertaining to the Los Angeles, Martinez and Puget Sound Refineries. In no event shall Big West bear any liability under the Consent Decree pertaining to the Los Angeles Refinery, Martinez Refinery or Puget Sound Refinery.

4. Paragraph 4 of the Consent Decree is deleted and restated in its entirety to read as follows:

4. Equilon owns and operates three (3) petroleum refineries, and Big West owns and operates one (1), petroleum refinery covered by this Consent Decree for

the manufacture of various petroleum-based products, including gasoline, diesel and jet fuels, and other marketable petroleum by-products.

5. Paragraph 5 is deleted and restated in its entirety to read as follows:

(a) Equilon owns and operates refineries located as follows:

Martinez, California  
Los Angeles, California  
Puget Sound, Washington

Equilon also owned and operated the Lubes units covered by this Consent Decree that are located in Deer Park, Texas, which Lubes units were conveyed to Deer Park Refining LP effective as of July 1, 2003.

(b) Big West owns and operates a refinery located in Bakersfield, California.

**A. Section VI. Program Enhancements Re: Benzene Waste NESHAP**

1. In its quarterly reports submitted pursuant to this Consent Decree, Equilon has reported that the obligations set forth in paragraphs 50, 52, 53, 65, 73, 76, 82, 83, 85 and 86 (Benzene Waste NESHAP) of the Consent Decree have been completed by Equilon as they pertain to the Bakersfield Refinery. No further action is required by Big West with respect to these provisions.

2. The refinery does not utilize carbon canister(s) as a control device under the Benzene Waste NESHAP. Therefore, the obligations of Paragraphs 54 through 62 are not applicable to the Bakersfield Refinery or to Big West.

3. Equilon has submitted the final report of the audit required pursuant to paragraph 50, and on June 6, 2005, Equilon completed the corrective action pursuant to paragraph 51 that is required as a result of that audit. Equilon will submit its certification of compliance for the Bakersfield Refinery in accordance with new Paragraph 51(b).

Paragraph 51 shall be deleted and restated in its entirety to read as follows:

51(a). Big West shall not assume any liability regarding the obligations for conducting the audit as required pursuant to paragraph 50 at the Bakersfield Refinery.

51(b). Equilon shall certify to the United States and Plaintiff-Intervener, that the audit and any related corrective action have been completed and that all Equilon refineries and the Bakersfield Refinery are in compliance. The United States will review Equilon's certification and will respond with written concurrence. Equilon's release from liability at all refineries for all past civil claims related to its compliance with the Benzene Waste NESHAP through the date of lodging of this Consent Decree, as specified in Part XV (Effect of Settlement), and release for those violations that Equilon self-disclosed as a result of its audits, will take effect upon the United States' concurrence with Equilon's audit and compliance certification.

**B. Section VII. Program Enhancements Re: Leak Detection and Repair**

1. Paragraph 99 shall be renumbered to be paragraph 99(a). A new Paragraph 99(b) shall be added to the Consent Decree:

99(b). Big West shall conduct an external audit of the LDAR program at the Bakersfield Refinery at least once every four (4) years, with the next audit due in October 2007.

2. Paragraph 100(b) (alternative audits) of the Consent Decree shall be deleted and restated to read as follows:

100(b). Alternative. As an alternative to the internal audits required by Paragraph 100(a) or 100(c), as applicable, Equilon or Big West may elect to perform external audits instead, provided that an audit of each refinery occurs every two (2) years.

3. A new Paragraph 100(c) shall be added to the Consent Decree, to read as follows:

100(c). Big West shall conduct internal audits of the Bakersfield Refinery's LDAR program according to the broad framework approved by EPA. These audits shall be conducted by the personnel familiar with the LDAR Program and its requirements from a refinery operated by an affiliate of Big West. The next of these internal LDAR audits shall be commenced no later than August 1, 2005, and held every four years thereafter for the life of this Consent Decree.

4. In its quarterly reports submitted pursuant to this Consent Decree, Equilon has reported that the obligations set forth in Paragraphs 96, 97, and 98 and subparagraphs

119(b) - 119(h) (First Progress Reports) of the Consent Decree have been completed by Equilon as they pertain to the Bakersfield Refinery. No further action is required by either Equilon or Big West with respect to these provisions.

**C. Section VIII. Program Enhancements Re: NSPS Subparts A and J SO<sub>2</sub> Emissions from Sulfur Recovery Plants ("SRP") and Flaring**

1. Equilon has not yet met the obligations set forth in Paragraph 121(a) (Refinery Flare Audits) relative to the Bakersfield Refinery, and such obligations shall remain binding on Equilon to the extent set forth in the revised paragraph 121(a) as below.

2. Paragraph 121(a) shall be deleted and restated in its entirety to read as follows:

121(a). By no later than June 30, 2001, Equilon shall develop and submit for EPA approval a protocol for audits of pre-1974 refinery flares, including the following:

Bakersfield (CA): Area 2 (74y-3) and Area 2 (74y-4);

Los Angeles Refinery (CA): Main Plant #1 and #2; SRP;

Martinez Refinery (CA): LOP and LPG;

Puget Sound Refinery (WA): East, North, and South.

Equilon shall begin the audits by September 30, 2001. Within 30 days of completing each audit, Equilon shall submit the audit results to EPA and identify the flares for which it will accept NSPS Subpart J applicability. With respect to the Los Angeles, Martinez, and Puget Sound Refineries, Equilon shall propose a schedule with the audit results for achieving compliance with Subpart J, to the extent necessary. With respect to the Los Angeles, Martinez, and Puget Sound Refineries, Equilon shall submit notifications to EPA required by 40 C.F.R. § 60.7 when it has achieved compliance for each particular flare. With respect to the Bakersfield Refinery flares, within sixty (60) days of Equilon's submission of the audit results for the Bakersfield Refinery, Big West shall submit any required proposed schedule of compliance. In such case, if required, Big West shall submit to EPA a notification required by 40 C.F.R. § 60.7 when it

has achieved compliance for each particular flare pursuant to such proposed schedule. The notification shall be included in either Equilon's or Big West's, as applicable, next quarterly report following compliance, as required under Part X. Equilon's or Big West's release for liability for each particular flare for violations of NSPS Subpart J under Part XV (Effect of Settlement) shall be contingent upon receipt of either Equilon's or Big West's certification of compliance hereunder.

3. In its quarterly reports submitted pursuant to this Consent Decree, Equilon has reported that the obligations set forth in paragraphs 123 (Rerouting of SRP Sulfur Pit Emissions), 127 through 129 (Past Flaring Analysis and Corrective Action) and 134(a) (Hydrocarbon Flaring Plan) of the Consent Decree have been completed by Equilon as they pertain to the Bakersfield Refinery. No further action is required by either Equilon or Big West with respect to these provisions.

4. Paragraph 151 is amended by replacing the first sentence with the following:

151. Equilon shall be liable to pay all stipulated penalties for violations of the requirements of this part. However, if any AG Flaring Incident or Tail Gas Incident occurs at the Bakersfield Refinery after the date of transfer of ownership of the Bakersfield Refinery ("Closing Date"), Big West shall instead be responsible for any applicable stipulated penalties. Further, Equilon shall continue to be liable for any AG Flaring Incident or Tail Gas Incident associated with any incident or event that occurred before the Closing Date or which continued subsequent to the Closing Date. Equilon shall also be liable for any requirements set forth in this Section associated with any AG Flaring Incident or Tail Gas Incident that occurred before the Closing Date or which continued subsequent to the Closing Date. Notwithstanding the above, Big West shall be liable for any applicable stipulated penalty for any failure to perform required Corrective Action(s) to be completed after the Closing Date for incidents occurring prior to the Closing Date, or for any failure to submit a report after all such Corrective Action(s) has been completed, as required pursuant to Paragraph 136(f)(5), to the extent Equilon identified such Corrective Action(s) within its Flaring Incident Reports submitted to EPA pursuant to Paragraph 136 prior to the Closing Date, and to the further extent that the schedules identified in the Flaring Incident Reports provided for such Corrective Action(s) to be completed after the Closing Date.

**D. Section IX. Permitting**

1. In its quarterly reports submitted pursuant to this Consent Decree, Equilon has reported that the obligations set forth in Paragraphs 154 and 156 of the Consent Decree have been completed by Equilon as they pertain to the Bakersfield Refinery. No further action is required by either Equilon or Big West with respect to these provisions.

2. The obligations set forth in Paragraph 155 of the Consent Decree are not applicable to the Bakersfield Refinery. Therefore, the obligations of Paragraph 155 are not applicable to Big West.

**E. Section XI. Stipulated Penalties**

1. Paragraph 160 is deleted and restated in its entirety to read as follows:

Equilon or Big West, as applicable, shall pay stipulated penalties to the United States and if applicable, the Plaintiff-Intervener with jurisdiction over the subject refinery, as appropriate (split 50 percent to each), for each failure by the respective Company to comply with the terms of this Consent Decree applicable to such Company; provided however that in no event shall Big West be responsible for stipulated penalties for any matter concerning the Los Angeles, Martinez, and Puget Sound Refineries, nor for any matter concerning the Bakersfield Refinery related to actions or omissions first occurring prior to the date of transfer; and provided further that the United States or Plaintiff-Intervener, as appropriate, may elect to bring an action for contempt in lieu of seeking stipulated penalties for violations of this Consent Decree.

**F. Section XVI. General Provisions**

1. Paragraph 194 shall be further amended to include the following information:

As to Big West:

Vince Memmott  
Director of Engineering and Environmental  
Big West of California, LLC.  
6451 Rosedale Highway  
P.O. Box 1132  
Bakersfield, CA 93302

As to Equilon:

Judith C. Moorad  
General Manager  
Health, Safety, Security, Environment,  
& Sustainable Development  
Global Manufacturing  
Shell Downstream  
910 Louisiana Street  
Houston, TX 77002

**G. Section XVII. Termination**

Paragraph 202 of the Consent Decree shall be deleted and restated in its entirety to read as follows:

202(a). All provisions of this Consent Decree applicable to Equilon shall be subject to termination upon motion by the United States, the Northwest Air Pollution Authority or Equilon after the Company satisfies all requirements of this Consent Decree applicable to Equilon. The requirements for termination for Equilon, as to the Los Angeles, Martinez, and Puget Sound Refineries include payment of all stipulated penalties that may be due to the United States or the Northwest Air Pollution Authority under this Consent Decree, installation of control technology systems as specified herein, the performance of all other consent decree requirements, the receipt of all permits specified herein, and EPA's receipt of the first calendar quarterly progress report following the conclusion of Equilon's operation for at least one year of all units in compliance with the emission limits established herein, all with respect to the Los Angeles, Martinez, and Puget Sound Refineries. The requirements for termination for Equilon as to the Bakersfield Refinery under this Addendum include payment of any stipulated penalties that may be due to the United States. At such time, if Equilon believes that it is in compliance with the applicable requirements of this Consent Decree and the relevant permits specified herein, and has paid any stipulated penalty required of Equilon by this Consent Decree, then Equilon shall so certify to the United States



and the Northwest Air Pollution Authority and, unless the United States or the Northwest Air Pollution Authority objects in writing with specific reasons within 120 days of receipt of the certification, the Court shall order the provisions of this Consent Decree applicable to Equilon be terminated on Equilon's motion. If the United States or the Northwest Air Pollution Authority objects to Equilon's certification, then the matter shall be submitted to the Court for resolution under Part XIV (Dispute Resolution) of this Consent Decree. In such case, Equilon shall bear the burden of proving that the relevant provisions of this Consent Decree shall be terminated.

202(b). All provisions of this Consent Decree applicable to Big West shall be subject to termination upon motion by the United States or Big West after Big West satisfies all requirements of this Consent Decree applicable to Big West. The requirements for termination for Big West, as to the Bakersfield Refinery, include payment of all stipulated penalties that may be due from Big West to the United States under this Consent Decree, the performance of all other consent decree requirements, the receipt of all permits specified herein, and EPA's receipt of the first calendar quarterly progress report following the conclusion of Big West's operation for at least one year of all units in compliance with any emission limits established herein, all only with respect to the Bakersfield Refinery. At such time, if Big West believes that it is in compliance with the applicable requirements of this Consent Decree and the relevant permits specified herein, and has paid any stipulated penalty required of Big West by this Consent Decree, then Big West shall so certify to the United States, and unless the United States objects in writing with specific reasons within 120 days of receipt of the certification, the Court shall order the provisions of this Consent Decree applicable to Big West be terminated on Big West's motion. If the United States objects to Big West's certification, then the matter shall be submitted to the Court for resolution under Part XIV (Dispute Resolution) of this Consent Decree. In such case, Big West shall bear the burden of proving that the relevant provisions of this Consent Decree shall be terminated.

So entered in accordance with the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2005.

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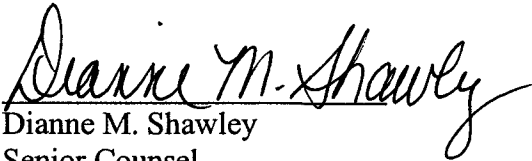
Melinda Harmon  
United States District Court Judge  
Southern District of Texas

**FOR PLAINTIFF, UNITED STATES OF AMERICA:**



Sue Ellen Wooldridge  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
10<sup>th</sup> & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Date: 12/4/05



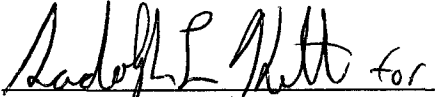
Dianne M. Shawley  
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Date: 11/21/05

Michael T. Shelby  
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U. S. v. Equilon Enterprises LLC

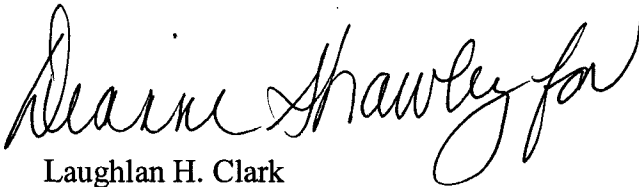
**FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:**

 for

Walker B. Smith, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building  
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Washington, D.C. 20460

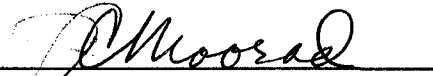
Date: August 4, 2005

**For Northwest Air Pollution Authority of the State of Washington, A Washington  
Municipal Corporation:**

By: 

Laughlan H. Clark  
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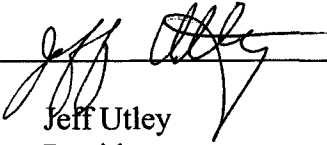
**For Equilon Enterprises LLC:**



Judith C. Moorad  
General Manager  
Health, Safety, Security, Environment,  
& Sustainable Development  
Global Manufacturing  
Shell Downstream  
910 Louisiana Street  
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Date: 6/30/05

**For Big West of California, LLC.:**



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Jeff Utley  
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6451 Rosedale Highway  
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**Date:** 7-12-2005