

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

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
	)	
v.	)	CIVIL ACTION NO.
	)	07-CV-00248-MAC
	)	
TOTAL PETROCHEMICALS USA, INC.,	)	
Defendant.	)	

**STIPULATION AND ORDER**

WHEREAS, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), initiated this action on April 30, 2007, by filing, concurrently with the lodging of a proposed Consent Decree, a Complaint against Defendant, TOTAL Petrochemicals USA, Inc., now known as Total Petrochemicals & Refining, USA, Inc. (“TOTAL”), pursuant to Section 113(b) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(b), for alleged violations at the petroleum refinery operated by TOTAL at Highway 366 and 32<sup>nd</sup> Street in Port Arthur, Texas (the “Refinery”).

WHEREAS, such alleged violations included, but were not limited to: 1) violations of the New Source Performance Standards (“NSPS”) found at 40 C.F.R. Part 60, Subparts A and J, promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411 (“Refinery NSPS Regulations”), for sulfur recovery plants, fuel gas combustion devices, and fluid catalytic cracking unit catalyst regenerators; and 2) violations of the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Benzene Waste Operations promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), and found at 40 C.F.R. Part 61, Subpart FF

(“Benzene Waste NESHAP Regulations”).

WHEREAS, on July 12, 2007, the Court approved and entered the Consent Decree resolving the United States’ claims.

WHEREAS, the Consent Decree required TOTAL to implement various measures to reduce air emissions at the Refinery, including, but not limited to, 1) a protocol for investigating, reporting, and, if necessary, addressing the root cause of significant flaring incidents, 2) specific equipment upgrades, including a project to improve the reliability of the Sulfur Recovery Plant, 3) compliance with an annual benzene quantity limit for Refinery waste of 4.2 megagrams per year (“Mg/year”), and 4) a schedule for identifying and implementing any necessary corrective actions if TOTAL exceeds the 4.2 Mg/year limit.

WHEREAS, the United States alleges that TOTAL failed to comply with requirements of the Consent Decree.

WHEREAS, the United States alleges that TOTAL is liable for stipulated penalties pursuant to Paragraph 57 and Section XV of the Consent Decree due to alleged noncompliances.

WHEREAS, TOTAL does not admit any liability to the United States arising from the occurrences described above or the matters addressed in this Stipulation and Order (“Stipulation”).

WHEREAS, the United States and TOTAL agree that settlement of the United States’ claims without further litigation is in the public interest.

WHEREAS, the United States and TOTAL further agree that the Court’s approval of this Stipulation and the Amendment to the Consent Decree (“Amendment”), lodged concurrently herewith, is an appropriate means of resolving this action.

NOW THEREFORE, before the taking of any testimony, without adjudication or admission of any issue of fact or law, except as provided in this document, the parties hereby agree and stipulate as follows:

1. Within 30 days of the date on which the Amendment is approved and entered by the Court, TOTAL will pay to the United States eight million seven hundred fifty thousand dollars (\$8,750,000.00) in stipulated penalties.

2. The payment required by Paragraph 1 herein shall be made in the manner specified in Paragraph 149 of the Consent Decree. The payment is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax deductible expenditure for purposes of federal law.

3. Except as provided in Paragraph 4 herein, TOTAL's payment of the stipulated penalties as set forth in Paragraphs 1 and 2 herein shall constitute full settlement and satisfaction of the United States' claims for stipulated penalties under the Consent Decree, unless specifically reserved below, with respect to the following:

- a. Failure to comply with the 4.2 Mg/year Refinery waste benzene limit, pursuant to Paragraph 62 of the Consent Decree, from July 12, 2007 through December 31, 2011;
- b. Failure to submit timely a written report, pursuant to Paragraph 86 of the Consent Decree, following the second, third, and fourth quarters of 2008, the third quarter of 2009, the second quarter of 2010, and the second quarter of 2011;
- c. Failure to submit timely a Benzene Waste Operations NESHAPs ("BWON") Corrective Measures Plan, pursuant to Paragraphs 86 and 87 of the Consent

Decree, following the second, third, and fourth quarters of 2008, the third quarter of 2009, the second quarter of 2010, and the second quarter of 2011;

- d. Failure to submit timely a proposal for a Third-Party TAB Study and Compliance Review, pursuant to Paragraph 88 of the Consent Decree, after the first and second quarters of 2008, and after each quarter thereafter through the end of 2011, except for after the first quarter of 2009 and the fourth quarter of 2010;
- e. Failure to submit a report, pursuant to Paragraph 44 of the Consent Decree, from the date each report was due through the date on which the Amendment is approved and entered by the Court, and liability for any associated stipulated penalties pursuant to Paragraphs 51, 52, 53, or 57 of the Consent Decree, for the following Flaring Incidents, except that this Paragraph should not be construed as releasing TOTAL from the obligation to submit the information required in Paragraph 44 of the Consent Decree for each of the below-listed Flaring Incidents:

<b>TCEQ Air Emission Event Tracking Number</b>	<b>Flaring Date</b>
94994	July 29, 2007
95171	August 1, 2007
95065	August 1, 2007
95412	August 9, 2007
95413	August 9, 2007
96146	August 19, 2007
96914	September 9, 2007
96915	September 9, 2007
97364	September 13, 2007
98101	September 29, 2007

<b>TCEQ Air Emission Event Tracking Number</b>	<b>Flaring Date</b>
98225	October 11, 2007
98847	October 26, 2007
99156	October 24, 2007
100179	November 18, 2007
101702	January 21, 2008
106860	May 9, 2008
109973	June 24, 2008
110127	June 25, 2008
110303	June 28, 2008
111592	July 27, 2008
113278	August 30, 2008
114983	September 2, 2008
117028	November 29, 2008
121768	March 24, 2009
123115	April 22, 2009
123851	May 7, 2009
125441	June 30, 2009
126062	July 9, 2009
127055	July 24, 2009
127057	July 26, 2009
127989	August 15, 2009
n/a	January 1, 2010
n/a	January 29, 2010
n/a	April 11, 2010
n/a	April 18, 2010
n/a	April 23, 2010
n/a	April 26, 2010
n/a	August 19, 2010

<b>TCEQ Air Emission Event Tracking Number</b>	<b>Flaring Date</b>
n/a	August 21, 2010
n/a	September 2, 2010
n/a	October 18, 2010
n/a	November 2, 2010

- f. Failure to timely submit a report, pursuant to Paragraph 44 of the Consent Decree, for the Flaring Incident beginning on July 26, 2011;
- g. Failure to include all information required by Paragraph 44 of the Consent Decree in TOTAL's October 26, 2007 Hydrocarbon Flaring Incident report;
- h. Failure to submit timely reports, pursuant to Paragraph 44(ix) of the Consent Decree, with respect to corrective actions taken in response to Flaring Incidents beginning on the following dates: July 23, 2007; August 15, 2007; August 29, 2007; September 2, 2007; September 12, 2007; September 18, 2007; September 24, 2007; October 2, 2007; January 24, 2008; January 11, 2009; May 11, 2009; May 12, 2009; May 14, 2009; June 12, 2009; June 17, 2009; July 13, 2009; August 12, 2009; October 13, 2009; October 29, 2009; and December 4, 2009;
- i. Failure to timely complete, by the projected completion date(s) stated in the reports required by Paragraph 44 of the Consent Decree, one or more of the corrective actions taken in response to the Flaring Incidents or Tail Gas Incidents beginning on the following dates: July 23, 2007; September 18, 2007; January 24, 2008; August 12, 2009; December 4, 2009; March 15, 2010; May 16, 2010; May 20, 2010; and August 11, 2010, except that this Paragraph should not be construed

as releasing TOTAL from the requirement of completing any required and uncompleted corrective action;

- j. Failure to include status updates regarding the flaring reduction projects set forth in Paragraph 49 and Appendix B of the Consent Decree in the quarterly reports, submitted pursuant to Part XIII of the Consent Decree, for the following nine quarters, as required by Appendix B: the fourth quarter of 2007, the first quarter of 2008, the second quarter of 2008, the third quarter of 2008, the fourth quarter of 2008, the first quarter of 2009, the second quarter of 2009, the third quarter of 2009, and the fourth quarter of 2009;
- k. Failure to complete eleven of the seventeen projects undertaken as part of the Sulfur Recovery Plant Reliability Improvement Project, set forth in Paragraph 49(v) and Appendix B of the Consent Decree, by the completion dates in the final reliability team report submitted pursuant to Appendix B, paragraph number 5;
- l. Failure to timely submit a Preventative Maintenance and Operation Plan that meets all requirements of Paragraph 35 of the Consent Decree;
- m. Failure to comply with the particulate matter emission limit and alternative continuous parameter monitoring protocol applicable to the fluid catalytic cracking unit at the Refinery, pursuant to Paragraph 16 of the Consent Decree, between July 12, 2007, and the date on which the Amendment is approved and entered by the Court;
- n. Failure to comply with the carbon monoxide emission limits applicable to the fluid catalytic cracking unit at the Refinery, pursuant to Paragraph 17 of the

Consent Decree, on July 16, 2007; August 9, 2007; August 27-28, 2007;

September 13, 2007; April 18, 2008; May 16, 2008; May 23, 2008; and November 30, 2011;

- o. Failure to comply with the maximum fuel gas hydrogen sulfide content limit applicable to heaters and boilers at the Refinery, pursuant to Paragraph 29 of the Consent Decree and 40 C.F.R. 60, Subpart J, during the following time periods: July 23-24, 2007; July 26-27, 2007; February 13, 2009; February 23, 2009; April 30, 2009; October 13, 2009; January 13, 2011; September 8, 2011; and November 13, 2011;
- p. Failure to comply with the sulfur dioxide emission limits applicable to sulfur recovery plants SRU-1/SRU-3 pursuant to Paragraph 32 of the Consent Decree and 40 C.F.R., Subpart J, during the following time periods: August 1, 2007; January 24-25, 2008; June 25-28, 2008; June 29-30, 2008; September 7-11, 2008; October 1-5, 2008; March 24-April 30, 2009; May 9, 2009; May 10, 2009; May 14-16, 2009; May 21-24, 2009; May 26, 2009; June 17-19, 2009; July 27-August 2, 2009; August 12-13, 2009; October 27-29, 2009; April 25-May 3, 2010; August 14-15, 2010; September 10, 2010; October 19, 2010; November 25-26, 2010; December 19-22, 2010; March 9, 2011; August 17-25, 2011; August 26-September 13, 2011; January 6-7, 2012; February 27-28, 2012; June 26-30, 2012; July 3-8, 2012; and September 25-27, 2012;
- q. Failure to comply with the sulfur dioxide emission limits applicable to sulfur recovery plant SRU-4 pursuant to Paragraph 32 of the Consent Decree and 40

- C.F.R., Subpart J, during the following time periods: February 15-26, 2011; March 29-31, 2011; April 13, 2011; April 19, 2011; May 15-16, 2011; June 1, 2011; September 5-6, 2011; September 13-14, 2011; and September 7, 2012;
- r. Failure to comply with the sulfur dioxide emission limits applicable to sulfur recovery plant SRU-5 pursuant to Paragraph 32 of the Consent Decree and 40 C.F.R., Subpart J, during the following time periods: April 12, 2011; May 9-11, 2011; June 12-13, 2011; September 7, 2011; November 7-11, 2011; January 11, 2012; and August 2, 2012; and
- s. Liability for any associated stipulated penalties pursuant to Paragraphs 51, 52, 53, or 57 of the Consent Decree, for thirteen Acid Gas Flaring Incidents – on December 7, 2007; October 15, 2008; October 16, 2008; January 11, 2009; June 17, 2009; August 12, 2009; October 13, 2009; October 29, 2009; December 4, 2009; January 12, 2011; January 13, 2011; August 17, 2011; and September 7, 2011 – and for nineteen Tail Gas Incidents – on July 23, 2007; August 15, 2007; September 12, 2007; September 29, 2007; January 24, 2008; May 11, 2009; August 11, 2010; October 19, 2010; November 26, 2010; July 13, 2011; November 7, 2011; January 10, 2012; January 16, 2012; June 6, 2012; June 27, 2012; July 3, 2012; August 2, 2012; August 19, 2012; and August 27, 2012;
- t. Failure to timely develop and implement compliant Quality Control Procedures for the sulfur dioxide continuous emissions monitoring system installed on the Refinery's tailgas thermal oxidizer stack, pursuant to Paragraph 31 of the Consent Decree and 40 C.F.R. § 60.13(a) and 40 C.F.R. Part 60, Appendix F;

- u. Failure to properly calculate data averages for the sulfur dioxide continuous emissions monitoring system installed on the Refinery's tailgas thermal oxidizer stack, pursuant to Paragraph 31 of the Consent Decree and 40 C.F.R. § 60.13(h)(2)(iv), through March 31, 2011;
- v. Failure to timely submit an annual update to the inventory of Covered Heaters and Boilers, pursuant to Paragraph 22 of the Consent Decree, in 2009 and 2010;
- w. Failure to submit on every occasion a certification statement with all notices, reports, or other submissions required under Part VI of the Consent Decree, pursuant to Paragraph 58 of the Consent Decree, during the Third Quarter of 2010;
- x. Failure to replace on every occasion a primary carbon canister with a fresh canister within 24 hours of detecting breakthrough, pursuant to Paragraph 67 of the Consent Decree, between July 12, 2007, and September 30, 2012;
- y. Failure by the Date of Entry to modify the written procedures for complying with 40 C.F.R. Part 61, Subpart FF, to provide for an annual review of management of change reviews conducted during the previous year to ensure that all new benzene waste streams are included in the Refinery's waste stream inventory, pursuant to Paragraph 70 of the Consent Decree;
- z. Failure to submit to EPA a description of a Refinery-wide enhanced leak detection and repair program, pursuant to Paragraph 97 of the Consent Decree, through August 17, 2007;
- aa. Failure to submit a copy of the description of the Refinery-wide enhanced leak

detection and repair program to the Texas Commission on Environmental Quality within 30 days of completing the written description, pursuant to Paragraph 123 of the Consent Decree;

- bb. Failure to timely complete a periodic third-party audit of the Refinery-wide enhanced leak detection and repair program at least once every two years following the Date of Entry in 2009 and 2011, pursuant to Paragraph 101 of the Consent Decree;
  - cc. Failure to submit to EPA, as part of the quarterly progress reports required by Paragraph 147 of the Consent Decree, for the first quarter of each year following a third party audit of the Refinery-wide enhanced leak detection and repair program, the audit report and corrective action records, pursuant to Paragraph 102 of the Consent Decree, in 2009 and 2011; and
  - dd. Failure to timely develop and implement a procedure to ensure a quality assurance/quality control review of all data generated by leak detection and repair monitoring technicians, pursuant to Paragraph 111 of the Consent Decree.
4. The United States reserves, and this Stipulation is without prejudice to, any other claims against TOTAL with respect to all other matters not addressed herein.
5. All requirements of the Consent Decree, as amended by the Amendment, and the United States' rights thereunder, remain effective.
6. Nothing in this Stipulation shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Stipulation.
7. Each party shall bear its own costs and attorneys' fees in this matter.

8. This Stipulation is contingent upon the Court's approval and entry of the Amendment, which is subject to the public notice procedures set forth at 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Amendment if public comments disclose facts or considerations indicating that the Amendment is inappropriate, improper, or inadequate. If the United States withdraws consent to the Amendment, or the Court declines to enter the Amendment, this Stipulation is void.

9. Each undersigned representative of TOTAL, EPA, and the Acting 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 Stipulation and to execute and legally bind the Party he or she represents to this document.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF TEXAS

FOR THE UNITED STATES OF AMERICA:

Date:

9/9/13

  
ROBERT G. DREHER  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Date:

9/10/13

  
KATHERINE M. KANE  
SCOTT D. BAUER  
Senior Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-4133

FOR TOTAL PETROCHEMICALS & REFINING USA, INC.:

Date: 06/26/13



NIGEL TRANTER  
Refinery Manager  
Total Petrochemicals & Refining USA, Inc.  
P.O. Box 849  
Port Arthur, Texas 77641

Date: 6-27-13



GEORGE O. WILKINSON, JR.  
Vinson & Elkins LLP  
2300 First City Tower  
1001 Fannin Street  
Houston, Texas 77002-6760  
ATTORNEY FOR TOTAL PETROCHEMICALS  
& REFINING USA, INC.