

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 STATE OF DELAWARE,)
STATE OF LOUISIANA, and the)
NORTHWEST AIR POLLUTION)
AUTHORITY OF THE STATE OF)
WASHINGTON,)
Plaintiff-Interveners,)
v.)
MOTIVA ENTERPRISES LLC,)
EQUILON ENTERPRISES LLC,)
and DEER PARK REFINING)
LIMITED PARTNERSHIP,)
Defendants.)

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

FIFTH ADDENDUM TO CONSENT DECREE

WHEREAS, the United States of America (hereinafter “the United States”), the State of Delaware, the State of Louisiana, and the Northwest Air Pollution Authority of the State of Washington (hereinafter collectively referred to as the “State Plaintiffs”), Motiva Enterprises LLC, Equilon Enterprises LLC (“Equilon,” doing business as Shell Oil Products US) and Deer Park Refining Limited Partnership (hereinafter collectively referred to as “the Shell/Motiva Companies”) are parties to a Consent Decree entered by this Court on August 20, 2001, and amended on May 29, 2002, December 24, 2003, January 13, 2005, and February 7, 2005 (hereinafter “the Heater and Boiler 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 Heater and Boiler Consent Decree and located in Bakersfield, California (hereinafter "the Bakersfield Refinery"); and

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

WHEREAS, the United States, the State Plaintiffs, the Shell Motiva Companies, and Big West have reviewed and each hereby consents to this Fifth Addendum;

NOW THEREFORE, the United States, the State Plaintiffs, the Shell/Motiva Companies and Big West hereby agree that, upon approval of this Fifth Addendum by the Court, the Heater and Boiler 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 by the Court 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 Norco, Convent, Port Arthur, Los Angeles, Martinez, Puget Sound, and Deer Park Refineries, nor to the Delaware City Refinery which is owned and operated by The Premcor Refining Group, Inc. ("Premcor"). In no event shall Big West bear any liability under the Consent Decree pertaining to the Norco, Convent, Port Arthur, Los Angeles, Martinez, Puget

Sound, and Deer Park Refineries, nor to the Delaware City Refinery owned and operated by The Premcor Refining Group Inc. ("Premcor").

4. Big West shall not be responsible for any portion of the Supplemental and Beneficial Environmental Projects provided for in Section VIII, nor Civil Penalty provided for in Section IX of the Heater and Boiler Consent Decree, which the United States and the State Plaintiffs hereby acknowledge has been paid in full.

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

4. The Shell/Motiva Companies own and operate seven (7) petroleum refineries, and each of Big West and Premcor 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.

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

5.(a) Motiva and Equilon own and operate refineries located as follows:

Norco, Louisiana (Motiva)
Convent, Louisiana (Motiva)
Port Arthur, Texas (Motiva)
Los Angeles, California (Equilon)
Martinez, California (Equilon)
Puget Sound, Washington (Equilon)

(b) The Deer Park, Texas refinery is owned by Deer Park Refining Limited Partnership, and operated by its general partner, Shell Oil Company.

(c) Premcor owns and operates a refinery located at Delaware City, Delaware.

- (d) Big West owns and operates a refinery located at Bakersfield, California.

A. Section V. NO_x and SO₂ Emissions Reductions From Heaters and Boilers

1. The Shell/Motiva Companies have achieved a reduction of 22.75 tons per year of NO_x emissions from the Bakersfield Refinery, and so certified in their annual NO_x Control Plan Update submitted pursuant to paragraph 16 on March 31, 2005.

2. Paragraph 9 is replaced with the following:

9. On or before December 31, 2008, the Shell/Motiva Companies, Premcor and Big West shall complete programs to reduce the overall NO_x emissions from the Controlled Heaters and Boilers at their refineries in an amount greater than or equal to 6,920 tons per year. The Shell/Motiva Companies shall achieve 5,103.25 tons per year of these reductions at the Shell/Motiva Company Refineries, Premcor shall achieve 1,794 tons per year of these reductions at the Delaware City Refinery, and Big West shall achieve 22.75 tons per year of these reductions at the Bakersfield Refinery, each as demonstrated by the inequality in paragraph 10, with no use of emission caps in the demonstration; provided however that the companies may propose for EPA approval an adjustment of the allocation of NO_x emission reductions to be achieved at the Shell/Motiva Company Refineries, the Delaware City Refinery, and at the Bakersfield Refinery, and the adjusted allocation shall be effective upon EPA's approval. EPA shall approve the adjustment if the proposed reallocation is consistent with the requirements of paragraphs 12, 14 and 15 of this Consent Decree, and the proposed reallocation provides that total NO_x emission reductions to be achieved from all refineries governed by this Consent Decree will be equal to or greater than 6,920 tons per year, in the aggregate, in accordance with this paragraph. Any proposed reallocation under this paragraph that satisfies the foregoing criteria will be deemed approved sixty (60) days after the companies submit the joint request for reallocation unless EPA objects to such reallocation within such timeframe in accordance with this paragraph.

3. Paragraph 10 shall be replaced with the following:

10. The Shell/Motiva Companies, Premcor's, or Big West's selection of control technology must at a minimum reduce overall NO_x emissions from the Controlled Heaters and Boilers by at least *X* tons per year from a prior actual to future allowable basis so as to satisfy the following inequality.

Sum $[(E_{\text{Actual}})_i - (E_{\text{Allowable}})_i]$ greater than or equal to X tons of NOx per year

$i = 1$

Where:

$(E_{\text{Allowable}})_i =$ [(The requested portion of the permitted allowable pounds of NOx per million BTU for heater or boiler i)/(2000 pounds per ton)] x [(the lower of permitted or maximum heat input rate capacity in million BTU per hour for heater or boiler i) x (the lower of 8760 or permitted hours per year)] ;

$(E_{\text{Actual}})_i =$ The tons of NOx per year prior actual emissions (unless prior actuals exceed allowable emissions, then use allowable) as shown in Attachment 1 for controlled heater or boiler i ; and

$n =$ The number of heaters and boilers at the Shell/Motiva Companies, Premcor's, or Big West's, as applicable, refineries that are controlled.

$X =$ The allocated tons per year of reductions established for the Shell/Motiva Companies, the Delaware City Refinery, or for the Bakersfield Refinery, as applicable, according to the provisions of paragraph 9.

3. The Heater and Boiler Consent Decree is amended to add the following paragraph after existing Paragraph 13(a):

13(b). Joint and several liability shall not attach to Big West. Big West shall only be liable for compliance obligations under the Consent Decree applicable to the Bakersfield Refinery, and shall only be liable for any of those obligations that continue or are to be satisfied under the Consent Decree subsequent to the Closing Date.

B. Section XII. Stipulated Penalties

1. The first sentence of Paragraph 44 is replaced with the following:

The Shell/Motiva Companies, Premcor, or Big West, as applicable, shall pay stipulated penalties to the United States and the appropriate State Plaintiff, if any (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 Premcor be responsible for stipulated penalties for any matter concerning the Norco, Convent, Port Arthur, Bakersfield, Los Angeles, Martinez, Puget Sound, and Deer Park Refineries, nor for any matter concerning

the Delaware City Refinery related to actions or omissions first occurring prior to the Closing Date; and in no event shall Big West be responsible for stipulated penalties for any matter concerning the Delaware City, Norco, Convent, Port Arthur, Los Angeles, Martinez, Puget Sound, and Deer Park Refineries, nor for any matter concerning the Bakersfield Refinery related to actions or omissions first occurring prior to the Closing Date; and provided further that the United States and the appropriate State Plaintiff may elect to bring an action for contempt in lieu of seeking stipulated penalties for violations of this Consent Decree.

C. Section XIV. Effect of Settlement.

1. The final sentence of Paragraph 68(a) of the Heater and Boiler Consent Decree shall be replaced by the following:

During the life of this Consent Decree, the units described in paragraphs 68(a) and 68(b) shall be on a compliance schedule, and to the extent that the Shell/Motiva Companies, Premcor, and Big West, as applicable, take required actions after obtaining all necessary permits to satisfy the compliance schedule, the releases of liability set forth in paragraphs 68(a) and 68(b) shall extend to the Shell/Motiva Companies, Premcor, or Big West, as applicable, through the time of the Shell/Motiva Companies,' Premcor's, or Big West's satisfactory completion of the applicable compliance schedule. Further, any modification (as defined in 40 C.F.R. § 52.21) to the units which is not required by this Consent Decree is beyond the scope of this release. In addition, this paragraph shall not be construed to grant any release to Shell/Motiva, Premcor, or Big West for new violations that originated after August 20, 2001 (the date of entry of the Consent Decree), and this paragraph does not affect any releases in Paragraphs 68(a) and 68(b).

D. Section XV. General Provisions

1. Paragraph 75 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 and Motiva:

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

E. Section XV. Termination

1. Paragraph 83a of the Heater and Boiler Consent Decree shall be deleted and restated in its entirety to read as follows:

83a. All provisions of this Consent Decree applicable to the Shell/Motiva Companies shall be subject to termination upon motion by the United States, the State Plaintiff or the Shell/Motiva Companies after the Company satisfies all requirements of this Consent Decree applicable to the Shell/Motiva Companies. The requirements for termination for the Shell/Motiva Companies, as to the Norco, Convent, Port Arthur, Los Angeles, Martinez, Puget Sound, and Deer Park Refineries include payment of all stipulated penalties that may be due to the United States or the State Plaintiff 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 the Shell/Motiva Companies' operation for at least one year of all units in compliance with the emission limits established herein. The requirements for termination for Motiva as to the Delaware City Refinery, and for Shell as to the Bakersfield Refinery, include payment of all stipulated penalties incurred prior to the respective Closing Dates that may be due to the United States or the State Plaintiff, if applicable, and the completion of the Supplemental and Beneficial Environmental Projects as required under the Consent Decree. At such time, if the Shell/Motiva Companies believe that they are in compliance with the applicable requirements of this Consent Decree and the relevant permits specified herein, and have paid any stipulated penalty required of the Shell/Motiva Companies by this Consent Decree, then the Shell/Motiva Companies shall so

certify to the United States and the State Plaintiff and unless the United States or the State Plaintiff 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 the Shell/Motiva Companies be terminated on the Shell/Motiva Companies' motion. If the United States or the State Plaintiff objects to the Shell/Motiva Companies' certification, then the matter shall be submitted to the Court for resolution under Part XVI (Dispute Resolution) of this Consent Decree. In such case, the Shell/Motiva Companies shall bear the burden of proving that the relevant provisions of this Consent Decree shall be terminated.

This section shall be modified by adding the following Paragraph 83c:

83c. All provisions of this Consent Decree applicable to Bakersfield 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 the emission limits established herein, all only with respect to the Bakersfield Refinery. At such time, if Bakersfield 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 XVI (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.

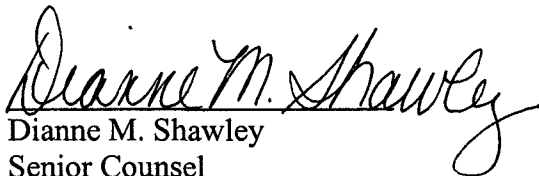
Melinda Harmon
United States District Court Judge
Southern District of Texas

FOR PLAINTIFF, UNITED STATES OF AMERICA:



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

Date: 12/4/05



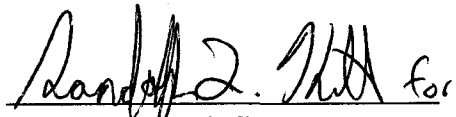
Dianne M. Shawley
Senior Counsel
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20005

Date: 11/21/05

Michael T. Shelby
United States Attorney
Southern District of Texas
P.O. Box 61129
Houston, TX 77208

U. S. v. Motiva Enterprises LLC, et al

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

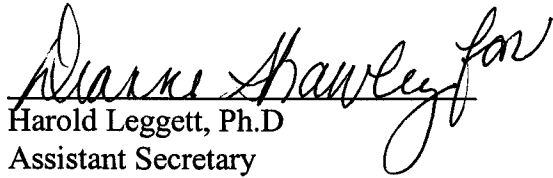
 for

Walker B. Smith, Director
Office of Civil Enforcement
Office of Enforcement and Compliance
Assurance

U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

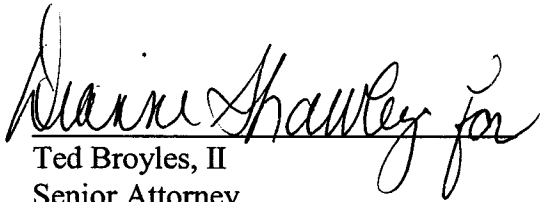
Date: August 4, 2005

Preliminary Approval of Plaintiff-Intervener, the State of Louisiana, through the Department of Environmental Quality:


Harold Leggett, Ph.D

Assistant Secretary
Office of Environmental Compliance
Louisiana Department of Environmental Quality

Date: 1/10/06


Ted Broyles, II

Senior Attorney
Office of the Secretary
Legal Affairs Division
P.O. Box 4302
Baton Rouge, Louisiana 70821-4302

Date: 1/10/06

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

By: *Deanne Hawley for*

Laughlan H. Clark
Visser, Zender and Thurston, P.S.
1700 D Street
P. O. Box 5226
Bellingham, WA 98227

Date: 1/10/00

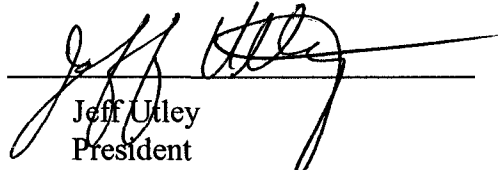
For Motiva Enterprises LLC, Equilon Enterprises LLC, and Deer Park Refining Limited Partnership:



Date: 6/30/05

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

For Big West of California, LLC.

A handwritten signature in black ink, appearing to read "Jeff Utley", is written over a horizontal line.

Jeff Utley
President
Big West of California, LLC
6451 Rosedale Highway
P.O. Box 1132
Bakersfield, CA 93302

Date: 7-12-2005