

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

UNITED STATES OF AMERICA,)
Plaintiff,)
)
)
v.)
)
)
TOTAL PETROCHEMICALS USA, INC.,)
Defendant.)

CIVIL ACTION NO.
07-CV-00248-MAC

AMENDMENT TO CONSENT DECREE

WHEREAS, on April 30, 2007, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint against Defendant, TOTAL Petrochemicals USA, Inc., now known as Total Petrochemicals & Refining USA, Inc. (“TOTAL”), for alleged violations at TOTAL’s petroleum refinery located in Port Arthur, Texas (“Refinery”);

WHEREAS, the Complaint alleged that TOTAL violated various Clean Air Act (“CAA” or “the Act”) statutory and regulatory provisions, including, but not limited to: 1) 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) 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, the claims in the Complaint were resolved by a Consent Decree, lodged contemporaneously with the filing of the Complaint and entered by the Court on July 12, 2007;

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 its noncompliance;

WHEREAS, TOTAL does not admit any liability to the United States for failure to comply with the Consent Decree or for stipulated penalties;

WHEREAS, this Amendment to the Consent Decree ("Amendment") addresses TOTAL's alleged violations of the Consent Decree by, *inter alia*, 1) extending by two years the period of compliance with the 4.2 Mg/year annual limit on benzene wastes at the Refinery, 2) implementing an internal Consent Decree compliance task force, and 3) retaining a third-party auditor to assess its compliance with the Consent Decree;

WHEREAS, Paragraph 267 of the Consent Decree provides that it may be modified by a subsequent written agreement signed by the United States and TOTAL (together, "the Parties"), and that, in the case of a material modification, such modification will be effective upon

approval by the Court; and

WHEREAS, the Parties recognize, and the Court by entering this Amendment finds, that this Amendment has been negotiated at arm's length and in good faith, that this Amendment is fair, reasonable, and in the public interest, and that this Amendment, along with the Stipulation and Order ("Stipulation") filed contemporaneously herewith, is the most appropriate means of resolving this matter;

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Consent Decree, as modified herein, shall remain in full force and effect in accordance with its terms.

CONSENT DECREE AMENDMENTS

2. Modification of Alternative Continuous Parameter Monitoring Protocol for FCCU: The text of Paragraph 16 of the Consent Decree is deleted and replaced with the following:

TOTAL shall comply with 40 C.F.R. 60.105(a)(1) through the following alternative continuous parameter monitoring protocol: TOTAL shall continuously monitor and record (1) the pressure drop across the wet gas scrubber, and (2) the scrubber liquid to gas ratio. TOTAL shall report as an emission exceedance, in accordance with the requirements of 40 C.F.R. Part 60, Subpart J, and of this Consent Decree, any three-hour period in which the average venturi pressure differential or average liquid to gas ratio falls below the minimum value established through the most recent stack sampling performed on the FCCU wet gas scrubber stack pursuant to the procedures set forth in

Texas Commission on Environmental Quality Permit Number 46396. No later than 30 days after receiving a final report of the results for any stack test performed on the FCCU wet gas scrubber stack pursuant to the procedures set forth in Texas Commission on Environmental Quality Permit Number 46396, Total shall submit a copy of such report to EPA. Total shall include in the reports required by Paragraph 147 of the Consent Decree recorded data for the average venturi pressure differential and scrubber liquid to gas ratio for any three-hour period in which the average of either of these monitored parameters falls below the minimum value established through the most recent stack test. Further, except during periods of Startup, Shutdown, or Malfunction, TOTAL shall maintain the three-hour average of the venturi pressure differential and scrubber liquid to gas ratio above the minimum values established through the most recent stack test. Within six months after the Date of Entry of this Consent Decree, TOTAL shall conduct a stack test pursuant to the protocol specified in 40 C.F.R. 60.106(b)(2) to measure PM emissions if such stack test has not been conducted within one year prior to the Date of Lodging. Within nine months after the Date of Entry of this Consent Decree, TOTAL shall submit a copy of the stack test result to EPA.

3. Extension of Period of Compliance with 4.2 BQ Compliance Option: The text of Paragraph 62 of the Consent Decree is deleted and replaced with the following:

Beginning on the Date of Lodging of this Consent Decree, TOTAL shall comply with the compliance option set forth at 40 C.F.R. § 61.342(e) ("6 BQ Compliance Option"), along with all other applicable requirements of 40 C.F.R. Part 61, Subpart FF ("Benzene Waste Operations NESHAP" or "Subpart FF"). By no later than March 31, 2007, and continuing until March 31, 2015, TOTAL will meet a standard at least thirty

percent more stringent than that imposed by 40 C.F.R. §61.342(e). Specifically, TOTAL will operate the Refinery so that the Refinery benzene wastes described in § 61.342(e) are equal to or less than 4.2 Mg/year (4.62 tons/year) ("4.2 BQ Compliance Option").

4. The text of Paragraph 63 of the Consent Decree is deleted and replaced with the following:

TOTAL will not change the Refinery's compliance option from the 6 BQ Compliance Option, but after March 31, 2015, TOTAL no longer will be required to comply with the 4.2 BQ Compliance Option.

5. Internal Consent Decree Compliance Task Force and Third Party Consent Decree Compliance Audit: The following text is added to the Consent Decree following Paragraph 147:

XIII-A. CONSENT DECREE COMPLIANCE ASSURANCE MEASURES

147-A. Internal Consent Decree Compliance Task Force. By no later than the Date of Entry of the Amendment, TOTAL will establish an Internal Consent Decree Compliance Task Force ("Task Force"), consisting of TOTAL employees and/or contractors, to oversee and ensure compliance with the Consent Decree.

a. The Task Force must include at least the following TOTAL employees: (i) the Refinery Manager; (ii) the Refinery Health Safety and Environmental Manager; (iii) the Refinery Operations Manager; and (iv) the Refinery Compliance Assurance Supervisor. The Refinery Compliance Assurance Supervisor will act as the secretary of the Task Force. The Refinery Environmental Supervisor or the Refinery Consent Decree Coordinator will participate in meetings to discuss the implementation of Consent Decree requirements and to provide information to Task Force members.

b. At its initial meeting, the Task Force will:

- (i) Review all requirements of the Consent Decree, as amended;
- (ii) Review the schedule for implementing Consent Decree requirements;
- (iii) Identify all outstanding tasks to be completed under the Consent Decree and the deadline for each;
- (iv) Identify any potential areas of noncompliance with outstanding Consent Decree requirements, if any, and establish a plan to comply promptly with such requirements;
- (v) Review all work to be conducted pursuant to the Consent Decree over the six (6) months following the date of the meeting and confirm that adequate resources and personnel are committed to ensure timely completion of each required task;
- (vi) Review each known area of noncompliance that has occurred during the twelve (12) months preceding the date of the meeting and ensure each such area of noncompliance has been remedied, or that adequate resources and personnel are committed to comply promptly;
- (vii) Identify all communications regarding the Consent Decree between TOTAL personnel and EPA personnel (oral and written) occurring during the six (6) months preceding the date of the meeting, determine whether any of such communications require further discussion with EPA or other action on TOTAL's part, and, if further action is required, assign adequate resources and personnel to complete the necessary action;
- (viii) Identify any issues for discussion with EPA and assign personnel to complete such discussions;

- (ix) Identify any issues that may arise over the twelve (12) months following the date of the meeting with the potential to hinder compliance with any Consent Decree requirement and assign adequate resources and personnel to address such issues to ensure timely and continuous compliance with the Consent Decree;
 - (x) Identify any decisions regarding the interpretation of Consent Decree language and/or requirements (i.e., "judgment calls") being considered or already made by TOTAL personnel and assign personnel to discuss such decisions with EPA; and
 - (xi) Identify any other issues for which the assistance of counsel or of an outside consultant may be necessary and/or beneficial and assign personnel to obtain such assistance.
- c. At subsequent meetings, the Task Force will:
- (i) Review and update, as necessary, the list of outstanding tasks to be completed under the Consent Decree and the potential areas of noncompliance with Consent Decree requirements, if any, and establish or revise the plan to comply promptly with such requirements;
 - (ii) Review all work to be conducted pursuant to the Consent Decree over the six (6) months following the date of the meeting and confirm that adequate resources and personnel are committed to ensure timely completion of each required task;
 - (iii) Review each known area of noncompliance that has occurred since the prior Task Force meeting and ensure each such area of noncompliance has

been remedied, or that adequate resources and personnel are committed to comply promptly;

- (iv) Identify all communications regarding the Consent Decree between TOTAL personnel and EPA personnel (oral and written) occurring since the prior Task Force meeting, determine whether any of such communications require further discussion with EPA or other action on TOTAL's part, and, if further action is required, assign adequate resources and personnel to complete the necessary action;
 - (v) Identify any issues for discussion with EPA arising since the prior Task Force meeting and assign personnel to complete such discussions;
 - (vi) Identify any issues that may arise over the twelve (12) months following the date of the meeting with the potential to hinder compliance with any Consent Decree requirement and assign adequate resources and personnel to address such issues to ensure timely and continuous compliance with the Consent Decree;
 - (vii) Identify any decisions regarding the interpretation of Consent Decree language and/or requirements (i.e., "judgment calls") being considered or already made by TOTAL personnel occurring since the prior Task Force meeting and assign personnel to discuss such decisions with EPA; and
 - (viii) Identify any other issues for which the assistance of counsel or of an outside consultant may be necessary and/or beneficial and assign personnel to obtain such assistance.
- d. After the Date of Entry of the Amendment, the Task Force will meet once

per calendar month. The first meeting of the Task Force shall occur no later than the end of the first full calendar month following the Date of Entry of the Amendment. After its twelfth consecutive meeting following the Date of Entry of the Amendment, the Task Force will decide whether to continue meeting once per calendar month or whether to meet every other calendar month, but in any event, the Task Force will meet at least once every other calendar month between one and two years following the Date of Entry of the Amendment. Two years following the Date of Entry of the Amendment, the Task Force will decide whether to meet once per calendar month, once every other calendar month, or once each Calendar Quarter, but in any event, the Task Force will meet at least once every Calendar Quarter between two and three years following the Date of Entry of the Amendment. Three years following the Date of Entry of the Amendment, TOTAL may disband the Task Force.

e. TOTAL will include in each report submitted pursuant to Section XIII of the Consent Decree a summary of the discussions of and actions taken by the Task Force since the prior such report.

147-B. Third Party Consent Decree Compliance Audit. TOTAL will retain, at its expense, an independent third party ("Compliance Auditor") to conduct a comprehensive audit of TOTAL's compliance with all requirements of the Consent Decree ("Compliance Audit"). TOTAL may impose on the Compliance Auditor, as a condition of his/her retention, confidentiality requirements to prevent release or disclosure of any information received, copied, photographed, imaged and/or reviewed by the Compliance Auditor pursuant to the Compliance Audit. TOTAL will provide the Compliance Auditor access to the Refinery, allow the Compliance Auditor to inspect all Refinery equipment and

systems within reasonable limitations imposed by TOTAL for purposes of health, safety, security and Refinery operations (including the requirement that the Compliance Auditor be accompanied by a TOTAL employee while within designated areas of the Refinery), and allow the Compliance Auditor to review and copy any Refinery records. The Audit Report, described in item (vii) below, as well as any information developed pursuant to the Compliance Audit and the findings of the Compliance Auditor, are not subject to Paragraph 252 of the Consent Decree, or to any privilege or protection, including, but not limited to, EPA's Audit Policy. Notwithstanding the preceding sentences in this paragraph, TOTAL may, without being subject to stipulated penalties for doing so, assert a business confidentiality claim, pursuant to 40 C.F.R. Part 2, Subpart B, with respect to any business information (including, but not limited to, photographs, diagrams, drawings, licensed technology, trade secrets and Refinery production information) submitted to the United States in the Audit Report or otherwise as a result of the Compliance Audit, if TOTAL believes the disclosure of such information would result in the loss or compromise of its ability to obtain or retain business advantages it derives from its rights in such information. Such a claim shall not limit or prevent the ability of the United States to use any such business information as the basis for a demand of stipulated penalties for any violation of the Consent Decree, or to otherwise enforce the requirements of the Consent Decree. The Compliance Audit will proceed in accordance with the following schedule:

- (i) Within fifteen (15) days of the Date of Entry of the Amendment, TOTAL must submit to EPA the name and qualifications of a proposed Compliance Auditor.

- (ii) EPA will either approve of or reject the proposed Compliance Auditor, and if EPA rejects the proposed Compliance Auditor it shall notify Total in writing of such rejection. TOTAL will then submit the name of another proposed Compliance Auditor within fifteen (15) days from the date TOTAL receives EPA's rejection of the proposed Compliance Auditor, and this process will repeat until the EPA approves a proposed Compliance Auditor.
- (iii) EPA shall notify TOTAL in writing of its approval of the proposed Compliance Auditor. Within forty-five (45) days from the date TOTAL receives EPA's approval of the proposed Compliance Auditor, TOTAL will retain the Compliance Auditor and submit a proposed Audit Work Plan to EPA that describes in detail the process by which the Compliance Auditor will assess TOTAL's compliance with the Consent Decree.
- (iv) EPA will either approve or reject, in whole or in part, the proposed Audit Work Plan, and if EPA rejects the Audit Work Plan in whole or in part it shall notify TOTAL in writing of its decision, and TOTAL will make whatever additions or changes to the Audit Work Plan EPA requires. TOTAL will then submit a revised Audit Work Plan to EPA within thirty (30) days from the date TOTAL receives EPA's rejection of the proposed Audit Work Plan, and this process will repeat until the EPA approves a proposed Audit Work Plan.
- (v) EPA will notify TOTAL in writing of its approval of the proposed Audit Work Plan. TOTAL will ensure that the Compliance Auditor begins work

on the Compliance Audit within ten (10) Working Days of the date TOTAL receives EPA's approval of the Audit Work Plan.

- (vi) TOTAL will ensure that the Compliance Auditor performs the Compliance Audit in accordance with the Audit Work Plan, and that the Compliance Auditor completes the Compliance Audit within sixty (60) days of the date on which the Compliance Auditor begins work pursuant to item (v) above.
- (vii) TOTAL shall ensure that the Compliance Auditor submits a final Audit Report, which will summarize the results of the Compliance Audit and describe any matters the Compliance Auditor considers not to be in compliance with the Consent Decree, to TOTAL and EPA within ninety (90) days after completion of the Compliance Audit.

6. The following text is added to the Consent Decree following Paragraph 10.M:

M-1. "Date of Entry of Amendment" shall mean the date on which the Amendment to the Consent Decree is approved and signed by the United States District Court Judge.

7. The following text is added to the Consent Decree following Paragraph 214:

M-1. Non-Compliance with Requirements for Internal Consent Decree Compliance Task Force and Third Party Consent Decree Compliance Audit

214-A. For failure to establish the Task Force or for the failure of the Task Force to meet and complete the tasks set forth in Paragraph 147-A(a)-(d), per each failure, per day:

<u>Period of Delay</u>	<u>Penalty per day</u>
1st through 30 th day after deadline	\$750
31 st through 60 th day after deadline	\$1,500
Beyond 60 th day	\$2,500

214-B. For failure to include in each report submitted pursuant to Section XIII of the Consent Decree a summary of the discussions of and actions taken by the Task Force since the prior such report as required by Paragraph 147-A(e), per each failure, per day:

<u>Period of Delay</u>	<u>Penalty per day</u>
1st through 30 th day after deadline	\$500
31 st through 60 th day after deadline	\$1,000
Beyond 60 th day	\$2,000

214-C. For failure to retain a Compliance Auditor or failure to ensure that the Compliance Auditor begins and completes a Compliance Audit pursuant to Paragraph 147-B, per each failure, per day:

<u>Period of Delay</u>	<u>Penalty per day</u>
1st through 30 th day after deadline	\$750
31 st through 60 th day after deadline	\$1,500
Beyond 60 th day	\$2,500

214-D. For failure to submit any written notice, proposal, report, or other deliverable required by Paragraph 147-B, per each failure, per day:

<u>Period of Delay</u>	<u>Penalty per day</u>
1st through 30 th day after deadline	\$500

31 st through 60 th day after deadline	\$1,000
Beyond 60 th day	\$2,000

GENERAL PROVISIONS

8. This Amendment shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Amendment disclose facts or considerations indicating that the Amendment is inappropriate, improper, or inadequate. TOTAL consents to entry of this Amendment without further notice and agrees not to withdraw from or oppose entry of this Amendment by the Court or to challenge any provision of the Amendment, unless the United States has notified TOTAL in writing that it no longer supports entry of the Amendment.

9. This Amendment may be signed in counterparts, and its validity shall not be challenged on that basis. TOTAL hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

10. Each undersigned representative of TOTAL 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 Amendment and to execute and legally bind the Party he or she represents to this document.

Dated and entered this _____ day of _____, 2013.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Amendment to Consent Decree in the matter of United States v. TOTAL Petrochemicals USA, Inc.

FOR PLAINTIFF 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




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THE UNDERSIGNED PARTIES enter into this Amendment to Consent Decree in the matter of United States v. TOTAL Petrochemicals USA, Inc.

FOR PLAINTIFF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
REGION 6:

Date: 6.13.12



JOHN BLEVINS
Director
Compliance Assurance and Enforcement Division
EPA Region 6
1445 Ross Ave.
Dallas, Texas 75202

THE UNDERSIGNED PARTIES enter into this Amendment to Consent Decree in the matter of United States v. TOTAL Petrochemicals USA, Inc.

FOR PLAINTIFF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

Date:

7/15/13



CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date:

7/11/13



PHILLIP A. BROOKS
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

TERESA E. DYKES
Attorney, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

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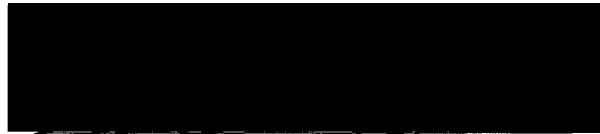
FOR DEFENDANT TOTAL PETROCHEMICALS
& REFINING USA, INC.:

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



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