U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
P.O. Box 7611
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Washington, DC 20044-7611

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October 15, 2004

Clerk of the Court
U.S. District Court for the Northern
District of Indiana
5400 Federal Plaza
Hammond, IN 46320

Re: BP Exploration & Oil Co., et al

Dear Sir/Madam:

Enclosed are the original and two copies of the Third Amendment to Consent Decree. Please have this filed with the Court and return a file stamped copy to me in the enclosed self-addressed envelope. Thank you for your assistance in this matter.

Sincerely,

Robert Brook
Assistant Chief
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil No. 2:96 CV 095 RL
	)	
And	)	Judge Rudy Lozano
	)	
THE STATE OF INDIANA, STATE OF OHIO, and the NORTHWEST AIR POLLUTION AUTHORITY, WASHINGTON,	)	
	)	
Plaintiff- Intervenors,	)	
	)	
v.	)	
	)	
BP EXPLORATION & OIL CO., ET AL.	)	
	)	
Defendants.	)	
	)	
	)	

THIRD AMENDMENT TO CONSENT DECREE

WHEREAS, the United States of America (hereinafter "the United States"); the State of Indiana, the State of Ohio, and the Northwest Air Pollution Authority of the State of Washington (hereinafter "Plaintiff-Intervenors"); and BP Products North America Inc., successor in interest to BP Exploration and Oil, Co., Amoco Oil Company, and Atlantic Richfield Company (hereinafter "BP") are parties to a Consent Decree entered by this Court on August 29, 2001 (hereinafter "the Consent Decree");

WHEREAS, BP sold its Mandan and Salt Lake City Refineries to Tesoro Petroleum Corporation (hereinafter "Tesoro") on September 6, 2001, and as a condition of that sale, Tesoro entered into the First Amendment to Consent Decree, which was approved and

entered as a final order of the Court on October 2, 2001, and which amendment modified the terms of the consent Decree as provided (hereinafter "the First Amendment");

WHEREAS, BP sold its Yorktown Refinery to Giant Yorktown, Inc. (hereinafter "Giant") on May 14, 2002, and as a condition of that sale, Giant entered into the Second Amendment to Consent Decree, which was approved and entered as a final order of the Court on June 7, 2002, and which amendment modified the terms of the consent Decree as provided (hereinafter "the Second Amendment");

WHEREAS, BP has agreed to sell and Praxair, Inc., a Delaware corporation (hereinafter "Praxair") has agreed to buy certain existing hydrogen production equipment located at the BP Texas City, Texas Refinery more specifically described in Attachment 1 hereto (hereinafter referred to as HU-1);

WHEREAS, Paragraph 6 of the Consent Decree requires that BP condition any transfer, in whole or in part, of ownership of the refineries that are subject of the Consent Decree upon the execution by the transferee of a modification to the Consent Decree, making the terms and conditions of the Consent Decree that apply to such refinery applicable to the transferee:

WHEREAS, Praxair 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 applies to HU-1;

WHEREAS, HU-1 includes an existing process heater designated by the Texas Commission on Environmental Quality ("TCEQ") as emission point number 231, also referred to as HU1-101B;

WHEREAS, the United States and Plaintiff-Intervenors agree that Praxair has the financial and technical ability to assume the obligations and liabilities of the Consent Decree as they relate to HU-1;

WHEREAS, the United States, Plaintiff-Intervenors, BP and Praxair desire to amend the Consent Decree to release BP from all obligations and liabilities under the Consent Decree insofar as they relate to HU-l and to transfer certain of those obligations to Praxair;

WHEREAS, since HU-1 is subject to TCEQ Air Quality Permit No. 19297, issued September 4, 2002, which mandates that HU-1 use either pipeline-quality natural gas or refinery fuel gas that complies with 40 C.F.R. Part 60 Subpart J (NSPS for Fuel Gas Combustion Units), the United States and the Plaintiff Intervenors agree that it is unnecessary to make the Consent Decree requirements related to sulfur emissions from heaters and boilers applicable to HU-1;

WHEREAS, BP and Praxair represent that HU-1 does not currently include any components that have the potential to leak volatile organic compounds or hazardous pollutants, as defined by 40 C.F.R. Part 60, Subpart GGG, and 40 C.F.R. Part 63, Subpart CC and that BP did not identify any of the components located within HU-1 as subject to LDAR during the audits required by Paragraph 20.C; and, therefore, is not currently subject to any federal Leak Detection and Repair (LDAR) program requirements and, as a result of such representation, the United States and the Plaintiff Intervenors agree that it is unnecessary to make the Consent Decree requirements of Paragraph 20 as they relate to enhanced LDAR applicable to HU-1;

WHEREAS, BP and Praxair represent that HU-1 has only one flare, which is not identified as a Flaring Device, as defined in the consent decree and as listed in Appendix G of the Consent Decree or any revisions of Appendix G; and based on that representation, the United

States and the Plaintiff-Intervenors agree that it is unnecessary to make the acid gas flaring incident requirements of the Consent Decree in Paragraph 22 applicable to HU-1;

WHEREAS, BP and Praxair represent that HU-1 does not include any waste streams or equipment subject to the Benzene NESHAP, 40 C.F.R. part 61, Subpart FF, and based on this representation, the United States and the Plaintiff-Intervenors agree that the enhanced Benzene NESHAP requirements of the Consent Decree in Paragraph 19 do not apply to HU-1;

WHEREAS, the provisions of this Amendment have no impact on any Party to the Consent Decree other than the signatories hereto; and

WHEREAS, Paragraph 85 of the Consent Decree requires that this Amendment be approved by the Court before it is effective;

NOW THEREFORE, upon approval of this Amendment by the Court, the Consent Decree shall be amended as follows:

1. Subparagraphs B.i. and F.i. of Paragraph 15 of the Consent Decree, as modified and restated by the Second Amendment To Consent Decree, are hereby further modified to read as follows:

*****

15. <u>NOx Emissions Reductions From Heaters and Boilers</u>

B. i. BP shall select the heaters and boilers that shall be controlled at the Carson, Cherry Point, Texas City, Toledo, and Whiting Refineries. The combined heat input capacity of the heaters and boilers selected by BP for future control, together with the heaters and boilers on which controls identified in Paragraph 15.E. have already been installed, must represent a minimum of 23,038 MMBtu of the five refineries' heaters and boilers greater than 40 MMBtu/hr. Further, not less than 30% of the heater and boiler

heat input capacity for heaters and boilers greater than 40 MMBtu/hr at any individual refinery must be controlled in accordance with Paragraph 15.E. For purposes of this Paragraph, the phrase "heaters and boilers" shall include the turbines associated with sources PRS4-410 and PRS4-420 at BP's Texas City Refinery.

* * * *

F. i. Following installation of all controls required by Paragraph 15.B.i., BP shall demonstrate that the allowable emissions from the controlled heaters and boilers at the Carson, Cherry Point, Texas City, Toledo and Whiting Refineries satisfy the following inequality:

$$\sum_{i=1}^{n} (E_{Final})_i = \sum_{i=1}^{n} (E_{Baseline})_i - 9{,}290$$

Where:

$(E_{Final})_i$ = Permit allowable pounds of NOx per million Btu for heater or boiler i times the lower of permitted or maximum rated capacity in million Btu per hour for heater or boiler i;

and

$(E_{Baseline})_i$ = The tons per year of actual emissions shown in Appendix A for controlled heater or boiler i.

2. New Subparagraph N of Paragraph 15 of the Consent Decree, as modified and restated by the Second Amendment To Consent Decree, is hereby added to read as follows:

*****

N.i. No later than December 31, 2008, Praxair shall either shut down the existing process heater designated by the Texas Commission on Environmental Quality ("TCEQ") as emission point number 231 (hereinafter "HU1-101B") or install SCR technology and a NOx continuous emission monitoring system on HU1-101B at the HU-1 Facility and limit NOx emissions from HU1-101B to no more than 0.015 lbs/MMBtu on an annual average. This emission limit equates to an allowable mass emissions rate of 23 tons per year given the design firing rate of 350 MMBtu/hr. For purposes of Paragraph 27 of the Consent Decree, the reduction in NOx emissions from HU1 down to 23 tons per year shall be considered to be a reduction required by the Consent Decree and shall not be used for purposes of netting or offset credits.

ii. Within ninety (90) days of the date of installation of the SCR technology on HU1-101B, Praxair shall conduct an initial performance test for NOx and CO.

iii. The requirements of this Paragraph do not exempt Praxair from complying with any and all Federal, state, and local requirements which may require technology upgrade based on actions or activities occurring after the Date of Entry of the Consent Decree.

iv. The requirements of this Paragraph shall apply to any and all successors in interest that own or operate HU-1. Effective from the Date of Entry of this Amendment to the Consent Decree until its termination, Praxair shall give written notice of the Consent Decree to any successors in interest prior to transfer of ownership or operation of HU-1 and shall provide a copy of the Consent Decree to any successor in interest. Praxair shall notify the United States in accordance with the notice provisions

set forth in Paragraph 82, of any successor in interest at least thirty (30) days prior to any such transfer.

v. If Praxair uses fuel gas which does not comply with 40 C.F.R. Part 60, Subpart J, at any time before the expiration of the Consent Decree, Praxair agrees to immediately comply with the requirements, including the limits, for the sulfur emissions as they relate to heaters and boilers applicable to HU-1 contained in Paragraph 17.

vi. If Praxair places any of the components contained within HU-1 into VOC service, as defined in 40 C.F.R. Part 60, Subpart GGG and/or 40 C.F.R. Part 63, Subpart CC, at any time before the expiration of the Consent Decree, Praxair agrees to immediately comply with the LDAR requirements contained in Paragraph 20 of the Consent Decree for components in VOC service.

3. Paragraph 26 of the Consent Decree, is hereby further modified to read as follows:

26. Operation

A. As soon as practicable following the Date of Lodging of the Consent Decree, but in no event later than twelve (12) months following the Date of Lodging, BP shall submit applications to incorporate the emissions limits and schedules set out in Paragraphs 14 – 18 and 21 of this Consent Decree into the minor or major new source review permits or other permits (other than Title V permits) which are federally enforceable and, upon issuance of such permits shall file any applications necessary to incorporate the requirements of those permits into the Facility's Title V permit. As soon as practicable, but in no event later than thirty (30) days after the establishment of any emission limitations under Paragraphs 14, 15, 16 and 21 of the Consent Decree, BP shall

submit applications to incorporate those incorporate the emissions limits into the minor or major new source review permits or other permits (other than Title V permits) which are federally enforceable and, upon issuance of such permits shall file any applications necessary to incorporate the requirements of those permits into the Facility's Title V permit. The parties agree that incorporation of the requirements of this Decree into Title V permits may be by "administrative amendment" under 40 C.F.R. 70.7(d) and analogous state Title V rules.

B. As soon as practicable following the Date of Lodging of the Third Amendment to Consent Decree, but in no event later than sixty (60) days following the Date of Lodging, Praxair shall submit applications to incorporate the following into its Title V permit:

i. HU-1 shall use only pipeline-quality natural gas or refinery fuel gas that complies with 40 C.F.R. Part 60 Subpart J (NSPS for Fuel Gas Combustion Units);

ii. HU-1 is subject to Special Condition 9 of Permit No. 19297, which contains a comprehensive LDAR program that will apply to any components in VOC service at HU-1, and that will include a 500-ppm leak definition, 15-day repair and other LDAR requirements for HU-1 as specified in Special Condition 9; and

iii. HU-1 has only one flare, which is subject to TCEQ Air Quality Permit restrictions limiting the materials burned in the flare to natural gas, low VOC content fuel gas, hydrogen, carbon monoxide, carbon dioxide, and methane; and HU-1 is subject to TCEQ rules governing episodic emissions under 30 Tex. Admin. Code Chapter 101 Subchapter F: Emissions Events and Scheduled Maintenance, Startup, and

Shutdown Activities, effective September 12, 2002, that requires for each flaring event a root cause evaluation, a detailed report, and corrective actions to minimize emissions and prevent future events.

4. Appendix A to the Consent Decree is hereby modified by deleting source HUl-l01B from that Appendix.

5. From and after the effective date of this Third Amendment to the Consent Decree, BP is hereby released from all obligations and liabilities imposed by the Consent Decree on HU-1 that arise after the effective date of the Consent Decree.

6. Praxair shall not be responsible for any portion of the Civil Penalty provided for in Section IX of the Consent Decree.

7. Paragraph 82 is hereby amended to include the following information:

Praxair, Inc.

Murray Covello,

Vice-President, Praxair Inc.,

175 East Park Drive (PO Box 44),

Tonawanda NY 14151

Phone: 716-879-2690

Fax: 716-879-2087

E-Mail: murray_covello@praxair.com

8. The undersigned representatives are fully authorized to enter into the terms and conditions of this Amendment.

9. This Amendment may be executed in several counterparts, each of which will be considered an original.

ORDER

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:

ORDERED, ADJUDGED and DECREED that the foregoing Third Amendment to the Consent Decree is hereby approved and entered as a final order of this court.

Dated and entered this _____ day of _____, 2004

_____
United States District Judge

WE HEREBY CONSENT to the foregoing Third Amendment to the Consent Decree entered in ***United States, et al., v. BP Exploration and Oil Co., et al.***, Civil No. 2:96 CV 095 RL on August 29, 2001.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date: 10/12/04

Tom Sansonetti /kj

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 10/5/04

ROBERT BROOK
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2738

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date:_____

Thomas V. Skinner
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

WE HEREBY CONSENT to the foregoing Third Amendment to the Consent Decree entered in ***United States, et al., v. BP Exploration and Oil Co., et al.,*** Civil No. 2:96 CV 095 RL on August 29, 2001.

FOR DEFENDANTS BP EXPLORATION AND OIL CO., AMOCO OIL COMPANY n/d/b/a BP PRODUCTS NORTH AMERICA INC., AND ATLANTIC RICHFIELD COMPANY:

Date: Aug 31, 2004

P.E. Grower
B.P. Products North America, Inc.

WE HEREBY CONSENT to the foregoing Third Amendment to the Consent Decree entered in ***United States, et al., v. BP Exploration and Oil Co., et al.,*** Civil No. 2:96 CV 095 RL on August 29, 2001.

FOR TESORO PETROLEUM CORPORATION

Date: October 4, 2004

DH

James C. Reed, Jr.
Executive Vice President, General Counsel
and Secretary

WE HEREBY CONSENT to the foregoing Third Amendment to the Consent Decree entered in ***United States, et al., v. BP Exploration and Oil Co., et al.,*** Civil No. 2:96 CV 095 RL on August 29, 2001.

FOR GIANT YORKTOWN, INC.

Date: 10/4/04

Carl D. Shook
Executive Vice President

WE HEREBY CONSENT to the foregoing Third Amendment to the Consent Decree entered in ***United States, et al., v. BP Exploration and Oil Co., et al.,*** Civil No. 2:96 CV 095 RL on August 29, 2001.

FOR PRAXAIR, INC

Date: Sept 1 /2004

Murray Covello
Vice President

WE HEREBY CONSENT to the foregoing Third Amendment to the Consent Decree entered in ***United States, et al., v. BP Exploration and Oil Co., et al.,*** Civil No. 2:96 CV 095 RL on August 29, 2001.

FOR THE STATE OF INDIANA:

Date: 10/5/04

Steven D. Griffin
Deputy Attorney General
Indiana Attorney General's Office

by RDB

WE HEREBY CONSENT to the foregoing Third Amendment to the Consent Decree entered in ***United States, et al., v. BP Exploration and Oil Co., et al.,*** Civil No. 2:96 CV 095 RL on August 29, 2001.

FOR THE STATE OF OHIO:

Date: 10/14/04

Jack McManus
Assistant Attorney General
State of Ohio

WE HEREBY CONSENT to the foregoing Third Amendment to the Consent Decree entered in ***United States, et al., v. BP Exploration and Oil Co., et al.,*** Civil No. 2:96 CV 095 RL on August 29, 2001.

FOR THE NORTHWEST AIR POLLUTION AUTHORITY OF THE STATE OF WASHINGTON:

Date: 10/5/04

Jamie Randles
Director
Northwest Air Pollution Authority

Attachment 1
To Third Amendment to Consent Decree

HU-1 Components

ITEM NO.	DESCRIPTION
	VESSEL
103-D	Desulfurizer
104-D	Desulfurizer
105-D	HighTemperature Shift Converter
106-D	Methanator
108-D	Low Temperature Shift Converter
101-E	CO_2 Absorber
102-E	CO_2 Stripper
104-F	375-psig Steam Drum
106-F & 102-B	Quench Chamber Secondary Reformer
107-F	Low Temperature Shift Knockout Drum
108-F	CO_2 Absorber Feed Knockout Drum
109-F	Absorber Overhead Knockout Drum
110-F	Solvent Storage Tank
111-F	CO_2 Stripper Overhead Accumulator
112 –F	MDEA Sump
117-F	H_2 Product Knockout Drum
133-F	Fuel Gas Dry Drum
128-F	Ammonia Storage Drum
136-F	Natural Gas Knockout Drum
144-F	Process Condensate Deaerator
145-F	500 psig Steam Drum
147-F and 147-FL	Anhydrous Ammonia Day Tank with 325 kw Electric Heater
149-F	Emergency Plant Air Knockout Drum
102-L	Solvent Carbon Filter
103-LA/LB	Cartridge Filters
104-L	Driver Condensate Deaerator
107-L	Ammonia Vaporizer with 16.5 kw Electric Heater
106-L	Process Condensate Filter
108-L	Entrainment Separator
109-L	Driver Steam Knockout Drum
SU-2202	Cooling Tower Acid Day Tank
	REFORMER
101-B	Primary Reformer and Convection Sections
	PUMP
104-J	Process Condensate

ITEM NO.	DESCRIPTION
104-JA	Process Condensate (Spare)
105-J	Solvent Circulating Pump
105-JA	Solvent Circulating Pump (Spare)
106-J	CO_2 Stripper Reflux Pump
106-JA	CO_2 Stripper Reflux Pump (Spare)
107-J	Solvent Sump Pump
118-J	Reformer Furnace Fan
119-J	Boiler Feed Water Pump
119-JA	Boiler Feed Water Pump (Spare)
2201-JA	Cooling Water Circulation
2201-JB	Cooling Water Circulation
2201-JC	Cooling Water Circulation
EXCHANGER	
104-C	Secondary Reformer Wasteheater
105-C	Methanator Feed Preheater
107-CA/CB	CO_2 Stripper Reboiler
108-CA	CO_2 Absorber Feed Cooler
108-CB	CO_2 Absorber Feed Cooler
109-CA/CB	Solvent High Temperature Cooler
110-CA/CB	Solvent Low Temperature Cooler
111-C1A/C1B	CO_2 Stripper Feed/Bottoms Exchanger
111-C2A/C2B	CO_2 Stripper Feed/Bottoms Exchanger
112-C	CO_2 Stripper Steam Reboiler
114-C	CO_2 Stripper Overhead Condenser
115-C	Methanator Effluent Steam Generator
116-CA	Methanator Effluent BFW Preheater
116-CB	Methanator Effluent Water Cooler
137-C	Low Temperature Shift Effluent Cooler
138-C	High Temperature Shift Cooler
143-C	Secondary Reformer Wasteheater Exchanger
152-C	High Temperature Shift Converter Condensate Heater
153-C	Feed Gas Heater
MISCELLANEOUS	
Oxygen Scavenger System	Oxygen Scavenger Tank and 2 Pumps[(1)]
Analyzers and Shelters	H_2 Analyzer, Methane, CO and CO_2 Analyzer
HU-1 Switchgear Building	HU-1 Main Switchgear Building, Switchgear, Transformers A, B, C, D, G and MCC

(1) The Oxygen Scavenger System is property of Nalco and must be returned to Nalco if Praxair decides against using Nalco as a water treating or process chemical vendor.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Third Amendment to Consent Decree was served on the 15th day of October, 2004, by the United States mail, postage prepaid, to the following:

William L. Patberg
Shumaker, Loop & Kendrick
North Courthouse Square
1000 Jackson
Toledo, OH 43624-1573

Clara Poffenberger
Baker Botts
1299 Pennsylvania Avenue, NW
Washington, DC 20004

Jeff Haffner
Tesoro Petroleum Corporation
300 Concord Plaza Drive
San Antonio, TX 78216-6999

Carl D. Shook
Executive Vice President
Giant Industries, Inc.
23733 North Scottsdale Road
Scottsdale, AZ 85255

Jack McManus
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State Office Tower
30 East Broad Street, 17th Floor
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Simone Mabry
Legal Support Assistant