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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

16

17

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 PREMIER INDUSTRIES, INC.,

22 Defendant.

23

Case No. ED CV 07-01092 SGL (OPx)

**[PROPOSED] ORDER**

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11 **Attorneys for Premier Industries, Inc.**

12  
13 **[PROPOSED] ORDER**

14 Having considered the Plaintiff's and Defendant's Joint Application for First  
15 Amendment to the Consent Decree it is hereby ORDERED, ADJUDGED AND  
16 DECREED that the Consent Decree shall remain in effect in accordance with its  
17 terms, except that the Decree shall be amended as set forth below.

18 **Paragraph 1** shall be amended by replacing the original paragraph  
19 with the following:

20 This Court has jurisdiction over the subject matter of this action, and  
21 over the Parties pursuant to section 113(b) of the CAA, 42 U.S.C.  
22 § 7413(b) and 28 U.S.C. §§ 1331 and 1345. Pursuant to Paragraph 88  
23 of this Decree, the Court retained jurisdiction to modify and enforce  
24 the Decree. Venue lies in this District pursuant to 28 U.S.C.  
25 § 1391(b) and 42 U.S.C. § 7413 (b), because the violations alleged in  
26 the Complaint are alleged to have occurred in this judicial district. For  
27

1 purposes of this Decree, or any action to enforce this Decree,  
2 Defendant consents to the Court's jurisdiction over this Decree and  
3 any such action and over Defendant and consents to venue in this  
4 judicial district.

5  
6 **Paragraph 9** shall be amended by adding the following new  
7 definitions:

8 **A(1).** "APPROVED NIEPS BEAD" shall mean NIEPS Loyal Type  
9 FS and NIEPS Flint Hills Type 54 used to create specified product  
10 and such other NIEPS Bead that has been approved by EPA Region  
11 IX for use under this amended Consent Decree and for which  
12 operating parameters have been established by EPA.

13  
14 **M(1).** "NIEPS FLINT HILLS TYPE 54" shall mean NIEPS Bead  
15 Flint Hills Type 54 used to produce either 1.0 pound per cubic foot  
16 virgin product (1.0 MV), 1.0 pound per cubic foot recycled product  
17 (1.0 MG) or 1.25 pound per cubic foot recycled product (1.25 MG).

18  
19 **M(2).** "NIEPS LOYAL TYPE FS" shall mean NIEPS Bead Loyal  
20 Type FS used to produce either 1.0 pound per cubic foot virgin  
21 product (1.0 MV), 1.0 pound per cubic foot recycled product (1.0  
22 MG) or 1.25 pound per cubic foot recycled product (1.25 MG).

23  
24 **Paragraph 9** shall be amended by replacing the definition of Non-  
25 Demonstrated Compliant Bead with the following:

1 N. "Non-Demonstrated Compliant Bead" shall mean raw EPS bead  
2 with a pentane content greater than 3.6% by weight, other than a  
3 NIEPS Bead or Approved NIEPS Bead.  
4

5 **Paragraph 14** shall be amended by replacing the first sentence of the  
6 Paragraph with the following:

7 Beginning no later than the date of lodging and continuing until  
8 termination of the Consent Decree, when using Demonstrated  
9 Compliant Bead, Defendant shall comply with 14(A), (B) and (C)  
10 below.  
11

12 **Paragraph 14** shall be amended by adding the following  
13 subparagraphs:  
14

15 **Paragraph 14(D).** When using NIEPS Loyal Type FS, Defendant  
16 shall:

17 (1) Age the beads for a minimum of 18 hours in the Bead  
18 Aging Operation before use.

19 (2) At all times during the Manufacturing Operation,  
20 continuously operate the Facility's RTO at a set point  
21 temperature of at least 1570°F. The RTO operating  
22 temperature shall be continuously monitored and  
23 recorded as required by Paragraph 14(A).

24 (3) At all times when there are beads present in the Bead  
25 Aging Operation, maintain the air temperature in the  
26 Bead Aging Operation of the Facility at a 24 hour  
27  
28

1 average temperature of no less than 92°F . The air  
2 temperature in the Bead Aging Operation shall be  
3 continuously monitored and results recorded as required  
4 by Paragraph 14(B).

5 (4) At all times when there are beads present in the Bead  
6 Aging Operation, maintain the Bead Aging Operation as  
7 required by Paragraph 14(C).

8 (5) Only use NIEPS Loyal Type FS bead to produce  
9 either 1.0 pound per cubic foot virgin product (1.0 MV),  
10 1.0 pound per cubic foot recycled product (1.0 MG) or  
11 1.25 pound per cubic foot recycled product (1.25 MG).

12 (6) Maintain records detailing the brand and type of bead  
13 used and the density and source (virgin or  
14 recycled/regrind) of each batch of product produced with  
15 such bead.

16  
17 **Paragraph 14(E).** When using NIEPS Flint Hills Type 54,  
18 Defendant shall:

19 (1) Age the beads for a minimum of 24 hours in the Bead  
20 Aging Operation before use.

21 (2) At all times during the Manufacturing Operation,  
22 continuously operate the Facility's RTO at a set point  
23 temperature of at least 1570°F. The RTO operating  
24 temperature shall be continuously monitored and  
25 recorded as required by Paragraph 14(A).  
26  
27  
28

1 (3) At all times when there are beads present in the Bead  
2 Aging Operation, maintain the air temperature in the  
3 Bead Aging Operation of the Facility at a 24 hour  
4 average temperature of no less than 90°F . The air  
5 temperature in the Bead Aging Operation shall be  
6 continuously monitored and results recorded as required  
7 by Paragraph 14(B).

8 (4) At all times when there are beads present in the Bead  
9 Aging Operation, maintain the Bead Aging Operation as  
10 required by Paragraph 14(C).

11 (5) Only use NIEPS Flint Hills Type 54 bead to produce  
12 either 1.0 pound per cubic foot virgin product (1.0 MV),  
13 1.0 pound per cubic foot recycled product (1.0 MG) or  
14 1.25 pound per foot cubic foot recycled product (1.25  
15 MG).

16 (6) Maintain records detailing the brand and type of bead  
17 used and the density and source (virgin or  
18 recycled/regrind) of each batch of product produced with  
19 such bead.

20  
21 **Paragraph 17** shall be amended by replacing the current Paragraph  
22 with the following:

23 Beginning on or before August 1, 2007, and continuing through the  
24 date of termination of this Consent Decree, Defendant shall process  
25 only Demonstrated Compliant Bead or Approved NIEPS Bead at the  
26 Facility, except to the extent that Defendant is required by the District  
27

1 to employ Non-Demonstrated Compliant Bead in the conduct of a  
2 source test or other compliance demonstration for purposes of  
3 periodically demonstrating Defendant's compliance with Rule 1175,  
4 or as provided in Paragraph 19.

5  
6 **Paragraph 20** shall be amended by replacing the current Paragraph  
7 with the following:

8 If, during the duration of this Consent Decree and pursuant to the  
9 above Paragraph 19, EPA determines that there exists NIEPS Bead  
10 that would achieve compliance with Rule 1175 and this Decree,  
11 Defendant may seek approval from EPA to use such Bead as  
12 Approved NIEPS Bead, as set forth in the following sub-paragraphs:

13 (A) For any NIEPS Bead tested pursuant to Paragraph 19 and  
14 which Defendant contends complies with Rule 1175 and this  
15 Consent Decree, Defendant shall submit to the District, EPA  
16 Region IX and DOJ in accordance with Section XV (Notices), a  
17 Request to Use NIEPS Bead ("Request to Use"), indicating  
18 that Defendant is seeking approval for use of such NIEPS Bead  
19 in production. The Request shall include the following  
20 information:

- 21 (1) Bead type  
22 (2) Product type(s)  
23 (3) Minimum Bead Aging Time  
24 (4) Minimum Average Bead Aging Temperature  
25 (5) RTO Operating Requirements  
26 (6) Proposed Date to Begin Usage  
27

1 (B) If, after review of the Request to Use, EPA Region IX  
2 determines that use of the proposed NIEPS Bead will comply  
3 with Rule 1175 and this Decree, EPA Region IX may approve  
4 the use of such NIEPS Bead and establish the operating  
5 parameters for the bead's usage.

6 (C) Upon EPA's written approval of the use of NIEPS Bead  
7 and operating parameters, such bead shall be considered  
8 Approved NIEPS Bead.

9 (D) Defendant shall not commence production with any NIEPS  
10 Bead or Approved NIEPS Bead, except as allowed under  
11 Paragraph 19, until Defendant receives written approval from  
12 EPA Region IX.

13 (E) The operating parameters established in EPA's written  
14 approval of Approved NIEPS Bead shall be enforceable  
15 conditions of the Consent Decree, and Defendant shall not use  
16 Approved NIEPS Bead except in conformance with such  
17 operating requirements.

18 (F) Approved NIEPS Bead shall be subject to the record  
19 keeping and reporting requirements of Sections VII and VIII  
20 and the stipulated penalty provisions in Section IX of the  
21 Consent Decree.

22  
23 **Paragraph 41(A)** shall be amended by replacing the current  
24 Paragraph with the following:  
25  
26  
27  
28



1 For each failure to operate as required by Paragraph 14 and/or the  
2 operating requirements established by EPA in accordance with  
3 Paragraph 20 for Approved NIEPS Bead:

4 \$2,200 per violation/per day.

5  
6 **Section XVI** shall be amended by adding the following paragraph:

7 **Paragraph 87(A)** This First Amendment to the Decree shall be  
8 effective upon approval and entry of this Amendment by the Court.

9  
10 IT IS SO ORDERED and ENTERED.

11  
12  
13 DATED: \_\_\_\_\_

14 **STEPHEN G. LARSON**  
15 **UNITED STATES DISTRICT JUDGE**

