

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 and)
)
 COUNTY OF WAYNE, MICHIGAN,)
 STATE OF LOUISIANA, STATE OF)
 MINNESOTA,)
)
 Plaintiff-Intervenors,)
)
 v.)
)
 MARATHON ASHLAND PETROLEUM)
 LLC)
)
 Defendant.)
 _____)

Civil Action No. 4:01-CV-40119-PVG
Judge Paul V. Gadola
Magistrate Judge Donald A. Sheer

SECOND MODIFICATION TO THE NOVEMBER 2005
FIRST REVISED CONSENT DECREE

WHEREAS, on May 11, 2001, Plaintiff, the United States of America (“United States”), on behalf of the Environmental Protection Agency (“EPA”), filed a complaint in this action against and simultaneously lodged a consent decree with Marathon Ashland Petroleum LLC (“MAP”);

WHEREAS, on August 30, 2001, this Court entered the consent decree (the “August 2001 Consent Decree”) that fully resolved the claims in the complaint;

WHEREAS, on June 20, 2005, this Court entered a First Amendment to the August 2001 Consent Decree;

WHEREAS, on November 17, 2005, this Court entered a First Revised Consent Decree (“November 2005 First Revised Consent Decree”) that replaced and superceded the August 2001 Consent Decree, as amended;

WHEREAS, on March 31, 2008, this Court entered a First Modification to the November 2005 First Revised Consent Decree;

WHEREAS, on or about September 1, 2005, MAP changed its name to Marathon Petroleum Company LLC (“MPC”), and MPC remains fully responsible for compliance with the November 2005 First Revised Consent Decree, as modified;

WHEREAS, in 2008, EPA amended the New Source Performance Standards (“NSPS”) for Petroleum Refineries, found at 40 C.F.R. Part 60, Subpart J;

WHEREAS, MPC owns and operates refineries located in, *inter alia*, Canton, Ohio (“Canton Refinery”); Catlettsburg, Kentucky (“Catlettsburg Refinery”); Detroit, Michigan (“Detroit Refinery”); Robinson, Illinois (“Robinson Refinery”); and Texas City, Texas (“Texas City Refinery”);

WHEREAS, the United States and MPC (the “Parties to the Second Modification”) have engaged in negotiations regarding certain violations of Paragraph 18.A.ii of the November 2005 First Revised Consent Decree involving the Benzene Waste Operations National Emission Standard for Hazardous Air Pollutants (“BWON”) at the Canton and Catlettsburg Refineries; regarding claims for stipulated penalties under Paragraph 48.A of the November 2005 First Revised Consent Decree at the Canton, Detroit, and Robinson Refineries; and regarding EPA’s 2008 Amendment to 40 C.F.R. Part 60, Subpart J, relating to inherently low-sulfur streams;

WHEREAS, in annual reports required by the BWON for the Canton and Catlettsburg Refineries, MPC certified compliance with the BWON at these two Refineries for calendar years 2007 and 2008 and expects to certify compliance at those two Refineries for calendar year 2009 when the annual BWON reports are due in April 2010;

WHEREAS, the Parties to the Second Modification have agreed to address the earlier BWON violations, the claims for stipulated penalties, and one of the 2008 Subpart J regulatory changes through modifications of the November 2005 First Revised Consent Decree pursuant to Paragraph 86 therein;

WHEREAS, the modifications set forth in this Second Amendment involve only the Canton, Catlettsburg, Detroit, Robinson, and Texas City Refineries;

WHEREAS, after the Date of Entry of the August 2001 Consent Decree, the State of Michigan withdrew Plaintiff-Intervenor Wayne County's authority to enforce the Michigan air pollution control laws and therefore no one within Wayne County has any authority to engage in negotiations regarding the implementation, enforcement, or modification of the November 2005 First Revised Consent Decree;

WHEREAS, the two intervenors in this action who are parties to the November 2005 First Revised Consent Decree – the State of Louisiana and the State of Minnesota – have no regulatory authority or jurisdiction over MPC's Canton, Catlettsburg, Detroit, Robinson, or Texas City Refineries and therefore are not parties to this Second Modification;

WHEREAS, the Parties to this Second Modification agree that the modifications embodied herein are in the best interests of the public and that entry of this Second Modification without litigation is appropriate;

WHEREAS, the Parties to this Second Modification recognize, and the Court by entering this Second Modification finds, that this Second Modification has been negotiated at arms length and in good faith and that this Second Modification is fair, reasonable, and in the public interest;

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 to this Second Modification, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

NEW AND MODIFIED PROVISIONS

The November 2005 First Revised Consent Decree, as modified, shall remain in full force and effect in accordance with its terms, except that new Paragraphs Numbered 29.F, 29.G, 29.H, 29.I, 29.J, 29.K, 29.L, 29.M, 29.N, 29.O, 29.P, 34.A, 34.B, 36.A, 50.A, 52.A, 75.B.iii, and 75.C.i are added as set forth below and Appendices H and J are amended as set forth below.

* * * *

29.F. Canton Supplemental Environmental Project. MPC shall implement a Supplemental Environmental Project (“SEP”) at the Canton Refinery by converting Tank 72 from an external floating roof tank to a domed, external floating roof tank that shall, to the extent practicable, be consistent with the requirements of 40 C.F.R. § 63.119(d). The dome shall be a geodesic dome. MPC shall complete this conversion by no later than September 30, 2011.

29.G. Catlettsburg Supplemental Environmental Project. MPC shall implement a SEP at the Catlettsburg Refinery by converting Tank 183 at the Catlettsburg Refinery from an external floating roof tank to a domed, external floating roof tank that shall, to the extent practicable, be consistent with the requirements of 40 C.F.R. § 63.119(d). The dome shall be a geodesic dome. MPC shall complete this conversion by no later than December 31, 2011.

29.H. MPC shall be responsible for the satisfactory completion of the Canton and Catlettsburg SEPs in accordance with the requirements of this Decree. MPC may use contractors or consultants in planning and implementing the SEPs.

29.I. With regard to the Canton and Catlettsburg SEPs, MPC certifies the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that MPC in good faith estimates that the cost to implement the Canton SEP is \$438,350 and that the cost to implement the Catlettsburg SEP is \$525,000.
- b. that, as of the date of executing this Decree, MPC is not required to perform or develop the Canton or Catlettsburg SEPs by any federal, state, or local law or regulation and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. that the Canton and Catlettsburg SEPs are not projects that MPC was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Second Modification;
- d. that MPC has not received and will not receive credit for the Canton and Catlettsburg SEPs in any other enforcement action; and
- e. that MPC will not receive any reimbursement for any portion of the Canton and Catlettsburg SEPs from any other person.

29.J. SEP Completion Report. By no later than 60 days after completing the Canton SEP and by no later than 60 days after completing the Catlettsburg SEP, MPC shall submit a Canton SEP Completion Report and a Catlettsburg SEP Completion Report to EPA in accordance with Paragraph 83 of the November 2005 First Revised Consent Decree (Notices). Each SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all eligible SEP costs expended;
- d. a certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

29.K. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph in order to evaluate MPC's SEP Completion Reports.

29.L. After receiving each SEP Completion Report, the United States shall notify MPC whether or not MPC has satisfactorily completed the SEP. If MPC has not completed the SEP in accordance with this Second Modification, stipulated penalties may be assessed under Paragraph 50.A of this Second Modification.

29.M. Disputes concerning the satisfactory performance of the SEPs and the amount of eligible SEP costs may be resolved under Section XIV of the November 2005 First Revised Consent Decree (Retention of Jurisdiction/Dispute Resolution). No other dispute arising under Paragraphs 29.F. - 29.L. shall be subject to dispute resolution.

29.N. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 33 of the November 2005 First Revised Consent Decree.

29.O. Any public statement, oral or written, in print, film, or other media, made by MPC making reference to the SEPs under this Second Modification shall include the following

language: “This project was undertaken in connection with the settlement of an enforcement action, United States, et al. v. Marathon Ashland Petroleum LLC, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.”

29.P. For federal income tax purposes, MPC agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the Canton or Catlettsburg SEPs.

* * * *

34.A. By no later than thirty (30) days of the Date of Entry of this Second Modification, MPC shall pay to the United States the sum of \$411,933 which consists of: (i) a civil penalty of \$408,000 in consideration of the resolution of liability set forth in Paragraph 75.B.iii; and (ii) a stipulated penalty of \$3,933 in consideration of the resolution of liability set forth in Paragraph 75.C.i. MPC shall pay the sum of \$411,933 by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice in accordance with written instructions to be provided to MPC, following lodging of this Second Modification, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Eastern District of Michigan. The costs of such EFT shall be MPC’s responsibility. At the time of payment, MPC shall send a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter (which shall state that the payment is for the civil and stipulated penalties owed pursuant to the Second Modification of the November 2005 First Revised Consent Decree, and shall reference the civil action number, USAO File Number 2001V00570, and DOJ Case Number 90-5-2-1-07247), to the United States in the manner set forth in Paragraph 83 (Notices), by email to acctsreceivable.CINWD@epa.gov, and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Dr.
Cincinnati, OH 45268

34.B. If any portion of the civil or stipulated penalty due to the United States is not paid when due, MPC shall pay interest on the amount past due, accruing from the Date of Entry of this Second Modification through the date of payment, at the rate specified in 28 U.S.C. § 1961.

* * * *

36.A. On the Date of Entry of this Second Modification, this Second Modification shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Federal Rule Civil Procedure 69, the Federal Debt Collection Act, 28 U.S.C. §§ 3001-2208, and other applicable federal authority. The United States shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

* * * *

50.A. If MPC fails to satisfactorily complete the SEPs in Paragraphs 29.F. and 29.G by the deadlines set forth therein, MPC shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEPs, as follows:

| <u>Period of Delay</u> | <u>Penalty per Day</u> |
|--|------------------------|
| 1 st - 30 th day after deadline | \$ 500 |
| 31 st - 60 th day after deadline | \$1000 |
| Beyond 60 th day after deadline | \$1500 |

* * * *

52.A. If MPC fails to timely pay the civil and stipulated penalties set forth in Paragraph 34.A, MPC shall be liable for a stipulated penalty of \$1000 per day for each day that the payment is late.

* * * *

75.B.iii. Resolution of Liability Regarding Benzene Waste Operations NESHAP Violations at the Canton and Catlettsburg Refineries. Entry of this Second Modification will resolve all civil liability of MPC to the United States for violations of the National Emission Standard for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF, promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), and for violations of Paragraph 18.A.ii of the November 2005 Consent Decree at the Canton and Catlettsburg Refineries for violations that occurred on or before December 31, 2006.

* * * *

75.C.i. Resolution of Liability for Stipulated Penalties for Acid Gas Flaring Incidents at the Canton, Detroit, and Robinson Refineries. Entry of this Second Modification will resolve all liability of MPC for stipulated penalties for Acid Gas Flaring Incidents that occurred at the Canton, Detroit, and Robinson Refineries prior to December 31, 2009.

* * * *

APPENDIX H REVISIONS

In addition to the “Methods of Compliance” already set forth in Appendix H, MPC shall have the option to utilize the exemptions from monitoring found at 40 C.F.R. §§ 60.105(a)(4)(iv) and 60.105(b) for gas streams that are inherently low in sulfur content if MPC qualifies for the exemption(s) pursuant to the requirements in those rules. The following heaters and boilers may combust some streams that may qualify for an exemption from monitoring:

Canton

CCR Charge Heaters [4-33-B-1 through 4]

Vacuum Heater

Catlettsburg

HRU Boilers

HPCCR Charge Heaters [2-102-B-1A, 1B, 1C]

LPCCR Charge Heaters [I-44-B-1&2]

Saturates Gas Heater

Detroit

FCC Charge Heater [11-H-1]

Heater(s) fed by Ref. Fuel Gas Header Unit

Heater(s) fed by Ref. Fuel Gas Header Off-Gas

CCR Inter-Heaters

CCR Charge Heater

Robinson

Platformer Heaters [16F-3A, B, C]

Alkylation Reboiler [7F-1]

All Other Heaters and Boilers except the Ultrafiner Heaters [2-F-1&2] and Crude Heater [1-F-1]

Texas City

Alkylation Heater

* * * *

APPENDIX J REVISIONS

In addition to the “Methods of Compliance” already set forth in Appendix J, MPC shall have the option to utilize the exemptions from monitoring found at 40 C.F.R. §§ 60.105(a)(4)(iv) and 60.105(b) for gas streams that are inherently low in sulfur content if MPC qualifies for the exemption(s) pursuant to the requirements in those rules. The following flaring devices may combust some streams that may qualify for an exemption from monitoring:

Canton

North Flare

South Flare

Catlettsburg

Lube/Petrochem Flare [1-14-FS-2]

South Area Flare [2-11-FS-1]

HF Alkylation Flare [2-11-FS-3]

New North Area Flare

Pitch Flare [1-14-FS-3]

RCCS Flare [2-11-FS-4]

Vapor Destruction Unit [1-7-B-1]

Detroit

Unifiner Flare

Alkylation Flare

Crude Flare

CP Cracking Plant Flare

Robinson

Flare System [#1 - #6]

Wastewater Flare [2-F-1 & 2]

Texas City

Marine Vapor Combustor

Alkylation Flare

Wastewater Treatment Flare

Main Flare

IT IS SO ORDERED.

Dated this _____ day of _____, 2010.

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of the Second Modification of the November 2005 First Revised Consent Decree in United States, et al. v. Marathon Ashland Petroleum LLC, Civil No. 01-40119 (E.D. MI), subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA

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UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

ADAM M. KUSHNER
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

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