

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

---

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	Civ. No. 1:17-cv-00087-BL
	)	
v.	)	
	)	
ALON USA, LP,	)	
Defendant.	)	

---

**NOTICE OF LODGING OF AMENDMENT TO CONSENT DECREE**  
**PENDING SOLICITATION OF PUBLIC COMMENT**

Plaintiff United States has lodged with the Clerk of the Court a proposed Amendment (Exhibit A) to the Consent Decree previously lodged in this matter. The proposed Amendment would, if entered by the Court, alter and enter the originally lodged Consent Decree and resolve claims of the United States.

To allow for compliance with the public notice-and-comment conditions that are part of the proposed settlement (*see* eighth paragraph of the proposed Amendment, at page 7), please take no action on the proposed Amendment at this time. Though it has been executed by the United States and the Defendant, the proposed Amendment must be subjected to a public notice-and-comment process, summarized below, before being considered by the Court.

The proposed Amendment to the Consent Decree provides that 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. The U.S. Department of Justice will publish in the Federal Register a notice that the proposed Amendment has been lodged with the Court. The notice will solicit

public comment for a period not less than thirty (30) days. After the close of the comment period, the United States will evaluate any comments received, determine whether any comments disclose facts or considerations which indicate that the proposed Amendment is inappropriate, inadequate, or improper, and then advise the Court whether the proposed Amendment should be entered. Until that time, the United States respectfully requests that the Court not sign the proposed Amendment.

Respectfully submitted,

Jeffrey Bossert Clark  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

*s/ T. A. Mariani, Jr.*

Thomas A. Mariani, Jr.  
NY Bar Regis. No. 2003374  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Phone: (202) 514-4620  
Fax: (202) 514-0097  
Email: [tom.mariani@usdoj.gov](mailto:tom.mariani@usdoj.gov)

Of Counsel:  
John Fogarty  
U.S. EPA Office of Civil Enforcement  
Washington, D.C.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2019, a copy of the foregoing Notice of Lodging of Amendment to Consent Decree Pending Solicitation of Public Comment was filed electronically with the Clerk of Court using the CM/ECF system and therefore was electronically sent to the registered participants identified on the Notice of Electronic Filing.

s/ T. A. Mariani, Jr.  
Thomas A. Mariani, Jr.

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civ. No. 1:17-cv-00087-BL
v.	)	
	)	
ALON USA, LP,	)	
	)	
Defendant.	)	
_____	)	

**FIRST AMENDMENT TO CONSENT DECREE**

WHEREAS, following lodging of the Consent Decree but prior to the filing of any motion for entry of the Consent Decree, Alon USA, LP (“Alon”) identified to the United States certain issues related to agreed-upon controls for emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) from the refinery’s Fluidized Catalytic Cracking Unit (FCCU); and

WHEREAS, in order to address the impact of these issues, which included technical and feasibility considerations pertaining to the different control options for compliance with the FCCU’s SO<sub>2</sub> and NO<sub>x</sub> limits, including certain collateral environmental impacts associated with the option for installing a wet gas scrubber, which affected the initial compliance schedule, the Parties have agreed to the adjusted schedule as provided in this First Amendment to Consent Decree; and

WHEREAS, had these issues been identified prior to the parties’ agreement to lodge the Consent Decree in April 2017, the Parties could have agreed to the compliance schedule for the FCCU as provided in this First Amendment to Consent Decree; and

AM2

WHEREAS, the United States and Alon desire to amend the Consent Decree to reflect the agreed-to adjusted FCCU compliance schedule; and

WHEREAS, additional changes are appropriate to reflect some changes in fact since lodging of the Consent Decree, including that in March 2018, Alon sold certain assets covered by the Consent Decree to an affiliated company, DKL Big Spring, LLC, and a minor schedule adjustment for the Supplemental Environmental Project; and

WHEREAS, with this settlement, each of the facilities currently engaged in petroleum refining in the United States that are owned or operated by Alon USA, LP, or any other subsidiary of Alon USA Energy, Inc., a corporate parent of Alon USA, LP, have been or are now covered by consent decrees pursuant to the Global Settlement Strategy; and

WHEREAS, Paragraph 252 of the Consent Decree requires that this amendment to the Consent Decree be approved by the Court before it is effective;

NOW THEREFORE, the United States and Alon hereby seek approval of this Amendment to the originally lodged Consent Decree:

**FIRST, Paragraphs 15 and 17 of the Consent Decree are now replaced as follows:**

15. NOx Emissions Limits. By no later than July 1, 2020, Alon shall comply with a final NOx emissions limit from the FCCU at the Big Spring Refinery of 20 ppmvd NOx on a 365-day rolling-average basis and 40 ppmvd NOx on a 7-day rolling-average basis, each at 0% O<sub>2</sub>. Compliance with such 7-day and 365-day limits shall be determined as provided in Paragraph 240. As an interim limit, Alon shall continue to comply with the NOx limits applicable to the FCCU in Permit Number 49154: 200 ppmv averaged over a one-hour period (Special Condition

No. 4), and emission rates of 464.21 tons per year and 105.98 lbs/hr (Maximum Allowable Emission Rates).

17. Demonstrating Compliance with FCCU NOx Emission Limits. By no later than July 1, 2020, Alon shall continue to use NOx and O<sub>2</sub> CEMS at the Big Spring Refinery FCCU to demonstrate compliance with the NOx emission limits established pursuant to this Subsection V.A. of this Consent Decree. Upon demand, Alon shall make emissions monitoring data available to EPA. Alon shall install, certify, calibrate, maintain, and operate all CEMS required by this Paragraph in accordance with the provisions of 40 C.F.R. § 60.13 that are applicable to CEMS (excluding those provisions applicable only to Continuous Opacity Monitoring Systems) and Part 60 Appendices A and F, and the applicable performance specification test of 40 C.F.R. Part 60 Appendix B.

**SECOND, Paragraph 19 of the Consent Decree is now replaced as follows:**

19. Final SO<sub>2</sub> Emission Limits. By no later than December 1, 2028, Alon shall comply with final SO<sub>2</sub> Emission Limits of 25 ppmvd at 0% O<sub>2</sub> on a 365-day rolling-average basis and 50 ppmvd at 0% O<sub>2</sub> on a 7-day rolling-average basis, using one of the control technology options as provided in this Paragraph. Compliance with such 7-day and 365-day limits shall be determined as provided in Paragraph 240. By no later than December 31, 2025, Alon shall notify EPA which of the control options Alon has selected to meet the final SO<sub>2</sub> emission limits.

a. Installation and Operation of Wet Gas Scrubber. If Alon selects a Wet Gas Scrubber as its control technology to comply with the final SO<sub>2</sub> emission limits under this Paragraph, then by no later than November 30, 2028, Alon shall complete installation and begin operation of a Wet Gas Scrubber at the Big Spring Refinery FCCU.

b. Installation and Operation of a Hydrotreater with or without SO<sub>2</sub> Reducing Catalyst. If Alon selects a hydrotreater as its control technology (either solely or in conjunction with SO<sub>2</sub> Reducing Catalyst Additives) to comply with the final SO<sub>2</sub> emission limits under this Paragraph, then by no later than six months before the initial startup of the hydrotreater (but in no event later than May 31, 2028), Alon shall submit to EPA for its approval a plan to minimize FCCU SO<sub>2</sub> emissions during hydrotreater outages, including, but not limited to, storage of hydrotreated feed, addition of SO<sub>2</sub> Reducing Catalyst Additive and minimizing FCCU feed sulfur content. Alon shall comply with the hydrotreater outage plan at all times, including during periods of Startup, Shutdown and Malfunction of the hydrotreater.

c. Use or Installation of Other Technology. If Alon selects a control technology other than a Wet Gas Scrubber, a hydrotreater and/or SO<sub>2</sub> Reducing Catalyst Additives to comply with the final SO<sub>2</sub> emission limits under this Paragraph, then it shall comply with the final SO<sub>2</sub> emission limits by no later than the dates established in this Paragraph.

**THIRD, Paragraph 169 of the Consent Decree is now replaced as follows:**

169. For failure to comply with the requirement to install a Wet Gas Scrubber or other control technology by the deadline specified in Paragraph 19, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 <sup>st</sup> through 30 <sup>th</sup> day after deadline	\$1000
31 <sup>st</sup> through 60 <sup>th</sup> day after deadline	\$1500
Beyond 60 <sup>th</sup> day after deadline	\$2,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater



FOURTH, Paragraph 221 of the Consent Decree is now replaced as follows:

221. Liability Resolution Regarding the Applicable NSR/PSD Requirements. With respect to emissions of the following pollutants from the following units, entry of this Consent Decree shall resolve all civil liability of Alon to the United States for alleged violations of the Applicable NSR/PSD Requirements resulting from (1) construction or modification of the following units that occurred prior to the Date of Lodging of the Consent Decree; and (2) construction or modification of the following units that commenced prior to the Date of Lodging of the Consent Decree and continued up to the following dates:

<u>Unit</u>	<u>Pollutant</u>	<u>Date</u>
FCCU	SO <sub>2</sub>	December 1, 2028
	NOx	July 1, 2020
Covered Heaters and Boilers	NOx	December 31, 2016
	SO <sub>2</sub>	Date of Entry
All Other Heaters and Boilers	SO <sub>2</sub>	Date of Entry

FIFTH, to address a transfer of specified physical assets from Alon to DKL Big Spring, LLC, the parties now add new Paragraph 4.A:

4.A. On March 1, 2018, Alon transferred ownership of certain Big Spring Refinery assets to DKL Big Spring, LLC (DKL), which assets are listed in Appendix E of the Consent Decree. Regardless of that transfer, Alon remains responsible for all performance or other requirements established by this Consent Decree, including any performance or other requirement related to those transferred assets. As DKL has succeeded to the ownership of the transferred assets, both DKL and Alon are jointly and severally liable under the Consent Decree for the assets transferred to DKL.

a. The Parties intend, as between Alon and DKL, that Alon is expected to be primarily responsible for performance and other requirements of the Consent Decree with respect to the assets transferred to DKL, and that DKL is secondarily responsible for performance and other requirements of the Consent Decree.

b. Paragraph 4.A.a. does not limit or waive DKL's rights, if any, that it may have against Alon or its affiliates; nor does it limit or affect DKL's and Alon's joint and several liability for the transferred assets.

SIXTH, to account for a change in the law that occurred after the lodging of the Consent Decree, the parties now add new Paragraph 253.A:

253.A. 26 U.S.C. Section 162(f)(2)(A)(ii) Identification. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of: Section II (Applicability and Binding Effect), Paragraph 12; Section V (Affirmative Relief), Paragraphs 15-61, 63, 65-148; Section VIII (Recordkeeping and Reporting), Paragraphs 157-159 (except Paragraph 159.d with respect to the Supplemental Environmental Project), 160-161; Section XII (Right of Entry), Paragraph 205; and Section XVI (General Provisions), Paragraph 239, is restitution or required to come into compliance with law.

SEVENTH, Appendix C, Paragraph 3 is now replaced as follows:

3. Schedule. The SEP shall be completed by the next refinery turnaround, scheduled as of the date of this First Amendment to Consent Decree to be completed during the first quarter of 2020. If the schedule for completion of the next refinery turnaround changes from the first quarter of 2020, Alon shall complete the SEP during the rescheduled turnaround.

EIGHTH, consent of the United States to this amendment is subject to the notice-and-comment provisions of Title 28 C.F.R. Section 50.7. Alon agrees to entry of the Amendment without further notice. The Court's approval of this Amendment both amends the originally lodged Decree and then enters it as a final judgment.

Upon the consent and agreement of the parties, it is hereby ORDERED that this First Amendment to Consent Decree is approved and entered as a Final Order of this Court.

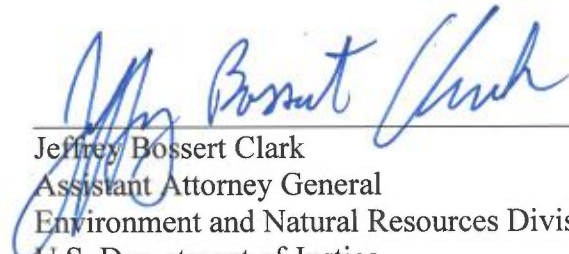
Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

---

UNITED STATES DISTRICT JUDGE

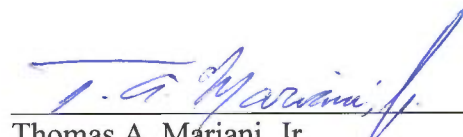
WE HEREBY CONSENT to the entry of the First Amendment to Consent Decree in *United States, et al. v. Alon USA, LP*, Civ. No. 1:17-cv-00087-BL (N.D. Tex.), subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

**FOR PLAINTIFF THE UNITED STATES OF AMERICA:**



---

Jeffrey Bossert Clark  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice



---

Thomas A. Mariani, Jr.  
NY Bar Regis. No. 2003374  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Phone: (202) 514-4620  
Fax: (202) 514-0097  
Email: [tom.mariani@usdoj.gov](mailto:tom.mariani@usdoj.gov)

WE HEREBY CONSENT to the entry of the First Amendment to Consent Decree in *United States, et al. v. Alon USA, LP*, Civ. No. 1:17-cv-00087-BL (N.D. Tex.), subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

**FOR PLAINTIFF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

November 21, 2018  
DATE

Rosemarie Kelley  
ROSEMARIE KELLEY  
Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Washington, D.C. 20460

November 16, 2018  
DATE

John Fogarty  
JOHN FOGARTY  
Associate Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Washington, D.C. 20460

WE HEREBY CONSENT to the entry of the First Amendment to Consent Decree in *United States, et al. v. Alon USA, LP*, Civ. No. 1:17-cv-00087-BL (N.D. Tex.), subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

**FOR DEFENDANT ALON USA, LP:**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
LOUIS LABELLA  
President  
Alon USA, LP

11/12/18  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
TODD LOPEZ  
Vice President, Environmental Health & Safety  
Alon USA, LP

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ALEXANDRA MAGILL BROMER  
Perkins Coie LLP  
700 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20005  
(202) 654-6218  
Counsel to Alon USA, LP

WE HEREBY CONSENT to the entry of the First Amendment to Consent Decree in *United States, et al. v. Alon USA, LP*, Civ. No. 1:17-cv-00087-BL (N.D. Tex.), subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

**FOR DEFENDANT ALON USA, LP:**

11-12-18  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
LOUIS LABELLE  
President  
Alon USA, LP

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TODD LOPEZ  
Vice President, Environmental Health & Safety  
Alon USA, LP

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ALEXANDRA MAGILL BROMER  
Perkins Coie LLP  
700 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20005  
(202) 654-6218  
Counsel to Alon USA, LP

WE HEREBY CONSENT to the entry of the First Amendment to Consent Decree in *United States, et al. v. Alon USA, LP*, Civ. No. 1:17-cv-00087-BL (N.D. Tex.), subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

**FOR DEFENDANT ALON USA, LP:**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
LOUIS LABELLA  
President  
Alon USA, LP

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TODD LOPEZ  
Vice President, Environmental Health & Safety  
Alon USA, LP

11/15/10  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
ALEXANDRA MAGILL BROMER  
Perkins Coie LLP  
700 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20005  
(202) 654-6218  
Counsel to Alon USA, LP



**APPENDIX E**  
**Assets Owned by DKL Big Spring, LLC**

Identification of storage tanks and loading racks owned by DKL Big Spring, LLC that have piping, connectors and other associated equipment that are subject to Consent Decree requirements (see Paragraph 4.A):

**Tank Numbers**

001TK-025	037TK-073	037TK-3132
001TK-199	037TK-075	037TK-320
001TK-203	037TK-109	037TK-321
001TK-205	037TK-112	037TK-322
001TK-206	037TK-121	037TK-326
001TK-207	037TK-122	037TK-327
001TK-208	037TK-123	037TK-328
001TK-212	037TK-124	037TK-350
001TK-213	037TK-125	037TK-351
001TK-214	037TK-126	037TK-352
001TK-215	037TK-128	037TK-353
001TK-216	037TK-130	037TK-TP7
001TK-3004	037TK-155	B1
001TK-3005	037TK-156	B2
001TK-3006	037TK-178	B4
001TK-3007	037TK-180	P5
001TK-3008	037TK-181	B9
001TK-3009	037TK-182	B10
001TK-3010	037TK-183	067TK001
001TK-3011	037TK-184	067TK002
001TK-3013	037TK-185	067TK003
001TK-410	037TK-2002	067TK004
037TK-1011	037TK-2044	067TK005
037TK-TP5	037TK-2045	067TK006
037TK-072	037TK-3131	067TK007

**Loading Racks**

(a) the asphalt rail rack used for loading asphalt; (b) the asphalt truck rack used for loading and unloading asphalt, hydrolene, and ground tire rubber; (c) the rail rack, commonly known as the "BTX Rail Rack," used for loading and unloading petroleum products; (d) the rail rack commonly known as the "Big Rail Rack," used for loading and unloading petroleum products; and (e) the truck rack used for loading and unloading petroleum products and the four-bay loading rack used for loading petroleum products.

*Ann*