

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

UNITED STATES OF AMERICA,

and

THE LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

and

THE KANSAS DEPARTMENT OF HEALTH
AND ENVIRONMENT,

Plaintiffs,

v.

COLUMBIAN CHEMICALS COMPANY,

Defendant.

Civil Action No. 17-1661

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

EXHIBIT A

UNITED STATES DISTRICT COURT
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LAFAYETTE DIVISION

UNITED STATES OF AMERICA,

and

THE LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

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THE KANSAS DEPARTMENT OF HEALTH
AND ENVIRONMENT,

Plaintiffs,

v.

COLUMBIAN CHEMICALS COMPANY,

Defendant.

Civil Action No. 17-1661

FIRST AMENDMENT TO CONSENT DECREE

WHEREAS, the United States of America, the Louisiana Department of Environmental Quality (“LDEQ”), and the Kansas Department of Health and Environment (collectively “Plaintiffs”), and Defendant Columbian Chemicals Company, now known as Birla Carbon USA, Inc., (“Birla”), are Parties to a Consent Decree entered by this Court on June 11, 2018 (ECF 20, the “Consent Decree”);

WHEREAS, the Consent Decree requires Birla to install emission control systems and to achieve compliance with reduced emission standards on specific Process Systems located at Birla’s carbon black production Facilities;

WHEREAS, Paragraphs 17, 23, 26, 30, and 31 of the Consent Decree require Birla to install by October 1, 2021, and continuing thereafter, Continuously Operate, a Seawater Wet Gas Scrubber emission control system (“WGS”) and a Selective Catalytic Reduction emission control system (“SCR”) at its North Bend facility to achieve reductions in sulfur dioxide, nitrogen oxide, and particulate matter emissions from affected process sources;

WHEREAS, Paragraph 26 of the Consent Decree requires Birla to install by January 1, 2021, and continuing thereafter, Continuously Operate, a Low NOx Combustion System at its Hickok facility to achieve reductions in nitrogen oxide emissions;

WHEREAS, Defendant asserts that the COVID-19 pandemic was declared a national health emergency by the United States Government on March 13, 2020;

WHEREAS, Defendant asserts that it sent force majeure notices under Paragraph 72 of the Consent Decree to the Plaintiffs on March 16, 2020, March 18, 2020, March 24, 2020, March 31, 2020, May 22, 2020, June 22, 2020, July 20, 2020, August 17, 2020, September 14, 2020, October 13, 2020, November 10, 2020, December 8, 2020, January 5, 2021, February 5, 2021, March 5, 2021, April 7, 2021, May 7, 2021, June 7, 2021, July 8, 2021, August 6, 2021, September 8, 2021, and October 7, 2021;

WHEREAS, Defendant asserts that it explained in those notices the circumstances related to the pandemic and extreme weather events that have led to delays in meeting the obligations under Paragraphs 17, 23, 26, 30, and 31 of the Consent Decree;

WHEREAS, Defendant asserts that its carbon black facility located in Centerville, Louisiana (“North Bend”) was subject to stay-at-home order, Louisiana Proclamation Number 58 JBE 2020, which strictly limited site visits by contractors and consultants through May 15, 2020,

and imposed workplace guidelines recommended by the Center for Disease Control (“CDC”) and the World Health Organization (“WHO”), resulting in delays;

WHEREAS, Defendant asserts that North Bend has experienced repeated events of employees, contractors, and subcontractors contracting COVID-19, requiring them and those who came in contact with them to quarantine, resulting in delays;

WHEREAS, Defendant asserts that the water construction at North Bend was delayed through May 2020 as a result of permitting delays, due to COVID-19 and hurricanes, by LDEQ and the U.S. Army Corps of Engineers (“USACE” or the “Corps”) in issuing permits under Section 404 of the Clean Water Act, 33 U.S.C. § 1344; Section 10 of the Rivers and Harbors Act of 1899; 33 U.S.C. § 403; and Section 14 of the Rivers and Harbors Act of 1899; 33 U.S.C. § 408;

WHEREAS, Defendant asserts that North Bend’s vendors have experienced COVID-19 related restrictions and poor weather conditions that continue to cause delays to supply chain for materials and equipment, resulting in significant delays in being able to timely receive the necessary equipment from vendors due to supply chain delays caused by COVID-19 in order to comply with the Consent Decree;

WHEREAS, Defendant asserts that North Bend experienced repeated shutdowns and delays due to Tropical Storm Marco, Hurricane Laura, Hurricane Delta, and Hurricane Zeta, resulting in compliance delays;

WHEREAS, Defendant asserts that it has exercised best efforts to prevent or minimize any resulting delays and/or violation and/or emissions with respect to COVID-19-related issues at North Bend by complying with Louisiana Proclamation Number 58 JBE 2020 and workplace

guidelines provided by the CDC and WHO, to the greatest extent possible in accordance with its obligations under the Force Majeure provisions of the Consent Decree;

WHEREAS, Defendant asserts that it has exercised best efforts to prevent or minimize any resulting delays and/or violation and/or emissions with respect to equipment vendor delays resulting from COVID-19 restrictions and poor weather conditions, including obtaining new vendors, to the greatest extent possible, in accordance with its obligations under the Force Majeure provisions of the Consent Decree;

WHEREAS, Defendant asserts that it has exercised best efforts to prevent or minimize any resulting delays and/or violation and/or emissions with respect to the extreme weather at North Bend, to the greatest extent possible, in accordance with its obligations under the Force Majeure provisions of the Consent Decree;

WHEREAS, Defendant asserts that its carbon black facility located in Ulysses, Kansas (“Hickok”) was subject to stay-at-home order, Executive Order No. 20-16, through May 3, 2020, which restricted mass gatherings of people, resulting in delays;

WHEREAS, Defendant asserts that Hickok imposed workplace restrictions with guidance from the CDC and WHO that limited the number of workers in a given space, resulting in overall productivity reduction and delays;

WHEREAS, Defendant asserts that Hickok has experienced repeated events of employees, contractors, and subcontractors contracting COVID-19, requiring them and those who came in contact with them to quarantine, resulting in delays;

WHEREAS, Defendant asserts that Hickok’s vendors in other states were subject to stay-at-home orders, resulting in delays;

WHEREAS, Defendant asserts that Hickok's vendors have been subject to COVID-19 related restrictions and issues that continue to cause delays to supply chain for materials and equipment, resulting in significant delays in procuring the necessary equipment to comply with the Consent Decree;

WHEREAS, Defendant asserts that equipment failures, beyond the control of Defendant, at Hickok resulted in significant damage to boiler tubes of the heat recovery steam generation, requiring substantial remediation work and resulted in delays;

WHEREAS, Defendant asserts it has exercised best efforts to prevent or minimize any resulting delays and/or violation and/or emissions with respect to COVID-19 related issues at Hickok by complying with Executive Order No. 20-16 and workplace guidelines provided by the CDC and WHO, to the greatest extent possible, in accordance with its obligations under Force Majeure provisions of the Consent Decree;

WHEREAS, Defendant asserts that it has exercised best efforts to prevent or minimize any resulting delays and/or violation and/or emissions with respect to equipment vendor delays resulting from COVID-19 restrictions and poor weather conditions, to the greatest extent possible, in accordance with its obligations under the Force Majeure provisions of the Consent Decree;

WHEREAS, Defendant asserts that it has exercised best efforts to prevent or minimize any resulting delays and/or violation and/or emissions with respect to equipment failures, to the greatest extent possible, in accordance with its obligations under Force Majeure provisions of the Consent Decree;

NOW THEREFORE, Plaintiffs and Birla hereby agree that, upon approval of this First Amendment by the Court, the Consent Decree shall be amended as follows:

1. Paragraph 17 of the Consent Decree is hereby amended and restated to extend the Date of Installation to December 31, 2021 and the Date of Continuous Operation to January 31, 2022 as follows:

SO₂ Process System Operation Emissions Limits and Control Technology. No later than the dates set forth in the table below, Defendant shall install (by the Date of Installation), operate, and Continuously Operate (by the Date of Continuous Operation and continuing thereafter), a WGS or DGS on the North Bend Process System as specified in the table below. Defendant shall Continuously Operate the WGS or DGS on the North Bend Process System as specified in the table below so as to achieve and maintain during Process System Operation (by the Date of Continuous Operation) the Emissions Limits specified in the table below.

Process System	Control Technology	7-day Rolling Average Emissions Limit	365-day Rolling Average Emissions Limit	Date
North Bend Process System	Seawater WGS	Interim 7-day Rolling Average Emissions Limit: No greater than 158 ppmvd (at 0% oxygen)	Interim 365-day Rolling Average Emissions Limit: No greater than 130 ppmvd (at 0% oxygen)	Date of Installation: <u>12/31/21</u> Date of Continuous Operation: <u>1/31/22</u>
		Final 7-day Rolling Average Emissions Limit: Option A: No greater than 120 ppmvd (at 0% oxygen) Option B: No less than 120 ppmvd (at 0% oxygen) and no greater than 158	Final 365-day Rolling Average Emissions Limit: Option A: No greater than 80 ppmvd (at 0% oxygen) Option B: No less than 80 ppmvd (at 0% oxygen) and no greater than 130	Applicable final Emissions Limit: Pursuant to the protocol specified in Appendix E

Process System	Control Technology	7-day Rolling Average Emissions Limit	365-day Rolling Average Emissions Limit	Date
		ppmvd (at 0% oxygen)	ppmvd (at 0% oxygen)	

2. Paragraph 23 of the Consent Decree is hereby amended and restated to extend the Dates of Continuous Operation as follows:

NO_x Emissions Limits Applicable to Heat Load Operation, Startup, and Shutdown. No later than the dates set forth in the table below, and continuing thereafter, Defendant shall operate the reactors, dryers, boilers and incinerators at each Facility (as listed) to collectively achieve and maintain the Emissions Limits specified in the table below, at all times, collectively, of Heat Load Operation, Startup, and Shutdown:

Facility	365-day Rolling Sum Emissions Limit	Date of Continuous Operation
North Bend	No greater than 72 tons (in total for all reactors, dryers, boilers, and incinerators) for the prior 365 Days	<u>1/31/22</u>
Hickok	No greater than 8 tons (in total for all reactors and boilers) for the prior 365 Days	<u>6/12/21</u>

3. Paragraph 26 of the Consent Decree is hereby amended and restated to extend the Date of Installation to December 31, 2021 and the Date of Continuous Operation to January 31, 2022 as follows:

NO_x Process System Operation Emissions Limits and Control Technology. No later than the dates set forth in the table below, Defendant shall install (by the Date of Installation), operate, and Continuously Operate (by the Date of Continuous Operation and continuing

thereafter), the designated Control Technology on each Process System specified in the table below. Defendant shall Continuously Operate the designated Control Technology on each Process System specified in the table below so as to achieve and maintain during Process System Operation (by the Date of Continuous Operation) the Emissions Limits specified in the table below.

Process System	Control Technology	7-day Rolling Average Emissions Limit	365-day Rolling Average Emissions Limit	Date
North Bend Process System	SCR	No greater than 54 ppmvd (at 0% oxygen)	No greater than 38 ppmvd (at 0% oxygen)	Date of Installation: <u>12/31/21</u> Date of Continuous Operation: <u>1/31/22</u>
Hickok Process System	Low NO _x Combustion System	Interim 7-day Rolling Average Emissions Limit: No greater than 375 ppmvd (at 0% oxygen)	Interim 365-day Rolling Average Emissions Limit: No greater than 300 ppmvd (at 0% oxygen)	Date of Continuous Operation: <u>6/12/21</u>
		Final 7-day Rolling Average Emissions Limit: Option A: No greater than 120 ppmvd (at 0% oxygen) Option B: No less than 120 ppmvd (at 0% oxygen) and no greater than 375 ppmvd (at 0% oxygen)	Final 365-day Rolling Average Emissions Limit: Option A: No greater than 80 ppmvd (at 0% oxygen) Option B: No less than 80 ppmvd (at 0% oxygen) and no greater than 300 ppmvd (at 0% oxygen)	Applicable final Emissions Limit: Pursuant to the protocol specified in Appendix F

4. Paragraph 30 of the Consent Decree is hereby amended and restated as follows:

Hickok NO_x Cap. Defendant shall comply with a Hickok NO_x Cap of 395 tons per Calendar Year by 365 Days after the Date of Continuous Operation of the Low NO_x Combustion System, pursuant to Paragraphs 26–29. For purposes of determining compliance with the Hickok NO_x Cap, NO_x emissions shall be determined for (a) the Low NO_x Combustion System, by measuring emissions using a CEMS in accordance with Paragraph 29 and (b) for the remainder of the Hickok facility, by calculating emissions using the following: (i) dryers (natural gas): NO_x emissions = (NO_x factor for dryers (natural gas)) x (MMscf of natural gas used), where the NO_x factor for the dryers (natural gas) = 230 lbs/MMscf; (ii) natural gas boiler(s): NO_x emissions = (NO_x factor for natural gas boiler(s)) x (MMscf of natural gas used), where the NO_x factor for the natural gas boiler = 230 lbs/MMscf; (iii) reciprocating internal combustion engines: NO_x emissions = (NO_x factor for RICE engines) x (hours of operation), where the NO_x factor for RICE engines = 0.031 lbs/hour for engines under 1,000 bHP; (iv) natural gas-fired oil heater: NO_x emissions = (NO_x factor for natural gas-fired oil heater) x (MMscf of natural gas used), where the NO_x factor for the natural gas-fired oil heater = 230 lbs/MMscf; (v) Heat Load Operations: NO_x emissions = (NO_x factor for Heat Load Operations) x (MMscf of natural gas used), where the NO_x factor for Heat Load Operations = 230 lbs/MMscf; (vi) Hickok Non-Assisted Flare: NO_x emissions = (NO_x factor for Hickok Non-Assisted Flare) x (actual production lbs while Hickok Non-Assisted Flare is operating), where the NO_x factor for the Hickok Non-Assisted Flare = 15.01 lbs NO_x per ton of production. Defendant may seek to revise either the NO_x factors for (b)(i) – (b)(iv), based on additional stack test data, provided there has been a prior written request by Defendant, which specifies the basis for the derivation of such revised factor, and written

approval by EPA of such revised factor pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree.

5. Paragraph 31 of the Consent Decree is hereby amended and restated to extend the Date of Installation to December 31, 2021 and the Date of Continuous Operation to January 31, 2022 as follows:

PM Control Technology and Emissions Limits.

- a. No later than the date set forth in the table below, Defendant shall install (by the Date of Installation), and Continuously Operate (by the Date of Continuous Operation), a WGS or DGS on each Process System specified in the table below. Defendant shall Continuously Operate the WGS or DGS on each Process System specified in the table below so as to achieve and maintain during Process System Operation (by the Date of Continuous Operation) the Emissions Limits specified in the table below.

Process System	Control Technology	3-hour Average Emissions Limit for PM	Date
North Bend Process System	Seawater WGS	No greater than 0.0069 gr/dscf	Date of Installation: <u>12/31/21</u> Date of Continuous Operation: 1/31/2022

6. This First Amendment shall be lodged with the Court for a period of not less than 30 Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding this First Amendment disclose facts or considerations indicating that this First Amendment is inappropriate, improper, or inadequate. Defendant consents to entry of this First Amendment without further notice and agrees not to withdraw from or oppose entry of this First Amendment by the Court or to challenge any

provision of the First Amendment, unless the United States has notified Defendant in writing that it no longer supports entry of the First Amendment.

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

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

9. Pursuant to Paragraph 110 of the Consent Decree, the effective date of this First Amendment shall be the date it is approved by the Court.

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 First Amendment to the Consent Decree is hereby approved and entered as a final order of this Court.

Dated and entered this _____ day of _____, 2021.

UNITED STATES DISTRICT JUDGE
Western District of Louisiana

WE HEREBY CONSENT to the foregoing First Amendment to the Consent Decree entered in *United States of America et al v. Columbian Chemicals Company*, Civil Action No. 17-1661.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Dated: Nov. 19, 2021

s/ Elias L. Quinn
ELIAS L. QUINN (CO# 42159)
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

WE HEREBY CONSENT to the foregoing First Amendment to the Consent Decree entered in *United States of America et al v. Columbian Chemicals Company*, Civil Action No. 17-1661.

FOR PLAINTIFF THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

s/ Rosemarie A. Kelly

ROSEMARIE A. KELLEY

Director

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

United States Environmental Protection Agency

WE HEREBY CONSENT to the foregoing First Amendment to the Consent Decree entered in *United States of America et al v. Columbian Chemicals Company*, Civil Action No. 17-1661.

FOR PLAINTIFF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

s/ Cheryl T. Seager

CHERYL T. SEAGER

Director

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region 6

WE HEREBY CONSENT to the foregoing First Amendment to the Consent Decree entered in *United States of America et al v. Columbian Chemicals Company*, Civil Action No. 17-1661.

FOR PLAINTIFF THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

s/ Leslie A. Humphrey

LESLIE A. HUMPHREY

Regional Counsel

U.S. Environmental Protection Agency, Region 7

WE HEREBY CONSENT to the foregoing First Amendment to the Consent Decree entered in *United States of America et al v. Columbian Chemicals Company*, Civil Action No. 17-1661.

FOR PLAINTIFF LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

COURTNEY BURDETTE, General Counsel (#30564)
Louisiana Department of Environmental Quality

s/ Dwana King

DWANA KING

Deputy General Counsel (La. #20590)

AMBER LITCHFIELD

Attorney Supervisor (La. #33866)

Louisiana Department of Environmental Quality

Legal Division

P.O. Box 4302

Baton Rouge, Louisiana 70821-4302

(225) 219-3985 (telephone)

(225) 219-4068 (facsimile)

Dwana.king@la.gov

amber.litchfield@La.Gov

WE HEREBY CONSENT to the foregoing First Amendment to the Consent Decree entered in *United States of America et al v. Columbian Chemicals Company*, Civil Action No. 17-1661.

FOR PLAINTIFF KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT:

s/ Leo G. Hennig
LEO G. HENNING
Deputy Secretary for Environment
Kansas Department of Health and Environment

s/ Kate J. Gleeson
KATE J. GLEESON, No. 25518
Senior Environmental Attorney
Special Assistant Attorney General
Kansas Department of Health and Environment
1000 S.W. Jackson, Suite 560
Topeka, Kansas 66612
(785) 296-1607
(785) 559-4272 (fax)
kate.gleeson@ks.gov

WE HEREBY CONSENT to the foregoing First Amendment to the Consent Decree entered in *United States of America et al v. Columbian Chemicals Company*, Civil Action No. 17-1661.

FOR DEFENDANT BIRLA CARBON:

s/ David T. Buente

David T. Buente

Partner

Sidley Austin LLP 1501 K St., NW Washington, DC 20005

Tel. 202-736-8111

Fax: 202-736-8711

Email: dbuente@sidley.com