

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA,

and

THE LOUISIANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

and

THE STATE OF TEXAS,

Plaintiffs,

v.

SID RICHARDSON CARBON, LTD.,

Defendant.

Civil Action No. 3:17-CV-1792-SDD-RLB

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

**EXHIBIT A**

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FOR THE MIDDLE DISTRICT OF LOUISIANA**

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and

THE LOUISIANA DEPARTMENT OF  
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THE STATE OF TEXAS,

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v.

SID RICHARDSON CARBON, LTD.,

Defendant.

Civil Action No. 3:17-CV-1792-SDD-RLB

**FIRST AMENDMENT TO CONSENT DECREE**

WHEREAS, the United States of America, the Louisiana Department of Environmental Quality, and the State of Texas (collectively “Plaintiffs”), and Defendant Sid Richardson, now known as Tokai Carbon CB Ltd., (“Tokai”), are Parties to a Consent Decree entered by this Court on August 14, 2018 (ECF 7, the “Consent Decree”);

WHEREAS, the Consent Decree requires Tokai to install emission control systems and to achieve compliance with reduced emission standards on specific Process Systems located at Tokai’s carbon black production Facilities, including the Borger production facility, as further described in the Consent Decree;

WHEREAS, Paragraphs 17, 23, 24, 27, and 31 of the Consent Decree require Tokai to install by April 1, 2021, and continuing thereafter, Continuously Operate, a Wet Gas Scrubber emission control system (“WGS”) and a Selective Catalytic Reduction emission control system (“SCR”) at its Borger facility to achieve reductions in sulfur dioxide and nitrogen oxide emissions from affected process sources;

WHEREAS, Paragraph 32 of the Consent Decree requires Tokai to install, and continuing thereafter, Continuously Operate a WGS to achieve reductions in particulate matter emissions from process sources;

WHEREAS, Paragraph 37 of the Consent Decree prohibits Tokai from using flares at its Borger Facility beginning April 1, 2021;

WHEREAS, Tokai timely notified Plaintiffs that installation of the WGS and SCR emission control systems would need to be delayed due to insufficient time to allow for the proper curing of epoxy lining on certain pieces of control equipment at the end of the construction process. This lining is critical to the proper installation and functioning of the process; curing at temperatures is required for the equipment warranty. The ambient temperature must remain above 55 degrees Fahrenheit for 24-hour period for several days during the curing process;

WHEREAS, from about February 12, 2021 through February 19, 2021 the state of Texas experienced an unprecedented cold front, Winter Storm Uri, with temperatures in the Borger, Texas area below 0° F for much of this period. The entire State of Texas and some surrounding states experienced power outages causing equipment freeze and transportation delays. Tokai’s contractors were not able to work on pollution control equipment installations for a period of about two weeks, and the Power Distribution Center, a pre-fabricated building that is a key piece

of equipment for the WGS and SCR emission control systems, could not be delivered as scheduled because of icy roads. With the onset of the storm, the Texas Department of Transportation rejected the originally permitted delivery routes due to road damage. The transportation company had to scout and resubmit several alternative routes, and the Texas Department of Transportation needed to issue a permit to allow the pre-fabricated building on the highway. There was an additional delay in the issuance of this permit due to backlogs at the Texas Department of Transportation. Tokai timely notified Plaintiffs of these additional, unforeseen delays;

WHEREAS, Tokai timely notified Plaintiffs of an additional 25 days where high wind speeds required the suspension of construction activities so crane operators working to install pollution control equipment at the facility were forced to stop work to adhere to safety protocols;

WHEREAS, in light of the above events, the Plaintiffs and Tokai agreed to modify the Consent Decree to extend certain compliance dates to August 9, 2021, or to February 2, 2022;

WHEREAS, on July 23, 2021, a contractor working at the Borger Facility tested positive for COVID-19. Three contracting firms active at the site removed their employees from the site to evaluate COVID exposure. These contractors were responsible for crane operations, mechanical work, and specialty welding. Over the following week and a half, eight workers across these firms had tested positive for COVID-19. Six employees of Tokai also tested positive for COVID-19. Contractors began to return to the site on July 28, but with reduced workforces and the need to orient replacement crewmembers to the project. The testing efforts and safety precautions taken to prevent further spread of COVID-19 among workers on site delayed several critical path projects at the site, with cascading effects on the pollution control projects'

schedule. Tokai timely notified Plaintiffs that installation of the WGS and SCR emission control systems would need to be delayed a further 20 days as a result of these events.

WHEREAS, after resumption of work at the Borger facility following the COVID diagnosis, the Borger Facility experienced an additional five days where high wind speeds required the suspension of construction activities so crane operators working to install pollution control equipment at the facility were forced to stop work to adhere to safety protocols. In addition, upon commencing the shift of emissions from flares to scrubbers on Friday, September 3, 2021, the facility discovered that the fan shaft for the Unit 3 fan, which had to be offline and cool for the installation of the emission control equipment, had bowed, causing the fan to be out of balance. Due to the Labor Day holiday weekend, Tokai was unable to get the necessary specialized contractor to the Borger Facility to rebalance the fan until September 8, 2021.

WHEREAS, Tokai represents that it has exercised best efforts to prevent or minimize any resulting delay and/or violation and/or emissions during the aforementioned events to the greatest extent possible, in accordance with its obligations under the Force Majeure provisions of the Consent Decree;

WHEREAS, Paragraph 73 of the Consent Decree provides that the Parties may reach agreement and stipulate in writing to an extension of deadlines for requirements affected by a Force Majeure claim and that, where such stipulation results in a material change to the terms of the Consent Decree, it shall be effective upon approval by the Court pursuant to Paragraph 110 of the Consent Decree;

NOW THEREFORE, Plaintiffs and Tokai 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 Continuous Operation to September 9, 2021 as follows:

SO<sub>2</sub> Process System Operation Emissions Limits and Control Technology. No later than the dates set forth in the table below, Defendant shall install, and continuing thereafter, Defendant shall Continuously Operate, a WGS on each Process System or equipment as specified in the table below so as to achieve and maintain during Process System Operation the Emissions Limits specified in the table below:

Process System or equipment	Control Technology	7-day Rolling Average Emissions Limit	365-day Rolling Average Emissions Limit	Date of Continuous Operation
Borger Common Stack	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)	Applicable interim Emissions Limit:  <b><u>September 9, 2021</u></b>
		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 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 130 ppmvd (at 0% oxygen)	Applicable final Emissions Limit: Pursuant to the protocol specified in Appendix E

2. Paragraph 23(b) of the Consent Decree is hereby amended to the modify specific SO<sub>2</sub> emissions caps to September 9, 2021 as follows:

SO<sub>2</sub> Caps.

- b. Borger. Defendant shall comply with a Borger SO<sub>2</sub> Cap (Facility-wide) of no more than 4540 tons per year, except once every five years the cap shall be 4978 tons per year, in either case, on a 365-day block-basis starting on September 9, 2021 (i.e., the first day included in the first 365-day block is September 9, 2021, and the first day included in the second 365-day block is September 9, 2022).

For purposes of determining compliance with the Borger SO<sub>2</sub> Cap, SO<sub>2</sub> emissions shall be calculated pursuant to Appendix F.

3. Paragraph 24 of the Consent Decree is hereby amended to the modify specific NO<sub>x</sub> Emissions Limits Applicable to Heat Load Operation, Startup, and Shutdown to September 9, 2021 as follows:

NO<sub>x</sub> 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, boilers, dryers, and combustors at each Facility to collectively achieve and maintain the Emissions Limits specified in the table below, at all times, collectively, of Heat Load Operation, Startup, and Shutdown:

<b>Facility</b>	<b>365-day Rolling Sum Emissions Limit</b>	<b>Date of Continuous Operation</b>
Borger	No greater than 50 tons (in total for all reactors and boilers) for the prior 365 Days	<u><b>September 9, 2021</b></u>

4. Paragraph 27 of the Consent Decree is hereby amended to the modify specific dates of continuous operation regarding NO<sub>x</sub> Process System Operation Emissions Limits and Control Technology to September 9, 2021 as follows:

NO<sub>x</sub> Process System Operation Emissions Limits and Control Technology.

- a. No later than the dates set forth in the table below, Defendant shall install,

and continuing thereafter, Defendant shall Continuously Operate, a SCR on each Process System or equipment specified in the table below so as to achieve and maintain during Process System Operation the Emissions Limits specified in the table below:

Process System or equipment	Control Technology	7-day Rolling Average Emissions Limit	365-day Rolling Average Emissions Limit	Date of Continuous Operation
Borger Common Stack	SCR	No greater than 54 ppmvd (at 0% oxygen)	No greater than 39 ppmvd (at 0% oxygen)	<b><u>September 9, 2021</u></b>

5. Paragraph 31(b) of the Consent Decree is hereby amended to the modify specific NO<sub>x</sub> emissions caps to September 9, 2021 as follows:

NO<sub>x</sub> Caps.

- b. Defendant shall comply with a Borger NO<sub>x</sub> Cap (Facility-wide) of no more than 640 tons per year except once every five years the cap shall be 682 tons per year, in either case, on a 365-day block basis starting on **September 9, 2021** (i.e., the first day included in the first year is **September 9, 2021**, and the first day included in the second 365-day block is **September 9, 2022**). For purposes of determining compliance with the Borger NO<sub>x</sub> Cap, NO<sub>x</sub> emissions shall be calculated pursuant to Appendix F.

6. Paragraph 32(a) of the Consent Decree is hereby amended to modify the dates of continuous operation for PM control technology as follows:

PM Control Technology and Emissions Limits.



- a. No later than the dates set forth in the table below, Defendant shall install, and continuing thereafter, Defendant shall Continuously Operate, a WGS on each Process System or equipment specified in the table below so as to achieve and maintain the Emissions Limits specified in the table below:

<b>Process System or Equipment</b>	<b>Control Technology</b>	<b>3-hour Average Emissions Limit for PM</b>	<b>Date of Continuous Operation</b>
Addis Process System	WGS	No greater than 0.0069 gr/dscf	July 1, 2023
Borger Common Stack	WGS	No greater than 0.0069 gr/dscf	<b><u>February 22, 2022</u></b>

7. Paragraph 37 of the Consent Decree is hereby amended to the modify the prohibition on the use of flares at the Borger facility as follows:

Prohibition On Use Of Flares. No later than the date set forth in the table below, Defendant shall permanently cease operation of any Flares at each Facility, except in the limited instance of (a) a Malfunction that satisfies the requirements of Section XVII (Affirmative Defenses To Certain Stipulated Penalties), (b) Inspection at the Alternative Combustion Technology, or (c) Force Majeure that satisfies the requirements of Section XVI (Force Majeure). During operation of any Flare in accordance with this Section IX (Prohibition on Use of Flares), the emissions from the Flare shall not be included in the calculation of any Emission Limits, but shall be included in the calculation of any Caps. In response to any of these of instances, Defendant shall operate the Flare only as necessary to comply with the carbon black MACT standard (40 C.F.R. § 63.1103(f)), minimize operation of the Flare to the extent possible, and comply with applicable law at all times the Flares are in operation.

<b>Facility</b>	<b>Date</b>
Addis	December 31, 2022
Big Spring	June 30, 2020
Borger	<b><u>September 9, 2021</u></b>

8. 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 and the State of Texas reserve the right to withdraw or withhold 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 or State of Texas has notified Defendant in writing that it no longer supports entry of the First Amendment.

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

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

11. 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.

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**UNITED STATES DISTRICT JUDGE**  
Middle District of Louisiana

WE HEREBY CONSENT to the foregoing First Amendment to the Consent Decree entered in *United States of America, et al., v. Sid Richardson Carbon, Ltd.*, Civil Action Number 3:17-CV-1792 on August 14, 2018.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Respectfully submitted,

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)  
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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

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FOR PLAINTIFF THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

*s/ Cheryl T. Seager*

CHERYL T. SEAGER

Director

Enforcement and Compliance Assurance Division

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FOR PLAINTIFF THE STATE OF TEXAS:

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FOR PLAINTIFF LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

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s/ Dwana King  
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FOR DEFENDANT SID RICHARDSON, NOW KNOWN AS TOKAI CARBON CB LTD:

s/ William R. Jones

William R. Jones

President/CEO

Tokai Carbon CB LTD Corporation