

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**UNITED STATES OF AMERICA,** )  
) )  
**And** )  
) )  
**STATE OF KANSAS, ex rel** )  
**KANSAS DEPARTMENT OF** )  
**HEALTH AND ENVIRONMENT,** )  
) )  
**Plaintiffs** )  
) )  
**v.** )  
) )  
**COFFEYVILLE RESOURCES** )  
**REFINING & MARKETING, LLC** )  
) )  
**Defendant.** )  
\_\_\_\_\_ )

**Civ. No. 04-CV-1064-MLB**

**SECOND MATERIAL MODIFICATION TO SECOND CONSENT DECREE**

WHEREAS, on April 19, 2012, this Court entered a consent decree (“Second Consent Decree”) among Plaintiff, the United States of America (“United States”), on behalf of the Environmental Protection Agency (“EPA”), the State of Kansas, (“Kansas”), on behalf of Kansas Department of Health and Environment (“KDHE”), (collectively “Plaintiffs”) and Defendant Coffeyville Resources Refining & Marketing, LLC (“CRRM”), resolving the violations alleged in the Complaint and certain alleged violations of federal statutory and regulatory provisions (ECF No. 14) at the petroleum refinery owned and operated by Defendant in Coffeyville, Kansas (“the Refinery”);

WHEREAS, on March 25, 2014, the Court entered a First Material Modification to the Second Consent Decree. ECF No. 17;

WHEREAS Paragraphs 19-24 of Section V.C. of the Second Consent Decree require CRRM to reduce emissions of SO<sub>2</sub> from the Fluidized Catalytic Cracking Unit (“FCCU”) at the Refinery. Specifically, Paragraphs 20, 21 and 23 required CRRM to elect, by December 31, 2011, one of two final long term and short term SO<sub>2</sub> emission limit alternatives for the FCCU. These alternatives enabled the Defendant to choose between a higher limit that would take effect sooner or a lower limit that would take effect later. Specifically, these alternatives consisted of: (a) 15 ppmvd @ 0% O<sub>2</sub> on a 365-day rolling average basis and 30 ppmvd @ 0% O<sub>2</sub> on a seven (7) day rolling average basis (the “15/30 Final SO<sub>2</sub> Emissions Limit”) which would become effective on January 1, 2012; or (b) 10 ppmvd @ 0% O<sub>2</sub> on a 365-day rolling average basis and 18 ppmvd @ 0% O<sub>2</sub> on a seven (7) day rolling average basis (the “10/18 Final SO<sub>2</sub> Emissions Limit) which would become effective on January 1, 2017;

WHEREAS on December 31, 2011, CRRM elected the 10/18 Final SO<sub>2</sub> Emissions Limit;

WHEREAS Paragraph 24.b. of the Second Consent Decree provided that if CRRM selected the 10/18 Final SO<sub>2</sub> Emissions Limit, “it shall comply with that limit by installing a wet gas scrubber or other technology pre-approved by EPA.”

WHEREAS in 2014 CRRM requested a modification of the above-described Consent Decree requirements regarding the Final SO<sub>2</sub> Emission Limit from the FCCU because installation and operation of a wet gas scrubber (“WGS”) to achieve the 10/18 Final SO<sub>2</sub> Emissions Limit, as required by Paragraph 24.b, would result in a wastewater effluent discharge to the Verdigris River of Total Dissolved Solids (“TDS”) that would cause CRRM to exceed current effluent limits in CRRM’s National Pollutant Discharge Elimination System (“NPDES”) permit and adversely affect water quality;

WHEREAS the Parties hereby agree to modify the Second Consent Decree as detailed below to: (1) change the Final SO<sub>2</sub> Emission Limits for the FCCU; (2) to allow CRRM to meet the revised Final SO<sub>2</sub> Emission Limits for the FCCU through means other than installing a WGS; (3) to provide that if CRRM does install a WGS to meet the modified SO<sub>2</sub> limits, it will either operate the WGS without any associated effluent discharge to surface water or with a discharge that meets applicable effluent limitations; (4) to revise Paragraph 183 by increasing the stipulated penalties associated with violations of Paragraphs 19 and 20 of the Second Consent Decree; and (5) to change certain of the recipients of notices submitted under Paragraph 243 of the Second Consent Decree;

WHEREAS Paragraph 247 of the Second Consent Decree provides that:

Consent Decree Modifications. Non-material modifications to this Consent Decree shall be in writing and shall be effective when signed by all Parties. The United States or State will file non-material modifications with the Court on a periodic basis. For the purpose of this Paragraph, non-material modifications include, but are not limited to: (i) any modifications to the frequency of reporting obligations; and (ii) any modifications to schedules that do not extend the date for compliance with emissions limitations. Material modifications to this Consent Decree shall be in writing, signed by the Parties and shall be effective upon approval by the Court.

WHEREAS the Parties agree that the Second Material Modification of the Second Consent Decree described herein is a material modification that requires Court approval;

WHEREAS the Parties agree that this Modification is in the best interest of the public;

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

NOW THEREFORE, The United States, the State of Kansas and CRRM hereby agree that, upon approval of this Second Material Modification by the Court, the Second Consent Decree shall be modified as follows:

1. The word “First” shall be inserted at the beginning of the heading above Paragraph 19 and the word “Emission” shall be replaced with “Emissions” and the word “Limit” replaced with “Limits” so that the heading reads:

**19. First Interim SO<sub>2</sub> Emissions Limits for the FCCU**

2. In the first sentence of Paragraph 19, the word “Final” shall be deleted and replaced with the phrase “Second Interim” and the reference to “Paragraph 20” shall be changed to Paragraph 19.1 so that the first sentence of Paragraph 19 reads:

“Beginning on January 1, 2011, and continuing until a Second Interim SO<sub>2</sub> Emission Limit becomes effective pursuant to Paragraph 19.1 below, CRRM shall:”

The rest of Paragraph 19 shall remain as is.

3. The following Paragraph shall be inserted between Paragraphs 19 and 20 of the Second Consent Decree and labeled Paragraph 19.1:

“19.1. Second Interim SO<sub>2</sub> Emissions Limit for the FCCU.

a. CRRM shall comply with the following SO<sub>2</sub> emissions limits on the FCCU exhaust stream:

i. beginning on December 31, 2015, 25 ppmvd @ 0% O<sub>2</sub> on a 365-day rolling average basis and 50 ppmvd @ 0% O<sub>2</sub> on a seven (7) day rolling average basis; SO<sub>2</sub> emissions during periods of Malfunction of the FCCU or SO<sub>2</sub> control device shall not be used in determining compliance with the 50 ppmvd 7-day rolling average limit provided that during such periods CRRM implements good air pollution control practices to minimize SO<sub>2</sub> emissions; and

ii. beginning on December 31, 2015, add at least an average of 957 pounds per day of SO<sub>2</sub> Reducing Catalyst Additive; and

iii.. beginning on July 31, 2016, achieve the lowest achievable SO<sub>2</sub> emissions rate while adding SO<sub>2</sub> Reducing Catalyst Additive without interfering with FCCU conversion or processing rate, provided, however, that the “lowest achievable SO<sub>2</sub> emissions rate” does not require CRRM to add more than 957 pounds per day of SO<sub>2</sub> Reducing Catalyst Additive.

b. By no later than January 31, 2016, CRRM shall notify EPA of the lowest achievable SO<sub>2</sub> emissions rate while adding SO<sub>2</sub> Reducing Catalyst Additive with a reasonable certainty of compliance without interfering with FCCU conversion or processing rate as specified in subparagraph 19.1.a. above. In this notice CRRM shall provide EPA with all information necessary to review its determination. CRRM shall supply EPA with any additional information that EPA requests in order to verify CRRM’s determination.

c. Compliance with Paragraph 19.1 a.i above shall initially be determined on December 31, 2016 based on the prior 365 days (January 1, 2016-December 30, 2016), for the 25 ppmvd 365-day rolling average limit, and on each successive 365-day rolling period thereafter; and on January 8, 2016 based on the prior 7 days (January 1, 2016-January 7, 2016), for the 50 ppmvd 7-day rolling average limit, and on each successive 7-day rolling period thereafter, until the effective dates of the elected Final SO<sub>2</sub> Emissions Limit under Paragraphs 20.a. or b. apply, as provided in Paragraphs 23.a and b.”

4. In the heading above Paragraph 20, the word “Limit” shall be changed to “Limits.”

5. In Paragraph 20 of the Second Consent Decree, in the underlined paragraph heading, the word “Limit” shall be replaced with “Limits” and the phrase “By December 31, 2016” shall be inserted at the beginning of the first sentence after the underlined heading so that

the first part of Paragraph 20 reads: “Election of Final SO<sub>2</sub> Emission Limits for the FCCU. By December 31, 2016, CRRM shall select one of the following Final SO<sub>2</sub> Emission Limits for the FCCU.”

6. In Paragraph 21 of the Second Consent Decree, the reference to December 31, 2011 in the first sentence shall be changed to “December 31, 2016.”

7. Paragraph 22 of the Second Consent Decree shall be stricken and replaced with [“reserved”] to preserve the numbering of Second Consent Decree paragraphs.

8. Paragraph 23 of the Second Consent Decree shall be stricken and replaced with the following:

“23. Effective Date for Elected Final SO<sub>2</sub> Emissions Limits

a. If CRRM selects the 15/30 Final SO<sub>2</sub> Emissions Limits pursuant to subparagraph 20.a. above, compliance with the 365-day rolling average limit shall be determined on August 1, 2017, based on the prior 365 days (August 1, 2016-July 31, 2017), and on each successive 365-day rolling period thereafter; and compliance with the 7-day rolling average limit shall be determined on August 1, 2017 based on the prior 7 days (July 25, 2017-July 31, 2017), and on each successive 7-day rolling period thereafter.

b. If CRRM elects the 10/18 Final SO<sub>2</sub> Emissions Limits pursuant to subparagraph 20.b. above, compliance with the 365-day rolling average limit shall be determined on January 1, 2020, based on the prior 365 days (January 1, 2019-December 31, 2019), and on each successive 365-day rolling period thereafter; and compliance with the 7-day rolling average limit shall be determined on January 8, 2019 based on January 1, 2019 - January 7, 2019), and on each successive 7-day rolling period thereafter.”

9. Paragraph 24 of the Second Consent Decree shall be stricken and replaced with the following:

“24. Means of Complying with applicable Final SO<sub>2</sub> Emissions Limit for the FCCU.

a. If CRRM selects the 15/30 Final SO<sub>2</sub> Emissions Limits pursuant to subparagraph 20.a. above, it shall comply with such limits by any means including but not limited to the use of SO<sub>2</sub> Reducing Catalyst Additives or control technology such as a wet gas scrubber (WGS). If CRRM selects to comply with the 15/30 Final SO<sub>2</sub> Emissions Limits by means of a WGS, the provisions of Paragraph 24.b.i below shall apply.

b. If CRRM selects 10/18 Final SO<sub>2</sub> Emissions Limits pursuant to subparagraph 20.b., it shall comply with such limits by either:

i. installing a wet gas scrubber (WGS) with either (1) no discharge of the WGS effluent to surface water, either directly or commingled with other CRRM wastewater or stormwater discharge flows; or (2) an authorized discharge of the WGS effluent to surface water, either directly or commingled with other CRRM wastewater or stormwater discharge flows, that meets all effluent limitations and conditions as permitted by KDHE pursuant to State and federal law. In the event CRRM does not obtain a wastewater discharge permit or permit modification, the lack of a wastewater discharge permit or permit modification for the WGS discharge shall not be a Force Majeure event within the meaning of Section X of the Second Consent Decree nor shall it be subject to Dispute Resolution under Section XI of the Consent Decree; or

ii. completing regenerator modifications including modifications designed to improve air and catalyst distribution within the FCCU regenerator to improve the

effectiveness of additives, with the use of SO<sub>2</sub> reducing catalyst additive and/or FCCU feed hydrotreating.

10. The term “Appendix G” in Paragraphs 14.h., 163, 164, 166 and 197a, shall be replaced with the term “Amended Appendix G.” Appendix G to the Consent Decree shall be deleted and replaced with the Amended Appendix G.

11. Paragraph 183 shall be stricken and replaced with the following:

“183. Section V.C. Requirements for SO<sub>2</sub> Emission Reductions from FCCU.

a. For each failure to meet any interim or final SO<sub>2</sub> emission limit set forth in Paragraphs 19, 19.1 and 20, per unit, per day: \$1500 for each calendar day in a calendar quarter on which the specified 7-day rolling average exceeds the applicable limit; \$5,000 for each calendar day in a calendar quarter on which the specified 365-day rolling average exceeds the applicable limit.

b. [reserved]

c. For failure to use SO<sub>2</sub> Reducing Catalyst Additives per day as required by subparagraphs 19.b or 19.1.a.ii:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1st through 30th day	\$500 or, an amount equal to 1.2 times the economic benefit of avoided or delayed compliance, whichever is greater.
31st through 60th day	\$750 or an amount equal to 1.2 times the economic benefit of avoided or delayed compliance, whichever is greater.
Beyond the 60th day	\$2,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

d. Unless a stipulated penalty has been assessed under subparagraph 183.a. above, for failure to meet lowest achievable emissions rate as required by subparagraphs 19.c or 19.1.a.iii.

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1st through 30th day	\$1000
31st through 60th day	\$1500
Beyond the 60th day	\$4,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

12. In Paragraph 243 of the Second Consent Decree the following notice recipients shall be deleted and replaced:

a. As to EPA, all Region 7 the addresses shall be changed from 901 N. 5<sup>th</sup> Street, Kansas City, KS 66101 to 11201 Renner Blvd., Lenexa, KS 66219.

b. As to the State, Russ Brichacek shall be replaced with:

Javier Ahumada  
 Acting Section Chief  
 Compliance and Enforcement  
 1000 SW Jackson, Suite 310  
 Topeka, KS 66612-1366  
[jahumada@kdheks.gov](mailto:jahumada@kdheks.gov)

c. As to CRRM, Edmund S. Gross shall be replaced with:

John R. Walter, Esquire  
 Senior Vice President, General Counsel, and Secretary  
 10 East Cambridge Circle Drive  
 Suite 250  
 Kansas City, KS 66103  
[jwalter@CVREnergy.com](mailto:jwalter@CVREnergy.com)

d. As to CRRM, Christopher G. Swanberg shall be replaced with:

Janice T. DeVelasco  
 Vice President, EH&S  
 2277 Plaza Drive, Suite 500  
 Sugar Land, TX 77479

[jtdevelasco@CVREnergy.com](mailto:jtdevelasco@CVREnergy.com)

- e. As to CRRM, Mark Keim shall be replaced with:

Darin Rains  
Vice President and Refinery General Manager  
P.O. Box 1566  
400 N. Linden  
Coffeyville, KS 67337-0945  
[drains@CVREnergy.com](mailto:drains@CVREnergy.com)

- f. As to CRRM, Robert Morris shall be added:

Robert Morris  
Director of Environmental Affairs  
906 South Powell  
Wynnewood, OK 73098  
[rmorris@CVREnergy.com](mailto:rmorris@CVREnergy.com)

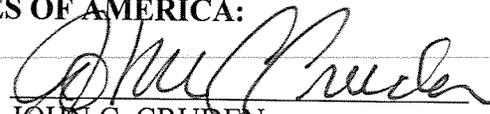
ORDERED, ADJUGED and DECREED this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
MONTI L. BELOT  
UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

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

Date:

  
JOHN C. CRUDEN  
Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources  
Division

Date:

12/17/15

  
ELIZABETH L. LOEB  
Senior Counsel  
Environment and Natural Resources  
Division  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 616-8916  
[Elizabeth.Loeb@usdoj.gov](mailto:Elizabeth.Loeb@usdoj.gov)  
Member of the New York Bar.

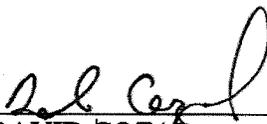
BARRY R. GRISSOM  
United States Attorney  
District of Kansas

/s/ Emily Metzger  
EMILY METZGER  
Assistant United States Attorney  
301 North Main Street  
Wichita, Kansas 67212  
(316) 269-6481  
[Emily.Metzger@usdoj.gov](mailto:Emily.Metzger@usdoj.gov)  
Kansas Supreme Court Number 10750

Date:

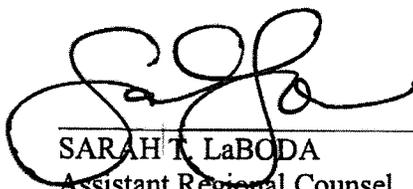


MARK HAGUE  
Regional Administrator  
U.S. Environmental Protection Agency  
Region VII



DAVID COZAD  
Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

Date: 11/10/15



SARAH T. LaBODA  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

United States and the State of Kansas v. Coffeyville Resources Refining & Marketing

Date: 2/9/16

  
\_\_\_\_\_  
SUSAN SHINKMAN  
Director  
Office of Civil Enforcement  
U.S. Environmental Protection Agency

Date: 2/8/2016

  
\_\_\_\_\_  
PHILLIP A. BROOKS  
Director  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency

Date: 11/6/2015

  
\_\_\_\_\_  
ROBERT G. KLEPP  
Attorney, Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency

**WE HEREBY CONSENT to the entry of this Consent Decree:**

**FOR PLAINTIFF KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT:**

Date: 11-25-15

  
\_\_\_\_\_  
SUSAN MOSIER, M.D.  
Secretary  
Kansas Department of Health and Environment

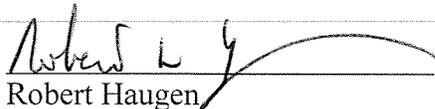
Date: 11-23-15

  
\_\_\_\_\_  
TIMOTHY E. KECK  
Deputy Chief Counsel and Special Assistant Attorney  
General  
Kansas Department of Health and Environment

WE HEREBY CONSENT to the entry of this Consent Decree:

**FOR DEFENDANT COFFEYVILLE RESOURCES REFINING & MARKETING, LLC,**

Date: 11/5/15



Robert Haugen  
Executive Vice President, Refining  
Operations



LeAnn Johnson Koch  
Perkins Coie, LLP  
700 13<sup>th</sup> Street, NW  
Washington, DC 20005  
(202) 654-6209  
Counsel to CRRM

Agent Authorized to Accept Service for Defendant:

\_\_\_\_\_