

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Formosa Plastics Corporation, Texas,
Formosa Plastics Corporation, Louisiana,
Formosa Hydrocarbons, Inc.,

Defendants.

Civil Action No. 6:09-cv-00061

FIRST AMENDMENT TO CONSENT DECREE

FIRST AMENDMENT TO CONSENT DECREE

WHEREAS on September 29, 2009, Plaintiff the United States of America (“United States”), on behalf of the Environmental Protection Agency (“EPA”), filed a complaint in this action and contemporaneously lodged a Consent Decree between the United States and Defendants Formosa Plastics Corporation, Texas, Formosa Plastics Corporation, Louisiana, and Formosa Hydrocarbons Corporation;

WHEREAS on February 3, 2010, this Court entered the Consent Decree (“Consent Decree”) that fully resolved the claims in the complaint;

WHEREAS the Consent Decree, *inter alia*, requires Formosa Plastics Corporation, Texas, and Formosa Hydrocarbons Corporation (collectively “FPC TX”) to perform enhancements to the leak detection and repair (“LDAR”) programs at their two facilities in Point Comfort, Texas (“Point Comfort Facilities”);

WHEREAS, in 2011, pursuant to the reporting requirements of the Consent Decree, FPC TX notified EPA that FPC TX had failed to include in its LDAR program pieces of equipment from a section of the hydrocarbons process unit that should have been included under applicable regulations;

WHEREAS the Point Comfort Facilities have in excess of 400,000 pieces of LDAR-regulated equipment;

WHEREAS prior to the Lodging of this First Amendment, FPC TX developed a Scope of Work that is attached as Appendix G to this First Amendment;

WHEREAS, FPC TX developed this Scope of Work in order to retain a Third-Party LDAR contractor (different from its current LDAR services provider) to undertake a comprehensive review of the piping and instrumentation drawings (“P&IDs”) of each process

unit covered by Appendix A of the Consent Decree for the Point Comfort Facilities (“Covered Process Units”) and to perform a field verification of the P&IDs and the LDAR database of each Covered Process Unit in order to review the “in service” determination (*i.e.*, “in Volatile Organic Compound (“VOC”) service” and/or “in Hazardous Air Pollutant (“HAP”) service”) of each line and to ensure that all components that are required to be included in the Point Comfort Facilities’ LDAR Program are included and all components that are not required to be included are removed from the LDAR database;

WHEREAS the overall process identified in the preceding WHEREAS clause is termed the “Comprehensive First Amendment LDAR Evaluation” and, as described in Appendix G, is intended to be much more detailed and comprehensive than an audit;

WHEREAS the United States and FPC TX (the “Parties to the First Amendment”) recognize, and the Court by entering this First Amendment finds, that this First Amendment has been negotiated at arm’s length and in good faith, that it will avoid litigation between the Parties to the First Amendment, and that this First Amendment is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby ADJUDGED, ORDERED, and DECREED as follows:

* * * *

1. The Consent Decree shall remain in full force and effect in accordance with its terms except that the new Definitions identified below in Paragraph 2 are added to Appendix A of the Consent Decree; the new Paragraphs numbered 37–40 below are added to Appendix A of

the Consent Decree; the new Paragraphs numbered 30A, 32A, 61A, and 61B below are added to the body of the Consent Decree; and new Appendices G and H, attached hereto, are added.

* * * *

DEFINITIONS TO BE ADDED TO APPENDIX A

2. The definitions in Appendix A are amended with respect to the Point Comfort Facilities to include the definitions set forth in the newly added Appendix G. These new definitions are found in both the "Definitions" section of Appendix G and in other locations in Appendix G.

* * * *

ADDITIONAL INJUNCTIVE RELIEF TO BE ADDED TO APPENDIX A

3. Appendix A is amended to add a new Subsection N which shall have the heading "**Subsection N (Additional Injunctive Relief)**." The following Paragraphs are added under that new Subsection:

"37. Comprehensive First Amendment LDAR Evaluation. FPC TX shall implement the Scope of Work set forth in Appendix G at the Point Comfort Facilities. FPC TX shall perform the actions in Appendix G that are assigned to it, shall use its Current LDAR Service Provider to perform the actions required by the Current LDAR Service Provider, and shall retain a Third-Party to perform the actions required by the Third-Party. FPC TX shall be solely responsible for ensuring that the work in Appendix G that must be performed by it, by its Current LDAR Service Provider and the Third-Party is undertaken consistent with Appendix G and in accordance with the schedule set forth in Paragraph 38.

"38. Schedule for Undertaking the Comprehensive First Amendment LDAR Evaluation.

a. Commencement. By no later than 60 days after the Date of Lodging of this First Amendment, FPC TX shall commence implementation of the Comprehensive First Amendment LDAR Evaluation set forth in Appendix G.

b. Completion. FPC TX shall perform the work required at each Covered Process Unit ("Covered Process Unit Evaluation") at the Point Comfort Facilities during the course of the Comprehensive First Amendment LDAR Evaluation with the goal of being comprehensive and thorough. With that goal in mind, FPC TX shall complete the

Comprehensive First Amendment LDAR Evaluation by no later than one year and 60 days after the Date of Lodging, unless, by no later than one year and 15 days after the Date of Lodging, FPC TX seeks approval from EPA Region 6 for an extension of the deadline. In seeking an extension, FPC TX shall provide specific and detailed reasons justifying the additional time. Unexpected costs shall not be a reason for seeking additional time. The request for an extension of time in this Subparagraph is distinct from a request under the *force majeure* provisions (Section VIII) of the Decree. Nothing in this Subparagraph prevents FPC TX from invoking *force majeure*, if applicable, for an extension of the deadline.

“39. Reports. Consistent with Step 6.2 in Appendix G, by no later than two weeks after completing each Covered Process Unit Evaluation, FPC TX shall submit a report to EPA Region 6 by certified mail that identifies, by Equipment type (*i.e.*, valve, connector, *etc.*), the number of pieces of Equipment within the Covered Process Unit that have been added to the LDAR program and the number that have been removed. This report shall be called the “Paragraph 39 Report” and each Paragraph 39 Report expressly shall identify that it is being submitted pursuant to Paragraph 39 of Appendix A of the First Amendment. Equipment that has been listed in a Paragraph 39 Report as having been added to the LDAR program will be subject to the stipulated penalties in Subparagraph 32A.b of this First Amendment.

“40. Certification. By signing this First Amendment, FPC TX certifies that, as of the date of its signature, and other than Equipment that FPC TX already has notified EPA of, it has no knowledge of any piece of Equipment at the Point Comfort Facilities that should be or should have been included in the LDAR Program but currently is not included. If, between the date of its signature and the Date Lodging of this First Amendment, FPC TX becomes aware of any piece of Equipment that should be or should have been included in its LDAR Program but is currently not included, FPC TX shall notify EPA Region 6 by electronic mail as soon as it has any such knowledge. Electronic notice shall be sent to moncrieffe.marcia@epa.gov and gibbs.jennifer@epa.gov. ”

* * * *

STIPULATED PENALTIES

4. A new Paragraph is added in Section VII of the body of the Consent Decree as follows:

“30A. By no later than thirty (30) days after Entry of this First Amendment, FPC TX shall pay a penalty of \$1,447,925 (One Million, Four-Hundred, Forty-Seven Thousand, Nine-Hundred and Twenty Five Dollars) to the United States in consideration of the resolution of liability set forth in Paragraph 61.A of this First Amendment. Payment shall be made as directed in Paragraph 9 of the Consent Decree.”

5. New stipulated penalties are added to the first table in Paragraph 32 (*i.e.*, the table for “Noncompliance with Requirements of Enhanced Leak Detection and Repair Program (Appendix A)”) as follows:

“32A. FPC TX shall be liable for stipulated penalties to the United States for the violations of this First Amendment set forth below.

Violation	Stipulated Penalty	
	<u>Period of Delay</u>	<u>Penalty per Day</u>
32A.a. For failure to timely complete the Comprehensive First Amendment LDAR Evaluation in accordance with the terms of Paragraph 37 of this First Amendment and Appendix G	Days 1 – 30	\$ 1000
	Days 31 – 60	\$ 2000
	Over 60 days	\$ 3000
32A.b. For each piece of Equipment that is listed in a Paragraph 39 Report that FPC TX failed to include in its LDAR Program that should have been included. (This penalty is in lieu of the stipulated penalties found in the final two rows of the stipulated penalty table on pages 13–16 of the main body of the Decree that is associated with “Noncompliance with Requirements of Enhanced Leak Detection and Repair Program (Appendix A).” The final two rows in question are located on page 16. For any pieces of Equipment other than those listed in a Paragraph 39 Report, the final two rows of the Table remain in full force and effect.)	\$175 per piece of missed Equipment”	

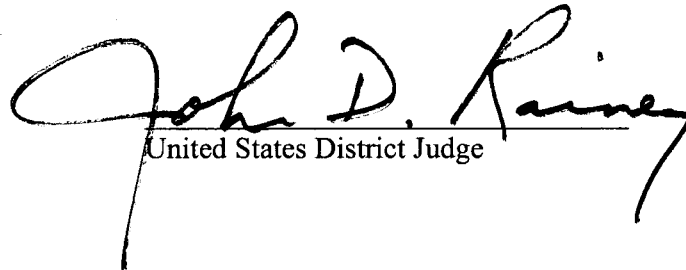
* * * *

6. Two new paragraphs are added after Paragraph 61 in the body of the Consent Decree as follows:

“61A. Resolution of Liability. This First Amendment resolves the civil and stipulated penalty claims of the United States for the violations alleged against FPC TX in an EPA letter dated March 23, 2012, and for the violations reported by FPC TX to EPA in an April 5, 2012 letter. EPA’s March 23, 2012 letter, the letters from FPC TX to EPA that EPA refers to in its March 23, 2012 letter, and FPC TX’s April 5, 2012 letter are set forth in Appendix H of this First Amendment.

"61B. All references in the Consent Decree to Paragraph 61 shall be interpreted to include reference to Paragraph 61A."

SO ORDERED this 13th day of March, 2013.


United States District Judge

Signature Page to First Amendment to Consent Decree in *U.S. v. Formosa Plastics Corporation, Texas, et al.*

Through its undersigned representatives, the party below consents to entry of the First Amendment to the Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA

/s/ Ignacia S. Moreno
IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

/s/ Annette M. Lang
ANNETTE M. LANG
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By: /s/ Daniel Hu
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Signature Page to First Amendment to Consent Decree in *U.S. v. Formosa Plastics Corporation, Texas, et al.*

Through its undersigned representatives, the party below consents to entry of the First Amendment to the Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY

/s/ Cynthia Giles***

CYNTHIA GILES

Assistant Administrator

Office of Enforcement and Compliance Assurance

United States Environmental Protection Agency

Washington, DC

*** Signed with permission.

Signature Page to First Amendment to Consent Decree in *U.S. v. Formosa Plastics Corporation, Texas, et al.*

Through its undersigned representatives, the party below consents to entry of the First Amendment to the Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY REGION 6

/s/ John Blevins ***

JOHN BLEVINS

Director

Compliance Assurance and
Enforcement Division

/s/ Marcia Elizabeth Moncrieffe ***

MARCIA ELIZABETH MONCRIEFFE

Assistant Regional Counsel

United States Environmental Protection Agency
Region 6

1445 Ross Ave, Suite 1200
Dallas, Texas 75202

*** Signed with permission.

Signature Page to First Amendment to Consent Decree in *U.S. v. Formosa Plastics Corporation, Texas, et al.*

Through its undersigned representative, the parties below consent to entry of the First Amendment to the Consent Decree.

FORMOSA PLASTICS CORPORATION, TEXAS,
FORMOSA HYDROCARBONS CORPORATION

/s/ Randall P. Smith ***
RANDALL P. SMITH
Vice President/General Manager
Formosa Plastics Corporation, Texas
Point Comfort, Texas

November 29, 2012
DATE

*** Signed with permission.

EXHIBIT G

Scope of Work to Perform FPC TX's Comprehensive First Amendment LDAR Evaluation

Overall Process: The overall process required by this Scope of Work shall be referred to as the "Comprehensive First Amendment LDAR Evaluation." As applied to a single "Covered Process Unit" (defined below), the process shall be referred to as the "Covered Process Unit Evaluation."

The Third-Party shall evaluate all piping and instrumentation diagrams ("P&IDs") from each Covered Process Unit at the Point Comfort, Texas facilities of Formosa Plastics Corporation, Texas, and Formosa Hydrocarbons Corporation (collectively FPC TX) to verify determinations of "in VOC service" or "not in VOC service" and/or "in organic HAP service" or "not in organic HAP service" as defined in applicable LDAR regulations.

The Third-Party also shall perform field verifications of the P&IDs and FPC TX's database by doing unit-by-unit walk-throughs to ensure that the P&IDs and current LDAR database accurately reflect the components in the field and that the components in the field accurately are reflected on the P&IDs and in the LDAR database. Any component that is in VOC service or in HAP service, as applicable, but not currently in the LDAR program will be added to the LDAR program. Any component that is in the LDAR program but should not be will be removed from the LDAR program.

By no later than two weeks after completion of the Covered Process Unit Evaluation for each Covered Process Unit, FPC TX shall send a report to EPA by certified mail describing the results of the evaluation. "Completion of the Covered Process Unit Evaluation" shall mean when Actions 1 through 5 (below) are complete for that Covered Process Unit. After addition to the LDAR program, such components will be first monitored during the next required periodic monitoring for that type of component in that service.

Purpose of the P&ID Review: The P&ID review portion of the Comprehensive First Amendment LDAR Evaluation Program has been developed in order to systematically challenge and evaluate FPC TX's affected LDAR Equipment determinations beyond:

- FPC TX's 2010 LDAR retagging effort, which relied on previously made historic determinations; and,
- The scope of a FPC TX's recent LDAR Audits, which were performed by looking at a statistically random sampling of compliance requirements, assessing compliance based on a "snap shot" approach, and generally not challenging previous, historic determinations made by Operational personnel regarding the regulatory status of Equipment.

Covered Process Units:

The FPC TX process units covered by this Scope of Work are the same as those in a February 2010 Consent Decree between FPC TX and the United States and are:

1. PP II
2. LLDPE
3. VCM
4. PVC
5. EDC

6. FHC
7. OL II
8. HDPE II
9. PP I
10. EG
11. OL I / PPU / GHU
12. Inland Traffic
13. Marine Traffic
14. HDPE I

Definitions:

“Current LDAR Service Provider” shall mean the firm or company that FPC TX uses for the duration of the work outlined in this Scope of Work to undertake routine, required LDAR functions (including but not limited to monitoring, database entry, instrument calibration, etc), at the Point Comfort, Texas facilities of FPC TX.

“Equipment”:

For PEI, PEII, LLDPE, and PPII, affected “Equipment” shall include the following, as defined in Part 63 Subpart UU and as allowed by 63.2535(k): “Each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in regulated material service” (i.e., in HAP or in VOC service).

For VCM, EDC, GHU, EG, Marine Traffic, and affected parts of Inland Traffic, affected “Equipment” shall include the following, as defined in Part 63 Subpart H: “Each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver, and instrumentation system in organic hazardous air pollutant service...”

For the affected parts of OLI and OLII, affected “Equipment” shall include the following, as defined in Part 63 Subpart YY: “Each pump, compressor, agitator, pressure relief device, sampling collection system, open-ended valve or line, valve, connector, instrumentation system in organic hazardous air pollutant service...”

For the affected parts of PVC, affected “Equipment” shall include the following, as defined in Part 63 Subpart EEEE: “Each pump, valve, and sampling connection system used in organic liquids service at an OLD operation. Valve types include control, globe, gate, plug, and ball. Relief and check valves are excluded.”

For the PVC Unit, affected “Equipment” shall include the following, as defined in Part 61 Subpart V: “Each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver in VHAP service...”

For PPI, PPU, FHC, and the affected parts of OLI and OLII, affected “Equipment” shall include the following, as defined in Part 60 Subpart VV: “Each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, and flange or other connector in VOC service...”

“Third-Party” shall mean the company or firm retained by FHC TX to undertake the work required in Actions 2–4 below.

Actions Necessary to Perform the Comprehensive First Amendment LDAR Evaluation for Each Covered Process Unit

Action #1: FPC TX’s Pre-Evaluation Assembly - FPC TX Operations shall assemble the following in preparation for each Covered Process Unit Evaluation (Third-Party does not have to perform these actions):

Step 1.1: Assemble all current color-coded P&IDs associated with the Covered Process Unit, including but not limited to those generated during the 2010 retagging effort. Ensure that the P&IDs are current by reviewing them alongside any process and/or equipment changes since the 2010 retagging effort, using MOC support. Update the color codes on each P&ID as necessary. (Hereafter, these updated, color-coded P&IDs shall be referred to as the “FPC TX First Amendment LDAR P&IDs.”)

Step 1.2: Gather operational data for the speciation of fluids (liquid or gas) contained within or in contact with the affected Equipment, including support for a determination of whether the fluid is potentially equal to or less than 5% wt. HAP or 10% wt VOC.

Step 1.3: Assemble Equipment-specific process descriptions and CAA regulatory applicability, including any regulatory overlaps, into a regulatory matrix.

Action #2: Third-Party P&ID Review

Step 2.1: Review Operations’ regulatory matrix from Step 1.3 to ensure it is current and accurate (to the extent possible at this Step).

Step 2.2: Using the FPC TX First Amendment LDAR P&IDs from Step 1.1 and the operational data from Step 1.2, review and confirm the regulatory status of each process stream (e.g., “In VOC service,” “In HAP service,” “exempt,” “nonregulated”) in preparation for field verification. Make all necessary changes to reflect the confirmed regulatory status on the FPC TX First Amendment LDAR P&IDs. (Hereafter, both the FPC TX First Amendment LDAR P&IDs that the third-party does *not* need to revise and those that it *does* need to revise shall collectively be called the “3P First Amendment LDAR P&IDs.”)

Step 2.3: Using the 3P First Amendment LDAR P&IDs from Step 2.2, review each P&ID to ensure the P&ID matches the regulatory matrix, including the regulatory status of each line (i.e., process stream). Make all necessary changes to the regulatory matrix.

Action #3: Third-Party Field Verification Process: P&IDs and LDAR Database (dB)

Step 3.1: Third-Party shall confirm the P&ID page number for each component in the LDAR dB.

Step 3.2: Third-Party teams (two people each) shall use the 3P First Amendment LDAR P&IDs from Step 2.2 to field verify affected Equipment. “Field verify” includes:

- a) Compare 3P First Amendment LDAR P&IDs to what is in the field;

- b) Compare what is in field to 3P First Amendment LDAR P&IDs; and,
- c) Compare a) and b) to what is represented in LDAR dB.

Step 3.3: On a daily basis, Third-Party shall identify and summarize data conflicts into initial determinations (e.g., add or remove affected equipment to/from the LDAR dB; update 3P First Amendment LDAR P&IDs, etc.).

Action #4: Third-Party & FPC TX: Review Initial Evaluation Findings, Make Final Determinations and Hold Progress Meetings

Step 4.1: On at least a weekly basis, in a meeting with FPC TX Operations and LDAR Coordinator, Third-Party shall review data conflicts from Step 3.3 and then finalize determinations. All necessary changes to the 3P First Amendment LDAR P&IDs, and regulatory matrix shall be made by the Third Party and all the necessary changes to the LDAR dB shall be made by the Current LDAR Services Provider, including adding new components and removing components that no longer are in service.

Step 4.2: Third-Party shall meet with FPC TX LDAR Coordinator at least every other week to discuss progress and schedule.

Action #5: If necessary: FPC TX or Current LDAR Services Provider Prepare dB/Log Sheet and Install LDAR Identification Tags for any New Components Found; Get New Components into LDAR Database for Monitoring

Step 5.1: FPC TX or its Current LDAR Services Provider shall populate a database/log sheet for each piece of affected Equipment that needs to be added to the LDAR dB. Data elements necessary for finding and monitoring regulated components include but are not limited to (Third-Party does not have to perform these actions):

- Unit
- Process Area
- Equipment
- Tag Number
- Component Type (e.g. valve, pressure relief device, etc.)
- Size
- Service Type
- Applicable Rule (if overlap; determine which supersedes)
- Location Description
- Accessibility (difficult to monitor? unsafe to monitor?)
- Process Stream Identification
- Process and instrumentation drawing (P&ID) Number
- Safety equipment necessary to perform inspections

In addition, in the LDAR dB, a note should be added that states the date when the Equipment was put in service and the fact (including date) that the Equipment was discovered under this Comprehensive First Amendment LDAR Evaluation Program.

Step 5.2: Begin monitoring newly affected Equipment at the next required monitoring period at the monitoring frequency and leak definition level specified in either the February 2010 Consent Decree or the appropriate LDAR regulation (whichever is applicable) for that type of component.

Action #6: FPC TX: Submit Reports to EPA

Step 6.1: FPC TX LDAR Coordinator shall maintain a record of the start and end dates for each Covered Process Unit Evaluation and other data associated with the Evaluations.

Step 6.2: By no later than two weeks after the completion of each Covered Process Unit Evaluation (i.e., completion of Actions 1 through 5), FPC TX shall submit a report that identifies all Equipment added to the LDAR program, all Equipment removed from the LDAR program, and all other material modifications to the LDAR database to EPA by certified mail. FPC TX shall certify each report it submits pursuant to the requirements of Paragraph 27 of the February 2010 Consent Decree.

EXHIBIT H



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

March 23, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7010 2780 0002 4357 3902

Formosa Plastics Corporation, Texas
201 Formosa Drive
Point Comfort, TX 77978
Attn: Plant Manager

Formosa Hydrocarbons Company, Inc.
P.O. Box 769
103 Fannin Road
Point Comfort, TX 77978

Robert T. Stewart
Kelly Hart & Hallman, LP
301 Congress Avenue, Suite 2000
Austin, TX 78701

Re: United States v. Formosa Plastics Corporation, Texas, et al.
Civil Action No. 6:09-cv-00061
DEMAND FOR STIPULATED PENALTIES

Dear Sir or Madam:

Pursuant to Paragraph 30 of the Consent Decree (Consent Decree) entered in the above-referenced matter, the United States Environmental Protection Agency (EPA) hereby demands payment from Formosa Plastics Corporation, Texas and Formosa Hydrocarbons, Inc. of stipulated penalties for violations of certain requirements of the Consent Decree. These violations involve Formosa Plastics Corporation, Texas, and Formosa Hydrocarbons, Inc. located in Point Comfort, Texas (Formosa). See Consent Decree at ¶ 30.

The Consent Decree requires Formosa to undertake enhancements to the Leak Detection and Repair (LDAR) program. See id., Appendix A. Under Paragraph 32 of the Consent Decree, Formosa is liable for stipulated penalties of \$175 for each component that Formosa failed to timely include in its LDAR program. To date, Formosa has failed to timely include 8,191 components. Under Paragraph 32 of the Consent Decree, Formosa is also liable for stipulated penalties of \$100 per piece of equipment when the proper leak definition is not implemented within the required time frame. To date, Formosa has failed to monitor 145 connectors at the required leak definition of 250 ppm VOC. Under the terms of the Consent Decree, as described below, the total amount of stipulated penalties due is \$1,447,925. The EPA, therefore, makes a demand for \$1,447,925.

* * * *

Internet Address (URL) • <http://www.epa.gov>

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Re: Formosa Plastics Corporation
Demand for Stipulated Penalties

Stipulated Penalties as Calculated under the Terms of the Decree:
Paragraph 32 Penalties

Failure to add existing Covered Equipment to the LDAR Program. Appendix A, Subsection J of this Consent Decree required Formosa to complete an initial LDAR audit of the Point Comfort facility by no later than April 29, 2010. Formosa retained ERM Consulting to conduct the audit and it was completed in a timely manner. The third party audit report notes that, of approximately 5,000 components that were visually inspected during the audit, 104 components were observed that were untagged and that Formosa confirmed had not been included in the LDAR program. Formosa's corrective action was to re-survey the facility to identify, tag, document and monitor fugitive piping components in light liquid or gas/vapor service in accordance with the facility's LDAR program. Formosa also conducted an audit of analyzer tags in NSPS VV service, and included any equipment that was untagged in its LDAR program. Mr. Randy White certified in the September 29, 2010, submittal that "all equipment at the Facility that is regulated under a federal, state, or local leak detection and repair program has been identified and included in the Facility's LDAR program." These components are not the subject of this stipulated penalty demand.

After the initial audit, however, in correspondence dated August 31, 2011, November 2, 2011, January 5, 2012, and February 14, 2012, Formosa reported that it discovered that 8,191 components had not been added to the LDAR program within one year of the Date of Lodging as follows:

<u>No. of Components</u>	<u>Source of Information</u>
11 flanges	Formosa's letter dated August 31, 2011
1,439 valves	Formosa's letters dated November 2, 2011, January 5, 2012, and February 14, 2012
6,712 connectors	Formosa's letters dated November 2, 2011, January 5, 2012, and February 14, 2012
3 pumps	Formosa's letter dated November 2, 2011
24 pressure relief valves	Formosa's letter dated November 2, 2011
2 compressors	Formosa's letter dated November 2, 2011
TOTAL:	8,191 components

Re: Formosa Plastics Corporation
Demand for Stipulated Penalties

Paragraph 32 of the Consent Decree states that "For failure to add existing Covered Equipment to the LDAR Program pursuant to Appendix A . . . if Defendant determines (either on its own or through a third-party audit) that it has, by no later than one year after the Date of Lodging, failed to include any Existing Covered Equipment in its LDAR program, Defendant shall pay \$175 per piece of Covered Equipment that it failed to include." Formosa did not timely include 8,191 components in its LDAR program, and is liable for stipulated penalties of \$1,433,425 ($8,191 \times \175).

Failure to Implement Internal Leak Definitions. Appendix A, Subsection C of this Consent Decree required Formosa to implement a leak definition for connectors in the Formosa Hydrocarbons unit by no later than 18 months after Date of Lodging. The Date of Lodging was September 29, 2009, and, therefore, the lower leak definition should have been implemented by March 29, 2011. Seven months later, on November 1, 2011, Formosa discovered that the Formosa Hydrocarbons Unit's affected connectors, which were monitored within 18 months of the Date of Lodging, were actually monitored with an internal leak definition of 500 ppm VOC, rather than 250 ppm due to a misunderstanding of a Formosa Hydrocarbons exception within the CD. Of the approximately 18,000 affected connectors monitored within 18 months of the Date of Lodging, 145 connectors were impacted by the misunderstood leak definition for the seven month period.

In correspondence dated November 15, 2011, Formosa reported that it failed to monitor 145 connectors at the required leak definition of 250 ppm VOC. Paragraph 32 states that "For failure to implement the internal leak definitions as required in Appendix A, Subsection C, paragraph 4," Formosa is required to pay stipulated penalties of "\$100 per component, but not greater than \$25,000 per month per Covered Process Unit." Formosa did not monitor the 145 connectors at the required leak definition of 250 ppm VOC for a period of seven months, and is liable for a substantial stipulated penalty. However, in this one instance, EPA has decided to demand a one-time stipulated penalty in the amount of \$14,500 ($145 \times \100), based on the regulatory requirement of annual monitoring of connectors as stated in Appendix A, Subsection D of the CD.

* * * *

Under Paragraph 39, payment of \$1,447,925 must be made in accordance with the provisions of Paragraph 9 of the Consent Decree, which in turn requires the U.S. Attorney's Office for the Southern District of Texas to issue EFT instructions to Formosa for payment of \$1,447,925. Under Paragraph 35 of the Consent Decree, Formosa must pay these stipulated penalties within 30 days of receiving this written demand unless it invokes the dispute resolution provisions of the Decree.

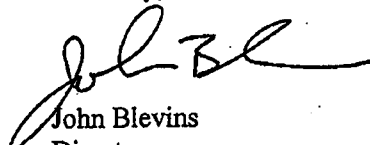
The EPA is not aware of any basis upon which Formosa may successfully defend the demand made in this letter. EPA, therefore, also requests Formosa to notify the EPA as soon as possible, but no later than 30 days after its receipt of this letter, if it does not intend to invoke dispute resolution. Upon receipt of that notice, EPA will have the U.S. Attorney's Office prepare the EFT instructions and will arrange to provide these instructions to Formosa.

4

Re: Formosa Plastics Corporation
Demand for Stipulated Penalties

Thank you for your prompt attention to this matter.

Sincerely,



John Blevins
Director
Compliance Assurance and
Enforcement Division

cc: Scott M. Cernich, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Bernadette M. Rappold, Director
Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

A/A/EN

11001842545



Formosa Plastics

Formosa Plastics Corporation, America
201 Formosa Drive • P.O. Box 700
Point Comfort, TX 77978
Telephone: (361) 987-7000
Fax: (361) 987-2363

RECEIVE

August 31, 2011

SEP 5 2011

Air/Toxics & Inspection
Coordination Branch
6EN-A

Certified Mail: 7008 1830 0000 9417 0154

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

Cause of Violation:

On August 17, 2011, FPC TX discovered eleven (11) flanges that had not been added to the LDAR program within one year of the Date of Lodging. While installing new equipment in the area, it was determined that the flanges were in VOC service and must be included in the LDAR program.

Corrective Actions Taken:

Upon discovery, the flanges were entered into the system and monitored per Method 21. The monitoring results showed that the flanges were not leaking.

Sincerely,

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas



August 31, 2011

Page 2

cc: Certified Mail: 7008 1830 0000 9417 0161
Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 0178
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

Certified Mail: 7008 1830 0000 9417 0185
Robert T. Stewart
Kelly Hart & Hallman LLP
301 Congress Avenue, Suite 2000
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Cernich, Scott



Formosa Plastics

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November 2, 2011

Certified Mail: 7008 1830 0000 9417 1205

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

DEPT OF JUSTICE - ENRD
ENVIRONMENT DIVISION
11 NOV 15 PM 5:53

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

Cause of Violation:

On October 19, 2011, FPC TX discovered that 1395 Valves, 6577 Connectors, 24 Pressure Relief Valves, 3 Pumps, and 2 Compressors had not been added to the LDAR program within one year of the Date of Lodging. While conducting inventory work related to the Green House Gas monitoring rules, it was discovered that this equipment was in VOC service and must be included in the LDAR Program. This area of the unit processes natural gas and was previously believed to be below the VOC content requirement for the LDAR regulations.

Corrective Actions Taken:

Upon discovery, the covered equipment was entered into the system and scheduled for monitoring per Method 21.

Sincerely,

[Signature]
for RPS

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas

Corr.
90-5-2-1-08995



November 2, 2011

Page 2

cc: Certified Mail: 7008 1830 0000 9417 1212
Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 1229
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

Certified Mail: 7008 1830 0000 9417 1236
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AI/AI/EN

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Formosa Plastics

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November 15, 2011

RECEIVE

NOV 1 2011

Air/Toxics & Inspection
Coordination Branch
6EN.A

Certified Mail: 7008 1830 0000 9417 1120

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that an incorrect internal leak definition was used when conducting Method 21 inspections of connectors. This situation has been resolved.

Cause of Violation:

On November 1, 2011, FPC TX discovered that the FHC (Formosa Hydrocarbons) Unit's affected connectors, which were monitored within 18 months of the Date of Lodging, were actually monitored with an internal leak definition of 500 ppm VOC, rather than 250 ppm due to a misunderstanding of an FHC exception within the applicable Consent Decree Subsection. This discovery indicated that of the approximately 18,000 affected connectors monitored within 18 months of the Date of Lodging, 145 connectors were impacted by the misunderstood leak definition.

Corrective Actions Taken:

The internal leak definition for connectors in FHC is set at 250 ppm, and all subsequent monitoring conducted in 2011 used this definition.

Sincerely,

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas



November 15, 2011

Page 2

cc: Certified Mail: 7008 1830 0000 9417 1137
Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 1144
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

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AAI/EN

11001892595



Formosa Plastics

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January 5, 2012

RECEIVE

JAN 9 2012

Air Toxics & Inspection
Coordination Branch
6EN-A

Certified Mail: 7008 1830 000 9417 1441

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

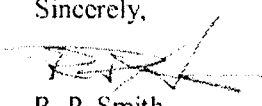
Cause of Violation:

On December 19, 2011, FPC TX discovered that 9 Valves and 29 Connectors had not been added to the LDAR program within one year of the Date of Lodging. While conducting routine inventory maintenance activities, it was discovered that this VOC equipment was not in the LDAR program. The affected equipment was not identified by the operating department as being in VOC service when the LDAR tagging was previously completed.

Corrective Actions Taken:

Upon discovery, the covered equipment was added to the LDAR system and monitored as required per Method 21.

Sincerely,


R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas



January 5, 2012

Page 2

cc: Certified Mail: 7008 1830 0000 9417 1458
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Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 1465
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

Certified Mail: 7008 1830 0000 9417 1885
Robert T. Stewart
Kelly Hart & Hallman LLP
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Formosa Plastics

Cernich, Scott

Formosa Plastics Corporation, America
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February 14, 2012

Certified Mail: 7008 1830 0000 9417 1908

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

Cause of Violation:

On January 31, 2012, FPC TX discovered that 35 Valves and 106 Connectors had not been added to the LDAR program within one year of the Date of Lodging. While conducting routine inventory maintenance activities, it was discovered that this VOC equipment was not in the LDAR program. The equipment had been included in the required AVO inspections, and there was no indication of any leaks.

Corrective Actions Taken:

Upon discovery, the covered equipment was added to the LDAR system and monitored as required per Method 21 with no leaks found.

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
FEB 21 AM 4:48

Sincerely,

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas

Corr.

90-5-2-08995



February 14, 2012

Page 2

cc: Certified Mail: 7008 1830 0000 9417 1915
Director, Special Litigation and Projects Division
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Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
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Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 1922
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Environment and Natural Resources Division
U.S. Department of Justice
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Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

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4/11/12

1100184259



Formosa Plastics

April 5, 2012

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201 Formosa Drive • P.O. Box 700
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Certified Mail: 7011 0110 0000 1782 5147

RECEIVED

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

APR - 9 2

Air/Toxics & Ins
Coordination B
6EN-A

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

Cause of Violation:

On March 23, 2012, FPC TX discovered that 46 Valves, 115 Connectors, 1 PRV, and 2 Pumps had not been added to the LDAR program within one year of the Date of Lodging. During the Third-Party LDAR Audit required under Appendix A, Section J, Paragraph 26 of the subject Consent Decree, these components were identified as being in VOC service but were not in the LDAR Program. These missed components will be included in the Audit report that will be submitted at a later date.

On March 26, 2012, FPC TX discovered that 18 Valves and 44 Connectors had not been added to the LDAR program within one year of the Date of Lodging. While conducting routine inventory maintenance activities, it was discovered that this VOC equipment was not in the LDAR program.

Corrective Actions Taken:

Upon discovery, the covered equipment was added to the LDAR system and monitored as required per Method 21.

Sincerely,

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas



April 5, 2012

Page 2

cc: Certified Mail: 7011 0110 0000 1782 5154
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Office of Enforcement and Compliance Assurance
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Washington, DC 20460

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Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
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