

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
(n/k/a/ BIRLA CARBON U.S.A., INC.),

Defendant.

Civil Action No. 17-1661

REVISED 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 U.S.A., 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 Technology and to achieve compliance with Emission Limits 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 April 1, 2021, and Continuously Operate beginning October 1, 2021, a Seawater Wet Gas Scrubber (“WGS”) and a Selective Catalytic Reduction System (“SCR”) at North Bend to achieve reductions in emissions of SO₂, NO_x, and PM;

WHEREAS, Paragraph 26 of the Consent Decree requires Birla to install by September 1, 2020, and Continuously Operate beginning January 1, 2021, a Low NO_x Combustion System at Hickok to achieve reductions in NO_x emissions;

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

WHEREAS, between March 2020 and November 2023, the Defendant sent numerous Force Majeure notices to the Plaintiffs regarding the Facilities under Section XV of the Consent Decree, with additional notices sent between August 2021 and September 2022 regarding Hickok;

WHEREAS, the Defendant asserts that it explained in those notices the circumstances related to the COVID-19 pandemic, extreme weather events, and equipment malfunctions that led to delays in meeting the obligations under Paragraphs 17, 23, 26, 30, and 31 of the Consent Decree;

WHEREAS, the Defendant asserts that Hickok was subject to Kansas Governor Laura Kelly’s “stay-home” order, Executive Order No. 20-16, effective from March 30 through May 4, 2020, which restricted mass gatherings of people, resulting in delays to its ability to comply with the Consent Decree;

WHEREAS, the Defendant asserts that 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;

WHEREAS, the Defendant asserts that Hickok and North Bend imposed workplace guidelines recommended by the Center for Disease Control (“CDC”) and the World Health Organization (“WHO”). These workplace restrictions limited the number of workers in a given space, resulting in delays to the Defendant’s ability to comply with the Consent Decree;

WHEREAS, the Defendant asserts that Hickok and North Bend 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 to the Defendant’s ability to comply with the Consent Decree;

WHEREAS, the Defendant asserts that the water construction at North Bend was delayed through May 2020 as a result of delays in obtaining necessary 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, caused by the COVID-19 pandemic and extreme weather events;

WHEREAS, the Defendant asserts that Hickok’s and North Bend’s vendors experienced supply chain delays caused by COVID-19 related restrictions, such as stay-at-home orders, and poor weather conditions that have, in turn, resulted in significant delays in being able to timely receive the necessary equipment that the Defendant needs to comply with the Consent Decree;

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

WHEREAS, the Defendant asserts that equipment failures at Hickok, that were beyond the control of the Defendant, resulted in significant damage to systems for heat recovery and steam generation, requiring substantial remediation work and resulting in delays to the Defendant's ability to comply with the Consent Decree;

WHEREAS, the Defendant asserts that in August 2022, Hickok experienced exhaust stack and control equipment malfunctions outside of the Defendant's control, which caused the exhaust stack to be shut down;

WHEREAS, the Defendant asserts that the disabling of the exhaust stack at Hickok also necessitated the shut down of its Low NO_x Combustion System and required the use of the Non-Assisted Flare for emissions control, impacting the Defendant's obligations under Consent Decree Paragraphs 26, 29, 30, 37, and 54, and Appendix F;

WHEREAS, the Defendant asserts that it has exercised best efforts to prevent or minimize any delays and/or violations and/or emissions with respect to COVID-19-related issues at North Bend resulting from complying with Louisiana Proclamation Number 58 JBE 2020 and COVID-19 workplace guidelines provided by the CDC and WHO, to the greatest extent possible in accordance with its obligations under Section XV of the Consent Decree (Force Majeure);

WHEREAS, the Defendant asserts that it has exercised best efforts to prevent or minimize any resulting delays and/or violations and/or emissions with respect to COVID-19 and equipment failure 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 Section XV of the Consent Decree (Force Majeure);

WHEREAS, the Defendant asserts that it has exercised best efforts at the Facilities to prevent or minimize any delays and/or violation and/or emissions resulting from COVID-19

related equipment vendor delays, extreme weather conditions, and equipment failure, to the greatest extent possible, in accordance with its obligations under Section XV of the Consent Decree (Force Majeure);

WHEREAS, the Defendant has now installed and commenced Continuous Operation of the Control Technology that the Consent Decree required for Hickok and North Bend;

WHEREAS, this Revised First Amendment supersedes the first amendment to the consent decree lodged with the Court on November 19, 2021 (ECF No. 25);

WHEREAS, the Parties recognize, and the Court by entering this Revised First Amendment finds, that this Revised First Amendment has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Revised First Amendment is fair, reasonable, and in the public interest.

NOW THEREFORE, the Plaintiffs and Birla hereby agree that, upon approval of this Revised 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 revise the Date of Installation to September 30, 2023 and the Date of Continuous Operation to October 31, 2023 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>9/30/2023</u> Date of Continuous Operation: <u>10/31/2023</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 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 of the Consent Decree is hereby amended and restated to revise 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>10/31/2023</u>
Hickok	No greater than 8 tons (in total for all reactors and boilers) for the prior 365 Days	<u>10/4/2023</u>

3. Paragraph 26 of the Consent Decree is hereby amended and restated to revise the Date of Installation to 9/30/2023 and the Date of Continuous Operation to 10/31/2023 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>9/30/2023</u> Date of Continuous Operation: <u>10/31/2023</u>
Hickok Process System	Low NO _x Combustion System	Interim 7-day Rolling Average Emissions Limit:	Interim 365-day Rolling Average Emissions Limit:	Date of Continuous Operation: <u>10/4/2023</u>

Process System	Control Technology	7-day Rolling Average Emissions Limit	365-day Rolling Average Emissions Limit	Date
		No greater than 375 ppmvd (at 0% oxygen)	No greater than 300 ppmvd (at 0% oxygen)	
		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 amended 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 Hickok, 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.

The 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 3 of Appendix F of the Consent Decree is hereby amended and restated to include additional Optimization and Demonstration Studies as follows:

Optimization and Demonstration Studies. Following the completion of the initial 3 Month Optimization and Demonstration Study periods beginning in June 2021 and ending in June 2022, Defendant shall conduct two additional 3 Month Optimization and Demonstration Study periods, the first of which shall begin no later than October 4, 2023.

During each Optimization and Demonstration Study period, Defendant shall operate the applicable Low NOx Combustion System or Co-Generation System in accordance with the protocol submitted to EPA on February 24, 2021, with the objective of establishing optimum operating levels to minimize NOx emissions for, at a minimum, the following parameters:

- a. Over-Fire Air: maximizing the effectiveness of the Over-Fire Air;
- b. O₂ (minimizing O₂ should minimize NO_x and a specific O₂ level shall be established during the Optimization and Demonstration Study); and
- c. Emissions Rates: Outlet NOx Concentration.

Within 30 Days of completing each 3 Month Optimization and Demonstration Study period, the Defendant shall submit to EPA a written report that documents any conclusions that the Defendant reached in its analysis of the data from that period, and provides any data supporting those conclusions. During the Optimization and Demonstration Study periods beginning no later than October 4, 2023, the Defendant shall operate the applicable Low NOx Combustion System or Co-Generation System in a manner consistent with the conclusions reflected in the written report of the Optimization and Demonstration Study, with the objective of minimizing NOx emissions to the extent practicable based on the design criteria.

6. Paragraph 31(a) of the Consent Decree is hereby amended and restated to revise the Date of Installation to September 30, 2023 and the Date of Continuous Operation to October 31, 2023 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	<u>Date of Installation:</u> 9/30/2023 <u>Date of Continuous Operation:</u> 10/31/2023

7. This Revised 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 Revised First Amendment disclose facts or considerations indicating that this Revised First Amendment is inappropriate, improper, or inadequate. The Defendant consents to entry of this Revised First Amendment without further notice and agrees not to withdraw from or oppose entry of this Revised First Amendment by the Court or to challenge any provision of the Revised First Amendment, unless the United States has notified the Defendant in writing that it no longer supports entry of the Revised First Amendment.

8. The Parties agree and acknowledge that final approval by LDEQ and entry of this Revised First Amendment are subject to the requirements of La. R.S. 30:2050.7, which provides for: (a) public notice of this Revised First Amendment in the newspaper of general circulation

and the official journal of the parish in which North Bend is located, (b) an opportunity for public comment and consideration of any comments received, and (c) concurrence by the State Attorney General. LDEQ reserves the right to withdraw or withhold consent if the comments regarding this Revised First Amendment disclose facts or considerations which indicate that this Revised First Amendment is inappropriate, improper, or inadequate.

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

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

11. Except as specifically provided in this Revised First Amendment, the Parties intend that all other terms and conditions of the Consent Decree will remain unchanged and in full effect.

12. Pursuant to Paragraph 110 of the Consent Decree, the effective date of this Revised 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 Revised First Amendment to the Consent Decree is hereby approved and entered as a final order of this Court.

Dated and entered this _____ day of _____, 202____.

UNITED STATES DISTRICT JUDGE
Western District of Louisiana

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, WE HEREBY CONSENT to the foregoing Revised 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:

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Dated: 1-27-26



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Senior Attorney
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Environment and Natural Resources Division
U.S. Department of Justice
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Steven.Shermer@usdoj.gov

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, WE HEREBY CONSENT to the foregoing Revised 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:

KARIN
KOSLOW

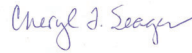


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KOSLOW
Date: 2025.09.02
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KARIN KOSLOW
Acting Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Washington, DC 20004

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, WE HEREBY CONSENT to the foregoing Revised 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:




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CHERYL SEAGER
Date: 2025.08.20 10:33:04
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CHERYL SEAGER
Director - Compliance Assurance and Enforcement
Division
U.S. Environmental Protection Agency, Region 6

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, WE HEREBY CONSENT to the foregoing Revised 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:

LESLIE
HUMPHREY

 Digitally signed by LESLIE
HUMPHREY
Date: 2025.06.05 10:10:27 -05'00'

LESLIE A. HUMPHREY
Regional Counsel
U.S. Environmental Protection Agency, Region 7

Subject to the notice and comment provisions of La. R.S. 30:2050.7, WE HEREBY CONSENT to the foregoing Revised 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:

JILL C. CLARK, General Counsel (La. #33050)
Louisiana Department of Environmental Quality



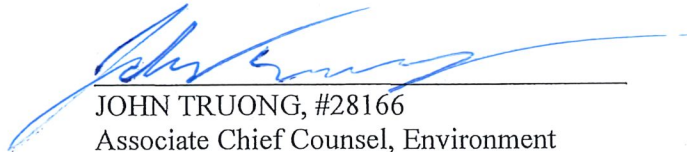
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WE HEREBY CONSENT to the foregoing Revised First Amendment to the Consent Decree entered in *United States of America et al v. Columbian Chemicals Company*, Civil Action No. 17-1661.

FOR PLAINTIFF KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT:



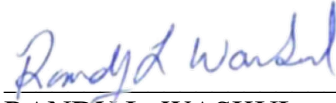
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WE HEREBY CONSENT to the foregoing Revised First Amendment to the Consent Decree entered in *United States of America et al v. Columbian Chemicals Company*, Civil Action No. 17-1661.

FOR DEFENDANT BIRLA CARBON:



RANDY L. WASKUL
Global Director - Health, Safety and Environment,
Birla Carbon