

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

_____)	
UNITED STATES OF AMERICA,)	
)	
And,)	
)	
THE LOUISIANA DEPARTMENT OF)	
ENVIRONMENTAL QUALITY,)	
)	
Plaintiffs,)	Civil Action No. 17-CV-1660
v.)	
)	
ORION ENGINEERED CARBONS, LLC,)	
)	
Defendant.)	
_____)	

FIRST AMENDMENT TO CONSENT DECREE

WHEREAS, Plaintiffs, the United States of America and the Louisiana Department of Environmental Quality (“LDEQ”), and Defendant Orion Engineered Carbons, LLC (“Orion”) are Parties to a Consent Decree entered by this Court on June 7, 2018 (ECF 10, the “Consent Decree”);

WHEREAS, the Consent Decree requires Orion to install emission control systems and achieve compliance with reduced emission standards for nitrogen oxides (“NO_x”), sulfur dioxide (“SO₂”), and particulate matter (“PM”) on specific Process Systems located at Orion’s carbon black production facilities, including at the Ivanhoe, Louisiana facility (“Ivanhoe”);

WHEREAS, Paragraphs 16 and 33 of the Consent Decree require Orion to install at Ivanhoe by April 1, 2021, and thereafter Continuously Operate, a Wet Gas Scrubber (“WGS”), Dry Gas Scrubber (“DGS”), or Alternative Equivalent Pollution Control Technology to achieve specified SO₂ and PM emissions limits from affected process sources;

WHEREAS Paragraph 26 of the Consent Decree requires Orion to install at Ivanhoe by April 1, 2021, and thereafter Continuously Operate, a Selective Catalytic Reduction emission control system (“SCR”) to achieve specified NO_x emissions limits from affected process sources;

WHEREAS Paragraphs 19, 20(c), 23, 28, 29(c), and 34 of the Consent Decree establish related SO₂, NO_x, and PM monitoring requirements and emission limits that Orion must comply with at Ivanhoe beginning April 1, 2021;

WHEREAS, Paragraph 38 of the Consent Decree restricts the circumstances under which Orion could use flares at Ivanhoe, beginning April 1, 2021;

WHEREAS, Paragraph 73 of the Consent Decree directs Orion to provide notice to Plaintiffs of Force Majeure events, which cause a delay or impediment to performance in complying with any obligation under the Consent Decree despite Orion’s best efforts to avoid delays;

WHEREAS, the President of the United States declared a national emergency due to the global COVID-19 crisis on March 13, 2020, and the state of Louisiana also declared an emergency, including significant periods of limiting gatherings to ten people, among other measures;

WHEREAS, Orion transmitted to Plaintiffs a Notice of Intent to Assert Claim of Force Majeure pursuant to Paragraph 105 of the Consent Decree as a result of the COVID-19 crisis on March 23, 2020, and has provided periodic updates to Plaintiffs since then;

WHEREAS, on September 27, 2021, Orion transmitted to Plaintiffs a Second Notice of Intent to Assert Claim of Force Majeure pursuant to Paragraph 105 of the Consent Decree as a

result of staffing issues related to the Delta variant's intensification of the COVID-19 crisis, and as a result of actions that Orion needed to take to respond to Hurricane Ida;

WHEREAS, Orion has informed Plaintiffs that transport delays caused by the COVID-19 pandemic, combined with the need to comply with applicable COVID-19 restrictions, including social distancing restrictions as well as related rules and recommendations, caused delays in complying with certain Consent Decree obligations relating to Ivanhoe;

WHEREAS, Orion has informed Plaintiffs that Ivanhoe was secured and then evacuated in its entirety immediately before Hurricane Ida made landfall, with employees and contractors able to return only after a significant delay; that Orion's Ivanhoe staff also had to spend post-hurricane time assessing the damage and impact on construction and commissioning; that hurricane response actions by the Federal Emergency Management Agency (FEMA) limited available hotel space for contractors; that Ivanhoe experienced increased COVID-19 infections related to the Delta variant among start-up technicians and others; and that all of these events caused delays in complying with certain Consent Decree obligations relating to Ivanhoe;

WHEREAS, Orion 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, and Plaintiffs have reviewed and evaluated those representations based on the Notices of Intent to Assert Claims of Force Majeure and periodic updates described above;

WHEREAS, Paragraph 74 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, where such stipulation results in a material change of the terms of the Consent Decree, it shall be effective upon approval by the Court pursuant to Paragraph 111 of the Consent Decree; and

WHEREAS, in light of the above events, the Plaintiffs and Orion wish to modify the Consent Decree as specified herein to adjust certain compliance deadlines and to add new Dates of Initial Operation for certain emissions controls regarding Ivanhoe, as well as corresponding adjustments to certain other compliance deadlines.

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

AMENDED CONSENT DECREE PROVISIONS

1. The following two terms are inserted into Paragraph 8 (Defined Terms):
yyyy. “Date of Initial Operation” shall mean the date by which Defendant shall Operate on an Initial Basis a Control Technology on a Process System.
zzzz. “Operate on an Initial Basis” or “Operation on an Initial Basis” shall mean, with respect to Unit 4 and Unit 5 of the Ivanhoe Process System, the period from July 27, 2021 to October 13, 2021 during which Defendant shall operate the Alternative Equivalent Pollution Control Technology at Ivanhoe at all times of the Unit 4 and Unit 5 Process System Operation using best efforts to achieve and maintain the relevant Emission Limits in advance of October 14, 2021 and minimize any emissions from July 27, 2021 to October 13, 2021 above those Emission Limits. “Operate on an Initial Basis” or “Operation on an Initial Basis” shall mean, with respect to Unit 2 and Unit 3 of the Ivanhoe Process System, the period from August 14, 2021 to October 13, 2021 during which Defendant shall operate the Alternative Equivalent Pollution Control Technology at Ivanhoe at all times of the Unit 2 and Unit 3 Process System Operation using best efforts to achieve and maintain the relevant Emission Limits in advance of October 14, 2021 and minimize any emissions from August 14, 2021 to October 13, 2021 above those Emission Limits. While Operating on an Initial Basis with respect to any unit of the

Ivanhoe Process System, Defendant has the choice to operate each unit of the Process System during Process System Operation in accordance with this definition or to idle one or more units of the Process System while operating the other units during Process System Operation in accordance with this definition to allow for a phased start-up of the Alternative Equivalent Pollution Control Technology at Ivanhoe. While Operating on an Initial Basis, Defendant shall not operate a unit of the Process System during Process System Operation without operating the Alternative Equivalent Pollution Control Technology applicable to that unit of the Process System at Ivanhoe.

2. Paragraph 16 is hereby amended to change the Ivanhoe Date of Continuous Operation and establish an Ivanhoe Date of Initial Operation for the SO₂ interim emissions limit by deleting and replacing the entire Paragraph with the following:

SO₂ Process System Operation Emissions Limits and Control Technology. No later than the dates set forth in the table below, Defendant shall install, Operate on an Initial Basis (By the Date of Initial Operation and continuing thereafter) and Continuously Operate (by the Date of Continuous Operation and continuing thereafter), a WGS, a DGS, or an Alternative Equivalent Pollution 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 and continuing thereafter) the SO₂ Emissions Limits specified in the table below. Defendant has the option to install such Control Technology at either Belpre or Borger. Defendant shall notify EPA in writing no later than April 30, 2021 whether it elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre (and not Borger) or at Borger (and not Belpre) by the

applicable date specified in the table below. This election shall be at Defendant's sole discretion.

Process System	Control Technology	7-day Rolling Average Emissions Limit	365-day Rolling Average Emissions Limit	Date
Ivanhoe Process System	WGS, DGS, or Alternative Equivalent Pollution Control Technology	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 Date of Initial Operation regarding Unit 4 and Unit 5: 7/27/21 Date of Initial Operation regarding Unit 2 and Unit 3: 8/14/21
		Final 7-day Rolling Average Emissions Limit: No greater than 120 ppmvd (at 0% oxygen)	Final 365-day Rolling Average Emissions Limit: No greater than 80 ppmvd (at 0% oxygen)	Applicable final Emissions Limit Date of Continuous Operation: 10/14/21
Belpre Process System or Borger Process System	WGS, DGS, or Alternative Equivalent Pollution Control Technology	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 Date of Continuous Operation: 12/17/22
		Final 7-day Rolling Average Emissions Limit: No greater than 120 ppmvd (at 0% oxygen)	Final 365-day Rolling Average Emissions Limit: No greater than 80 ppmvd (at 0% oxygen)	Applicable final Emissions Limit Date of Continuous Operation: 6/16/23

3. Paragraph 19 is hereby amended to change the Ivanhoe date for commencement of SO₂ monitoring by deleting the first sentence of the Paragraph and replacing it with the following:

SO₂ Monitoring Requirement. Beginning no later than the Dates of Initial Operation (in the case of the Ivanhoe Process System) and the Dates of Continuous Operation (in the case of the Borger Process System or the Belpre Process System) specified in the table in Paragraph 16, Defendant shall use a CEMS (in accordance with the terms of this Paragraph) to monitor the performance during Process System Operation of each Process System specified therein and to report compliance with the terms and conditions of this Consent Decree.

4. Subparagraph 20(a) is hereby amended to change the Borger dates for compliance with the SO₂ cap by deleting the first and second sentences of the Subparagraph and replacing them with the following:

Borger SO₂ Cap. If, pursuant to Paragraph 16, Defendant elects to install WGS, DGS, or Alternative Equivalent Pollution Control Technology at Belpre, but not Borger, Defendant shall comply with a Borger SO₂ Cap of 4714 tons per year by December 17, 2023 (i.e., the first day included in the first year is December 18, 2023). If, pursuant to Paragraph 16, Defendant elects to install WGS, DGS, or Alternative Equivalent Pollution Control Technology at Borger, but not Belpre, Defendant shall comply with a Borger SO₂ Cap of 475 tons per year by December 17, 2022 (i.e., the first day included in the first year is December 18, 2022).

5. Subparagraph 20(b) is hereby amended to change the Belpre dates for compliance with the SO₂ cap by deleting the first and second sentences of the Subparagraph and replacing them with the following:

Belpre SO₂ Cap. If, pursuant to Paragraph 16, Defendant elects to install WGS, DGS, or Alternative Equivalent Pollution Control Technology at Belpre, but not Borger,

Defendant shall comply with a Belpre SO₂ Cap of 355 tons per year by December 17, 2022 (i.e., the first day included in the first year is December 18, 2022). If, pursuant to Paragraph 16, Defendant elects to install WGS, DGS, or Alternative Equivalent Pollution Control Technology at Borger, but not Belpre, Defendant shall comply with a Belpre SO₂ Cap of 3525 tons per year by December 17, 2023 (i.e., the first day included in the first year is December 18, 2023).

6. Subparagraph 20(c) is hereby amended to change the Ivanhoe date for compliance with the SO₂ cap by deleting the first sentence of the Subparagraph and replacing it with the following:

Ivanhoe SO₂ Cap. Defendant shall comply with an Ivanhoe SO₂ Cap of 850 tons per year by October 14, 2021 (i.e., the first day included in the first year is October 15, 2021).

7. Paragraph 23 is hereby amended to change certain dates for compliance with the Heat Load Operation limit for NO_x by deleting the rows in the table that relate to Ivanhoe, Belpre, and Borger, and replacing them with the following:

Facility	365-day Rolling Sum Emissions Limit	Date of Continuous Operation
Ivanhoe	No greater than 65 tons (in total for all reactors and boilers) for the prior 365 Days	10/14/21
Belpre	No greater than 50 tons (in total for all reactors and boilers) for the prior 365 Days	12/17/22 if, pursuant to Paragraph 16, Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre, and not Borger; otherwise 12/17/23

Facility	365-day Rolling Sum Emissions Limit	Date of Continuous Operation
Borger	No greater than 50 tons (in total for all reactors and boilers) for the prior 365 Days	12/17/23 if, pursuant to Paragraph 16, Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre, and not Borger; otherwise 12/17/22

8. Paragraph 26 is hereby amended to change the Dates of Continuous Operation for Ivanhoe, Belpre, and Borger—and to establish an Ivanhoe Date of Initial Operation—for NO_x control technology and emissions limits by deleting the entire paragraph and replacing it with the following:

NO_x Process System Operation Emissions Limits and Control Technology. No later than the dates set forth in the table below, Defendant shall design and install, Operate on an Initial Basis (By the Date of Initial Operation and continuing thereafter), and Continuously Operate (by the Date of Continuous Operation and continuing thereafter), a SCR on each Process System or equipment as specified in the table below so as to achieve and maintain during Process System Operation (by the Date of Continuous Operation and continuing thereafter) the NO_x Emissions Limits specified in the table below:

Equipment	Control Technology	7-day Rolling Average Emissions Limit	365-day Rolling Average Emissions Limit	Date
Ivanhoe Process System	SCR	No greater than 55 ppmvd (at 0% oxygen)	No greater than 39 ppmvd (at 0% oxygen)	<p>Date of Initial Operation regarding Unit 4 and Unit 5: 7/27/21</p> <p>Date of Initial Operation regarding Unit 2 and Unit 3: 8/14/21</p> <p>Date of Continuous Operation (all units): 10/14/21</p>
Belpre Process System	SCR	No greater than 55 ppmvd (at 0% oxygen)	No greater than 39 ppmvd (at 0% oxygen)	<p>Date of Continuous Operation: 12/17/22 if, pursuant to Paragraph 16, Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre, and not Borger;</p> <p>otherwise 12/17/23</p>
Orange Incinerator (as defined in Paragraph 8.nnn) or, if Defendant operates the Orange Co-Generation System after June 30, 2019, the Orange Waste Heat Boiler	SCR	No greater than 55 ppmvd (at 0% oxygen)	No greater than 39 ppmvd (at 0% oxygen)	Date of Continuous Operation: 6/30/19

Equipment	Control Technology	7-day Rolling Average Emissions Limit	365-day Rolling Average Emissions Limit	Date
Borger Process System	SCR	No greater than 55 ppmvd (at 0% oxygen)	No greater than 39 ppmvd (at 0% oxygen)	Date of Continuous Operation: 12/17/23 if, pursuant to Paragraph 16, Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre, and not Borger; otherwise 12/17/22

9. Paragraph 28 is hereby amended to conform the Ivanhoe, Belpre, and Borger dates for commencement of NO_x monitoring to the dates specified in Paragraph 26 (as amended) by deleting the first sentence of the paragraph and replacing it with the following:

NO_x Monitoring Requirement. Beginning no later than the Dates of Initial Operation (in the case of the Ivanhoe Process System) and the Dates of Continuous Operation (in the case of the Borger Process System or the Belpre Process System, or relevant Orange equipment) specified in the table in Paragraph 26, Defendant shall use a NO_x CEMS (in accordance with the terms of this Paragraph) to monitor performance of each Process System (Ivanhoe, Belpre, and Borger) or equipment (Orange) specified therein and to report compliance with the terms and conditions of this Consent Decree.

10. Subparagraph 29(a) is hereby amended to change the Belpre dates for compliance with the interim and final NO_x caps by deleting the first and second sentences of the Subparagraph and replacing them with the following:

Borger NO_x Cap. Defendant shall comply with an interim Borger NO_x Cap of 551 tons per year by December 17, 2023 if, pursuant to Paragraph 16, Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre, and not Borger; otherwise by December 17, 2022. Defendant shall comply with a final Borger NO_x Cap of 290 tons per year by December 17, 2024 (i.e., the first day included in the first year is December 18, 2024) if, pursuant to Paragraph 16, Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre, and not Borger; otherwise by December 17, 2023.

11. Subparagraph 29(b) is hereby amended to change the Belpre dates for compliance with the NO_x cap by deleting the first sentence of the Subparagraph and replacing it with the following:

Belpre NO_x Cap. Defendant shall comply with a Belpre NO_x Cap of 95 tons per year by December 17, 2022 (i.e., the first day included in the first year is December 18, 2022) if pursuant to Paragraph 16, Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre, and not Borger; otherwise by December 17, 2023.

12. Subparagraph 29(c) is hereby amended to change the Ivanhoe date for compliance with the NO_x cap by deleting the first sentence of the Subparagraph and replacing it with the following:

Ivanhoe NO_x Cap. Defendant shall comply with an Ivanhoe NO_x Cap of 205 tons per year by October 14, 2021 (i.e., the first day included in the first year is October 15, 2021).

13. Paragraph 33 is hereby amended to change the Ivanhoe Date of Continuous Operation and establish an Ivanhoe Date of Initial Operation for PM control technology and emissions limits by deleting the entire paragraph and replacing it with the following:

PM Control Technology and Emissions Limits. No later than the dates set forth in the table below, Defendant shall install, Operate on an Initial Basis (By the Dates of Initial Operation and continuing thereafter), and Continuously Operate (by the Date of Continuous Operation and continuing thereafter), a WGS, DGS, or Alternative Equivalent Pollution Control Technology on each Process System specified in the table below so as to achieve and maintain (by the Date of Continuous Operation and continuing thereafter) the Emissions Limits specified in the table below. The Emission Limits shall apply at Ivanhoe and, between either Belpre or Borger, the Facility at which Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology pursuant to the notice provided in Paragraph 16 (i.e., the Emission Limits shall apply at either Belpre or Borger, but not both).

Process System	Control Technology	3-hour Average Emissions Limit for PM	Date
Ivanhoe	WGS, DGS, or Alternative Equivalent Pollution Control Technology	No greater than 0.0069 gr/dscf	Date of Initial Operation regarding Unit 4 and Unit 5: 7/27/21 Date of Initial Operation regarding Unit 2 and Unit 3: 8/14/21 Date of Continuous Operation (all units): 10/14/21
Belpre or Borger	WGS, DGS, or Alternative Equivalent Pollution Control Technology	No greater than 0.0069 gr/dscf	Date of Continuous Operation: 12/17/22

14. Paragraph 34 is hereby amended to change the start date for the Ivanhoe PM stack testing requirement by deleting first sentence of the paragraph and replacing it with the following:

PM Stack Testing Requirements. Beginning no later than the Dates of Continuous Operation specified in the table in Paragraph 33, and continuing annually thereafter, Defendant shall conduct a stack test for PM for each Process System to which the table in Paragraph 33 applies (i.e., Ivanhoe and either Belpre or Borger) to report compliance with the terms and conditions of this Consent Decree.

15. Paragraph 38 is hereby amended to change the start dates for the Ivanhoe, Borger, and Belpre limitations on use of flares by deleting the rows in the table that relate to Ivanhoe, Borger, and Belpre and replacing them with the following:

Facility	Date
Borger	December 17, 2023 if, pursuant to Paragraph 16, Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre, and not Borger; otherwise December 17, 2022
Belpre	December 17, 2022 if, pursuant to Paragraph 16, Defendant elects to install a WGS, a DGS, or an Alternative Equivalent Pollution Control Technology at Belpre, and not Borger; otherwise December 17, 2023
Ivanhoe	October 14, 2021

16. The Consent Decree shall remain in full force and effect in accordance with its terms, except as specified in Paragraphs 1 through 15 above.

17. This First Amendment shall be lodged with the Court for a period of not less than 30 Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding this First Amendment disclose facts or considerations indicating that this First Amendment is inappropriate, improper, or inadequate. Defendant consents to entry of this First Amendment without further notice and agrees not to withdraw from or oppose entry of this First Amendment by the Court or to challenge any provision of the First Amendment, unless the United States has notified Defendant in writing that it no longer supports entry of the First Amendment.

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

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

20. Pursuant to Paragraph 111 of the Consent Decree, the effective date of this First Amendment shall be the date it is approved by the Court.

Dated and entered this ____ day of _____, 2021.

United States District Court Judge
Western District of Louisiana

Signature Page for *United States of America v. Defendant Orion Engineered Carbons, LLC*,
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FOR THE UNITED STATES OF AMERICA

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Date: November 19, 2021

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

s/ Rosemarie A. Kelley
ROSEMARIE A. KELLEY
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: October 6, 2021

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
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Date: November 1, 2021

CHERYL T. SEAGER
Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 6

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FOR THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Courtney Burdette (#30564)
General Counsel

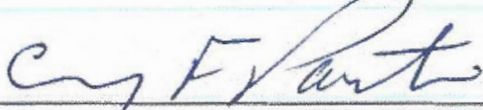


Date: 10-5-2021

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FOR DEFENDANT, ORION ENGINEERED CARBONS, LLC



CORNING PAINTER
Chief Executive Officer
Orion Engineered Carbons, LLC

Date: 10 sept 2010



PEDRO RIVEROS
Senior Vice President and General Manager, Americas Region
Orion Engineered Carbons, LLC

Date: 10 September 2021