

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

_____)	
UNITED STATES OF AMERICA,)	
)	
and)	
)	
THE STATE OF INDIANA,)	
)	
Plaintiffs,)	
)	Civil Action No. 18-cv-35
v.)	
)	
INDIANA HARBOR COKE COMPANY, LLC)	
)	
and)	
)	
SUNCOKE ENERGY, INC.,)	
)	
and)	
)	
COKENERGY, LLC,)	
)	
Defendants.)	
_____)	

**NOTICE REGARDING AGREEMENT OF THE UNITED STATES,
INDIANA, AND DEFENDANTS TO EXTEND THE DEADLINES
FOR SOLAR OCCULTATION FLUX TESTING AND THE LEAD
HAZARD REDUCTION SUPPLEMENTAL ENVIRONMENTAL
PROJECT UNDER THE REVISED CONSENT DECREE**

The United States hereby notifies the Court that the parties in the above-captioned case have agreed to extend two deadlines imposed by the Revised Consent Decree that was entered by the Court: (1) the deadline by which Indiana Harbor Coke Company (“IHCC”) must perform Solar Occultation Flux (“SOF”) testing; and (2) the deadline by which Cokenergy must complete a Lead Hazard Reduction Supplemental Environmental Project (“SEP”). The United States, on behalf of the U.S. Environmental Protection Agency (“EPA”), and the State of Indiana (“Indiana”), on behalf of the Indiana Department of Environmental Management (collectively

the “Plaintiffs”), filed a Complaint and contemporaneously lodged a proposed Consent Decree in this action between the Plaintiffs and Indiana Harbor Coke Company, LLC (“IHCC”), SunCoke Energy, Inc., and Cokenergy, LLC (collectively the “Defendants”), regarding alleged Clean Air Act violations at Defendants’ heat recovery coking and power generation facility in East Chicago, Indiana (“the Facility”). After reviewing public comments, the United States moved for entry of a Revised Consent Decree. The Court entered the Revised Consent Decree on October 25, 2018.

IHCC is required to conduct SOF testing in accordance with Paragraph 30 and Appendix 2 of the Revised Consent Decree by no later than November 30, 2020. *See* Revised Consent Decree, ¶ 30 and App. 2. SOF is one of the enhanced monitoring and testing requirements in the Revised Consent Decree. The objective of the SOF testing is to measure potential fugitive emissions from the rebuilt coke ovens and other equipment at the Facility.

SunCoke has retained FluxSense, Inc. (“FluxSense”), an experienced SOF testing company, to perform the SOF testing required by the Revised Consent Decree. FluxSense informed IHCC that it planned to have personnel based in Sweden perform the on-site testing. Due to travel restrictions and other governmental orders resulting from the COVID-19 pandemic that have been imposed since approximately mid-March and associated safety concerns, the Parties have agreed to extend the deadline for the SOF testing. IHCC shall conduct the SOF testing between May 1, 2021 and June 30, 2021, if practicable. If it is not practicable to perform the SOF testing during that time period, IHCC shall perform the SOF testing between September 1, 2021 and October 31, 2021 (“Backup Dates”). If delaying the SOF testing until the Backup Dates will not be practicable, IHCC may conduct the testing between July 1, 2021 and August 31, 2021.

Cokenergy is required to carry out a Lead Hazard Reduction SEP in accordance with Section VII of the Revised Consent Decree. *See* Revised Consent Decree, ¶¶ 36-50. Section VII requires Cokenergy to spend no less than \$250,000 in Eligible Costs, as defined by the Revised Consent Decree, to implement a SEP “designed to reduce the exposure to lead in schools, day-care centers, and/or other buildings where owners are unable to afford lead hazard abatement work.” *Id.*, ¶ 36.

Cokenergy retained Elevate Energy to perform the lead hazard abatement work required by the Revised Consent Decree. To date, Cokenergy and Elevate Energy have completed five of a planned twelve total lead abatement projects. However, Cokenergy has informed the Plaintiffs that construction of the remaining seven projects has been delayed due to COVID-19-related work stoppages and restrictions. Specifically, based on information provided by Elevate Energy, Cokenergy indicated that from mid-March to June 2020, construction activities were paused in order to keep employees and the community safe, and because the state health department had temporarily stopped issuing the required permits to perform the work.

The original Revised Consent Decree required Cokenergy to complete the Lead Hazard Reduction SEP “within two years after the Effective Date, provided that this date may be extended by mutual agreement of Cokenergy and the United States in writing.”¹ *Id.*, ¶ 42. Because the Effective Date of the Revised Consent Decree was October 25, 2018, the original deadline for completion of the SEP is October 25, 2020. Due to the governmental orders resulting from the COVID-19 pandemic and associated safety concerns, the Parties have agreed to extend the SEP deadline for completion of the SEP to April 30, 2021.

¹ The First Amendment to Revised Consent Decree memorializes the United States’ and Cokenergy’s agreement to extend the date for completion of the SEP.

The Parties agree that the modification set forth herein is a non-material modification within the meaning of Paragraph 112 of the Revised Consent Decree, and does not require Court approval. *Id.*, ¶ 112. Therefore, the Parties do not seek approval from the Court for this agreement. The United States nonetheless files this Notice to inform the Court regarding the extension of the deadline for the Solar Occultation Flux testing until June 30, 2021, with a possibility for further extension until October 31, 2021, and the extension of the deadline for the Lead Hazard Reduction SEP to April 30, 2021. The Agreement of Plaintiffs and Defendants is attached hereto as Exhibit 1.

FOR THE UNITED STATES OF AMERICA:

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THE STATE OF INDIANA,)	
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Defendants.)	
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FIRST AMENDMENT TO REVISED CONSENT DECREE

The United States, on behalf of the U.S. Environmental Protection Agency (“EPA”), the State of Indiana (“Indiana”), on behalf of the Indiana Department of Environmental Management (collectively the “Plaintiffs”), and Indiana Harbor Coke Company, LLC (“IHCC”), SunCoke Energy, Inc., and Cokenergy, LLC (collectively the “Defendants”), enter into this First Amendment to Revised Consent Decree to modify two dates in the Decree entered by the Court in this action on October 25, 2018. First, this Amendment modifies the date by which IHCC must perform the required Solar Occultation Flux (“SOF”) testing. Second, it modifies a

deadline for Cokenergy to complete a Lead Hazard Reduction Supplemental Environmental Project (“SEP”).

On January 25, 2018, the Plaintiffs filed a Complaint against Defendants alleging Clean Air Act violations at Defendants’ Midwestern heat recovery coking and power generation facility located in East Chicago, Indiana (“the Facility”). *See* Complaint, Dkt. 1. Simultaneously with filing the Complaint, the United States lodged a proposed Consent Decree to remedy the violations alleged therein. At the time of lodging the Consent Decree, the Plaintiffs asked the Court to defer action on it while the United States submitted the proposed settlement for public review and comment pursuant to 28 C.F.R. § 50.7. On February 13, 2018, the Department of Justice published notice of the proposed Consent Decree in the Federal Register. *See* 83 Fed. Reg. 6214-15 (Feb. 13, 2018). The United States received several comments and carefully considered those comments, ultimately moving for entry of a Revised Consent Decree. The Court entered the Revised Consent Decree on October 25, 2018. *See* Dkt. 10.

I. SOF Testing

IHCC is required to conduct SOF testing in accordance with Paragraph 30 and Appendix 2 of the Revised Consent Decree by no later than November 30, 2020. *See* Revised Consent Decree, ¶ 30 and App. 2. SOF is one of the enhanced monitoring and testing requirements in the Revised Consent Decree. The objective of the SOF testing is to measure potential fugitive emissions from the rebuilt coke ovens and other equipment at the Facility. Paragraph 8(vv) of the Revised Consent Decree defines “Solar Occultation Flux” or “SOF” as “a remote sensing method based upon measuring infrared intensity spectra of the sun, developed to identify and quantify fugitive emissions from a variety of emission sources, including large industrial sources.” *Id.*, ¶ 8(vv).

SunCoke has retained FluxSense, Inc. (“FluxSense”), an experienced SOF testing company, to perform the SOF testing required by the Revised Consent Decree. SunCoke originally scheduled the testing for May and June of 2020. IHCC has represented that FluxSense informed IHCC that it planned to have personnel based in Sweden perform the on-site testing. Due to travel restrictions and other governmental orders resulting from the COVID-19 pandemic that have been imposed since approximately mid-March and associated safety concerns, the Parties have agreed to extend the deadline for the SOF testing. IHCC shall conduct the SOF testing between May 1, 2021 and June 30, 2021, if practicable. If it is not practicable to perform the SOF testing during that time period, IHCC shall perform the SOF testing between September 1, 2021 and October 31, 2021 (“Backup Dates”). If delaying the SOF testing until the Backup Dates will not be practicable, IHCC may conduct the testing between July 1, 2021 and August 31, 2021.

II. Lead Hazard Reduction SEP

Cokenergy is required to carry out a Lead Hazard Reduction SEP in accordance with Section VII of the Revised Consent Decree. *See* Revised Consent Decree, ¶¶ 36-50. Section VII requires Cokenergy to spend no less than \$250,000 in Eligible Costs, as defined by the Revised Consent Decree, to implement a SEP “designed to reduce the exposure to lead in schools, day-care centers, and/or other buildings where owners are unable to afford lead hazard abatement work.” *Id.*, ¶ 36. In accordance with Paragraph 42 of the Revised Consent Decree, Cokenergy submitted a SEP Plan on April 22, 2019 outlining the work to be performed to implement the Lead Hazard Reduction SEP.

Cokenergy retained Elevate Energy to perform the lead hazard abatement work required by the Revised Consent Decree. To date, Cokenergy and Elevate Energy have completed five of

a planned twelve total lead abatement projects. However, Cokenergy has informed the Plaintiffs that construction of the remaining seven projects has been delayed due to COVID-19-related work stoppages and restrictions. Specifically, based on information provided by Elevate Energy, Cokenergy indicated that from mid-March to June 2020, construction activities were paused in order to keep employees and the community safe, and because the state health department had temporarily stopped issuing the required permits to perform the work.

The original Revised Consent Decree required Cokenergy to complete the Lead Hazard Reduction SEP “within two years after the Effective Date, provided that this date may be extended by mutual agreement of Cokenergy and the United States in writing.” *Id.*, ¶ 42. Because the Effective Date of the Revised Consent Decree was October 25, 2018, the original deadline for completion of the SEP is October 25, 2020. Due to the governmental orders resulting from the COVID-19 pandemic and the associated safety concerns, the Parties have agreed to extend the SEP deadline for completion of the SEP to April 30, 2021.

The Parties agree that the modification set forth herein is a non-material modification within the meaning of Paragraph 112 of the Revised Consent Decree, and does not require Court approval. *Id.*, ¶ 112.

NOW, THEREFORE, upon the consent and agreement of the Parties in accordance with Paragraph 112 of the Revised Consent Decree, the Revised Consent Decree is hereby modified as follows:

AMENDED REVISED CONSENT DECREE PROVISIONS

The Revised Consent Decree shall remain in full force and effect in accordance with its terms, except that:

1. The first sentence of Paragraph 30 is deleted and replaced with the following:

SOF Testing. IHCC shall conduct SOF testing in accordance with Paragraph 30 and Appendix 2 of this Revised Consent Decree. IHCC shall conduct the SOF testing between May 1, 2021 and June 30, 2021, if practicable. If it is not practicable to perform the SOF testing during that time period, IHCC shall perform the SOF testing between September 1, 2021 and October 31, 2021 (“Backup Dates”). If delaying the SOF testing until the Backup Dates will not be practicable, IHCC may conduct the testing between July 1, 2021 and August 31, 2021.

The rest of Paragraph 30 remains unchanged.

2. The final sentence of Paragraph 42 is deleted and replaced with the following:

Cokenergy shall complete the Lead Hazard Reduction SEP by April 30, 2021, and provided that this date may be extended by mutual agreement of Cokenergy and the United States in writing.

The rest of Paragraph 42 remains unchanged.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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Environmental Enforcement Section

s/Nicholas A. McDaniel
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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2020, the foregoing Notice Regarding Agreement of the United States, Indiana, and Defendants to Extend the Deadlines for Solar Occultation Flux Testing and the Lead Hazard Reduction Supplemental Environmental Project Under the Revised Consent Decree and First Amendment to Revised Consent Decree were filed electronically, and notice of the filing will be sent by operation of the Court's website. A copy of the foregoing was sent by email to the following counsel:

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