

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

UNITED STATES OF AMERICA,)	
)	Civil No. 2:08-cv-00020-WFD
Plaintiff,)	
)	
OKLAHOMA DEPARTMENT OF)	FIFTH AMENDMENT
ENVIRONMENTAL QUALITY)	TO CONSENT DECREE
and STATE OF WYOMING)	
)	
Plaintiff-Intervenors,)	
)	
v.)	JUDGE WILLIAM F. DOWNES
)	
HOLLY REFINING AND MARKETING -)	
TULSA LLC, HEP TULSA LLC, SINCLAIR)	
WYOMING REFINING COMPANY and)	
SINCLAIR CASPER REFINING COMPANY)	
)	
Defendants.)	
)	

WHEREAS, the United States of America (hereinafter “the United States”), the U.S. Environmental Protection Agency (“EPA”), the State of Oklahoma, the State of Wyoming, Sinclair Tulsa Refining Company (“STRC”), Sinclair Wyoming Refining Company (“SWRC”), and Sinclair Casper Refining Company (“SCRC”) (collectively “the Sinclair Refineries”) are parties to a Consent Decree filed with this Court on May 8, 2008, as amended (hereinafter “the Consent Decree”);

WHEREAS, the Consent Decree has been previously amended to reflect the transfer of the refinery located in Tulsa, Oklahoma to Holly Refining and Marketing – Tulsa LLC and HEP Tulsa LLC, and to make other material modifications to certain provisions of the Consent Decree as they pertain to each of the Sinclair Refineries;

WHEREAS, on January 22, 2011, a loss of electric power and fire at SWRC’s Sinclair Wyoming Refinery, located in Sinclair, Wyoming, caused extensive damage to the electrostatic precipitator (“ESP”) and rendered it inoperable;

WHEREAS, on March 18, 2011, EPA issued an Administrative Compliance Order to SWRC requiring it to, *inter alia*, expeditiously repair the ESP and to take other measures;

WHEREAS, the United States, State of Wyoming, and SWRC have agreed to certain material modifications to the Consent Decree to address the impacts resulting from the fire and ESP outage, as set forth in this Fifth Amendment to Consent Decree ("Fifth Amendment"), which modifications address only the Sinclair Wyoming Refinery, owned and operated by SWRC;

WHEREAS, the Consent Decree specifies that the Court retains continuing jurisdiction for the purpose of enforcing and modifying the Consent Decree;

WHEREAS, Paragraph 345 of the Consent Decree, as amended, provides that any material modifications to the Consent Decree shall be in writing, signed by EPA, the Applicable Co-Plaintiff, and the relevant Sinclair Refineries, and shall be effective upon approval by the Court; and

WHEREAS, EPA, the State of Wyoming and the SWRC have each reviewed and hereby consents to this Fifth Amendment.

NOW THEREFORE the United States, the State of Wyoming and the SWRC hereby agree that the Consent Decree, as previously modified by the First through Fourth Amendments, shall remain in full force and effect in accordance with its terms, except as set forth in this Fifth Amendment, which shall become effective upon entry by this Court.

AMENDED CONSENT DECREE PROVISIONS

1. New Paragraph 47A shall be added, as follows:

47A. Additional NOx Reductions From Combustion Units. SWRC shall undertake the following to achieve an additional approximately 40 tons per year of NOx reductions at the SWRC refinery:

a. By no later than the earlier of the end of the next scheduled turnaround for the 582 Crude Unit at Sinclair Wyoming Refinery, or December 31, 2013, SWRC shall install Next Generation Ultra-Low NOx Burners in all five heaters in the 582 Crude Unit, to reduce NOx emissions by an additional approximately 40 tons per year greater than the reductions required by Paragraph 42.

b. Beginning no later than one hundred eighty (180) days after the installation of the Next Generation Ultra-Low NOx Burners in the five heaters in

the 582 Crude Unit, SWRC shall monitor the heaters as specified in Paragraphs 48 and 49.

c. SWRC shall include, for the five heaters in the 582 Crude Unit, the information specified in Paragraph 44(a)-(e) (substituting the information specified in Paragraph 43(a)-(e) for the five heaters for the information required by 44(a)) in the reports required pursuant to Paragraph 199.

d. Upon startup after installation of the Next Generation Ultra-Low NOx Burners, the five heaters in the 582 Crude Unit shall each be required to achieve an emission limit of 0.035 lb/mmBTU on a 3-hour average.

e. Within 6 months after the date of entry of this Fifth Amendment, SWRC shall submit a permit application to WDEQ for the installation of Next Generation Ultra-Low NOx Burners in the five heaters. With respect to all other aspects of permitting the construction and operation of Next Generation Ultra-Low NOx Burners in the five heaters, SWRC shall comply with Paragraphs 180 through 183.

2. Paragraph 57 shall be amended to read as follows:

57. Reduction of Fuel Oil Burning at the Sinclair and Casper Refineries.

a. Commencing on the Date of Entry or January 1, 2008, whichever is earlier, the SWRC will limit Fuel Oil burning at the Sinclair Wyoming Refinery such that total SO₂ emission resulting from fuel oil burning will be no greater than 200 tons per year on a 365 day rolling average basis. Commencing on December 31, 2010, the SWRC will limit Fuel Oil burning at the Sinclair Wyoming Refinery such that total SO₂ emissions resulting from fuel oil burning will be no greater than 55 tons per year on a 365 day rolling average basis. Commencing on the date of lodging of the Fifth Amendment to the Consent Decree, SWRC shall not combust Fuel Oil in any combustion device at the Sinclair Wyoming Refinery except during periods of Natural Gas Curtailment, Test Runs or operator training.

b. Commencing on December 31, 2008, the SCRC will limit Fuel Oil burning at the Casper Refinery such that total SO₂ emission resulting from fuel oil burning will be no greater than 188 tons per year on a 365-day rolling average

basis. Fuel Oil combusted during periods of Natural Gas Curtailment will not be counted in the 365-day rolling average.

c. Compliance with paragraphs a. and b. above will be determined for each refinery on a daily basis by the following the equation:

$$\sum_{i=1}^n [(DRFO_i \times FOD_i \times (SC_i/100) \times 2)/2000_i] \leq \text{the limit in tons of SO}_2 \text{ per year}$$

Where:

- DRFO_i = the amount of fuel oil combusted at the refinery for day i in gallons per day;
- FOD_i = the average density of fuel oil combusted at the refinery for day i in pounds per gallon;
- SC_i = the average sulfur content of the oil combusted at the refinery for day i in weight percent sulfur; and
- n = the prior 365 calendar days.

In demonstrating compliance with this Paragraph, the SWRC and the SCRC shall measure and retain records of the following for each day on which fuel oil is combusted: amount of fuel oil combusted (weight and volume), density, sulfur content and method of determining the amount of fuel oil combusted.

3. New Section P shall be added to Part V (“AFFIRMATIVE RELIEF/ ENVIRONMENTAL PROJECTS”) and Paragraphs 184 through 190 shall be amended to read as follows:

P. PM Reductions from Road Paving at the Sinclair Wyoming Refinery

184. To reduce total suspended particulate matter by approximately 15 tons per year, by no later than June 30, 2011, SWRC shall pave the unpaved roadway at the Sinclair Wyoming Refinery depicted in pink in the Refinery Plot Plan attached hereto as Appendix F.

185. The roadway shall be paved in accordance with the specifications set forth in the March 21, 2011, letter from 71 Construction, attached hereto as Appendix G, and maintained in accordance with the March 3, 2011, Sinclair Wyoming Refining Company Inspection Plan for the Northwest Trucking Division Access Road, attached hereto as Appendix H. SWRC shall inspect the paved roadways at least every 6 months, and report on the condition of the roadways to WDEQ.

186. The paving, inspection and reporting requirements of this Section V.P shall be incorporated into federally-enforceable permits issued by WDEQ.

187-190. Reserved.

4. Paragraph 208 shall be amended to read as follows:

208. For failure to install, certify, calibrate, maintain, and/or operate a NOx , O2, SO2 and CO CEMS, COMS (AMP) and/or appropriate monitoring required under Paragraphs 16, 23, 34, 37, 38, 47A.b, 48, 49, 68.b and 75.a(3), per unit per monitored parameter per day:

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

5. New Paragraph 214A shall be added, as follows:

214A. For failure to install Next Generation Ultra-Low NOx Burners in the five heaters in the 582 Crude Unit by the deadline specified in Paragraph 47A.a and/or to submit permit applications sufficient to comply with the requirements of Paragraph 47A.e, per day:

<u>Period of Delay</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$2,500
31 st through 60 th day after deadline	\$6,000
Beyond 60 th day after deadline	\$10,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

6. Paragraph 215 shall be amended to read as follows:

215. For each failure to meet NOx emission limits proposed by the Sinclair Refineries pursuant to Paragraph 42, and for each failure to meet NOx emission limits set

forth in Paragraph 47A.d, per day, per unit: Five Hundred Dollars (\$500) for each calendar day in a calendar quarter on which the emissions exceed the applicable limit.

7. Section N of Part XI (“STIPULATED PENALTIES”) shall be amended and new Paragraph 259A shall be added, as follows:

N. Road Paving at the Sinclair Wyoming Refinery

259A. For failure to comply with any of the requirements set forth in Paragraphs 184 through 186:

<u>Period of Delay</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$1,000
31 st through 60 th day after deadline	\$2,000
Beyond 60 th day after deadline	\$5,000

ORDER

Before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the United States, the State of Wyoming and SWRC, it is hereby ADJUDGED, ORDERED and DECREED that this Fifth Amendment is hereby approved and entered as a final order of this Court.

Dated and entered this _____ day of _____, 2012.

WILLIAM F. DOWNES
United States District Judge


SIGNATORIES

Each of the undersigned representatives certifies that he or she is fully authorized to enter into the Fifth Amendment to Consent Decree on behalf of such Parties, and to execute and to bind such Parties to this Fifth Amendment. This Fifth Amendment to Consent Decree may be signed in counterparts.


WE HEREBY CONSENT to the entry of the Fifth Amendment to Consent Decree entered in the matter of *United States, et al. v. Sinclair Wyoming Refining Co. et al.*, Civil No. 2:08-cv-00020-WFD, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: 1/19/12


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

Date: 3/29/12


JAMES D. FREEMAN
Senior Attorney
Environmental Enforcement Section
United States Department of Justice

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FOR PLAINTIFF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

Date: 3/16/12

PAMELA J. MAZAKAS
Acting Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

Date: 3/15/12

PHILLIP A. BROOKS
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

Date: 2/9/12

ROBERT G. KLEPP
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

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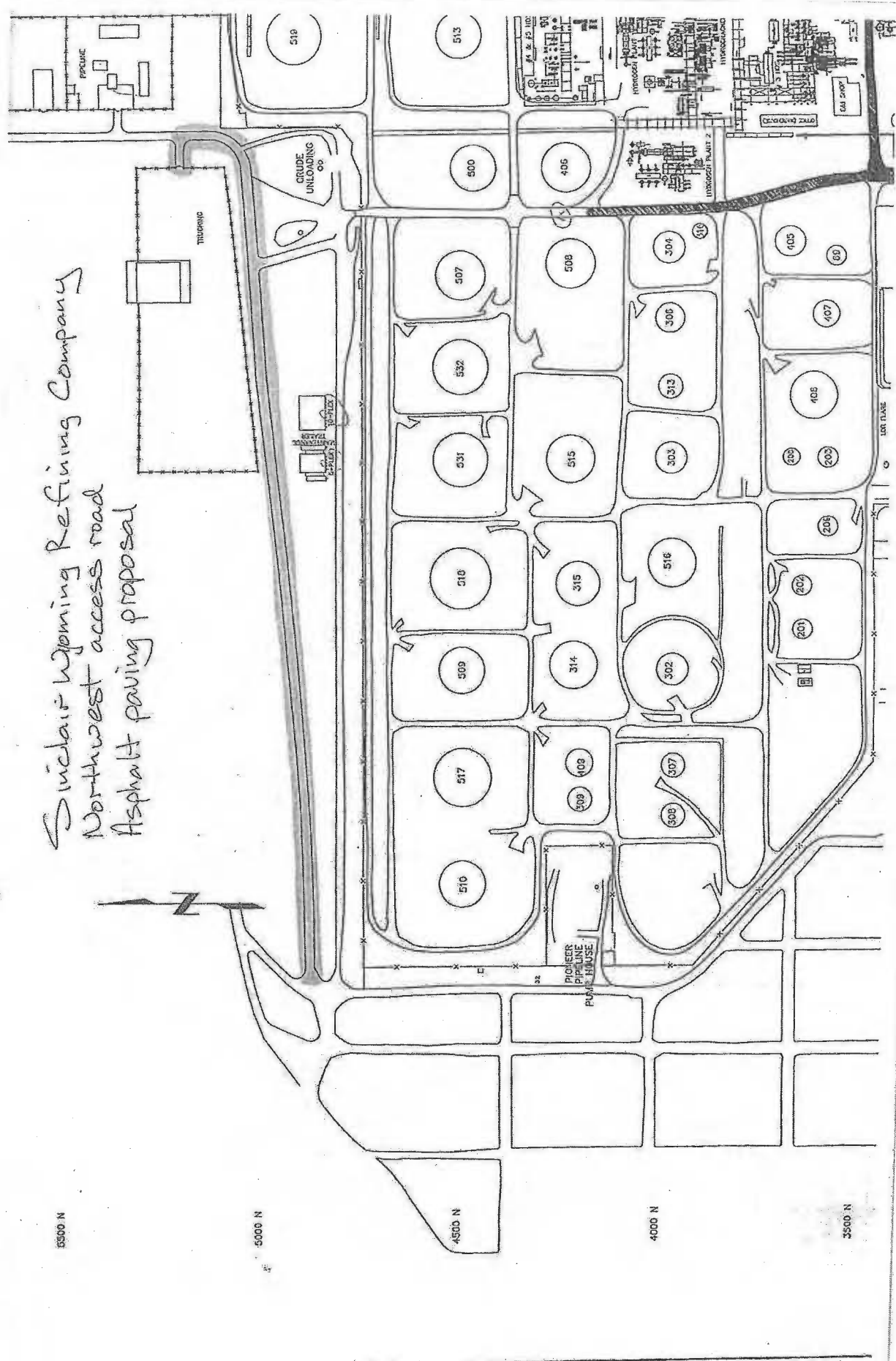
FOR DEFENDANT SINCLAIR WYOMING
REFINING COMPANY:

Date: 12/1/11

ROSS MATTHEWS
President, Sinclair Wyoming Refining Company

Appendix F: Road Paving Plot at Sinclair Wyoming Refinery

Sinclair Refining Company
Northwest access road
Asphalt paving proposal

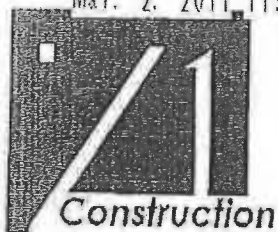


Appendix G: Road Paving Specifications at Sinclair Wyoming Refinery

Mar. 2. 2011 11:25AM

71CONSTRUCTION(RIV)

No. 2151 P. 1



71 CONSTRUCTION

820 LOUGH DRIVE
RIVERTON, WY 82501



March 2, 2011

Sam Greene
Sinclair Oil Corp.
550 East South Temple
Salt Lake City, UT 84130

Re: Light Use Road Specifications

Sam,

71 Construction will be following the Wyoming Department of Transportation's Standard Specifications for Road and Bridge Construction, 2010 edition, for all construction Phases. This will include:

- 1) Grading, grubbing and re-compaction of subgrade.
- 2) Installation of 4" of grading "W" roadbase, compacted to 95% std. proctor.
- 3) Installation of a 2" compacted depth mat of 1/2" Nominal Max., Type IV, Hot Mix Asphalt.

If I may be of any further service please call on me.

Sincerely,

Thomas Davenport, EIT

Asphalt Paving • Water & Sewer • Grading • Excavating • Sand & Gravel • Crane Service • Oil Field Services

P.O. BOX 4600
CASPER, WY 82604
PHONE (307) 236-2922
FAX (307) 236-3005

71 CONSTRUCTION
www.71construction.com

820 LOUGH DRIVE
RIVERTON, WY 82501
PHONE (307) 856-7174
FAX (307) 856-7191

Appendix H: Road Maintenance at Sinclair Wyoming Refinery

SWRC
3/3/11, rev. 0

Sinclair Wyoming Refining Company

Inspection Plan for the Northwest Trucking Division Access Road

1. Purpose

The purpose of this inspection plan is to provide a mechanism to assure that Sinclair Wyoming Refining Company (SWRC) will inspect, repair and maintain the asphalt paved road used for Trucking Division, contractor, refinery vehicle and refinery employee access located at the Northwest corner of the refinery.

2. Background

SWRC is in the process of paving various earthen roads at the refinery for the purposes of dust control. Each of the paved roads will be inspected for common distresses such as loss of aggregates, cracks, and distortions to help assess the road base condition as well as the roadway surface condition.

3. Types of maintenance to be performed

- An engineering evaluation will first be performed to determine if the existing asphalt road is suitable for an overlay or if it will need to be rebuilt. An overlay will consist of a tack coat and perhaps a geotextile fabric to control reflective cracking, followed by one or more courses of hot plant mix pavement to the required thickness and density.
- If it is determined the road should be rebuilt, the existing asphalt will be removed and the subgrade scarified, reshaped and recompact to the required density (typically 95% of the standard proctor) followed by one or more courses of hot plant mix pavement to the required thickness and density. Depending on the condition of the existing subgrade, additional road base may be required.
- In either of the above cases, drainage will also be addressed to ensure water is adequately carried away from the roadway.
- Within the first year after construction, an emulsified seal coat or cover seal coat will be installed on the roadway to seal any surface cracking. Thereafter, a regular maintenance program will be implemented to ensure the integrity of the roadway. A minimum of once per year, a visual examination of the roadway will be conducted and required maintenance procedures, if any, will be determined. Maintenance procedures may consist of crack sealing and pot hole repair. Typically, seal coats are reapplied every five (5) years to extend the life of the pavement.

SWRC
3/3/11, rev. 0

4. Inspection schedule and tracking

- Road inspections will be conducted at a minimum frequency of once per year.
- The Environmental Department will alert the Maintenance Department to perform the inspections.
- The Environmental Department will have the responsibility to track inspection frequency and any corrective actions taken.