

7/17/79
Final Federal
Decree

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIDGESBURG CIVIC COUNCIL, et al.)
)
Plaintiffs,)
)
UNITED STATES OF AMERICA,)
CITY OF PHILADELPHIA,)
)
Intervening Plaintiffs,)
)
v.)
)
PHILADELPHIA COKE CO., INC., et al)
)
Defendant.)

CIVIL ACTION NO. 79-3917

CONSENT DECREE

The parties, by their respective counsel, have entered into a comprehensive settlement of this litigation, certain terms of which are, subject to the approval of the Court, to be embodied in a consent decree.

Upon consideration of the motions of the parties, before the taking of any testimony on the pleadings, and without adjudication of any issue of law or fact herein, and upon consent of the parties hereto, it is ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. 1343 and Sections 113(b) and 304 of the Clean Air Act, 42 U.S.C. 1954(b)

and 7604, and of the parties hereto. The Bridesburg Civic Council and the individually named plaintiffs (hereinafter "BCC") have filed a Complaint in this action. The United States of America and the City of Philadelphia have filed Complaints in Intervention in this action. The parties to this decree stipulate and agree that the United States of America and the City of Philadelphia are joined in this action as intervening plaintiffs.

Dismissal of Complaint

2. Subject only to the terms of this decree, the Complaint and the Complaints in Intervention herein are dismissed. Such dismissal is with prejudice except as to claims of individuals for personal injury, which claims are dismissed without prejudice pursuant to FRCP 41(a)(2).

Regulations

3. Philadelphia Coke Co., Inc. ("PCC") consents and agrees that after this decree expires PCC's facility located at 4501 Richmond Street, Philadelphia,

Pa. (hereinafter "the facility") and the coke oven battery located at such facility are subject to the Pennsylvania D.E.R. Coke Oven Regulations (hereinafter "DER Regulations") that were approved as part of the Pennsylvania State Implementation Plan by the Administrator of the Environmental Protection Agency on July 17, 1979 at 44 Fed. Reg. 41429 pursuant to Section 110(a) of the Clean Air Act, 42 U.S.C. §7410(a). See 25 Pa. Code §§121.1 et seq. References herein to §§ are to 25 Pa. Code. The foregoing consent and agreement shall not apply to any proceeding brought by the Environmental Protection Agency (hereinafter "EPA") to assess a penalty under Section 120 of the Clean Air Act, 42 U.S.C. §7420.

Pushing

4. (a) PCC shall install a device for the enclosure of pushing operations (as such operations are defined at §121.1 of DER Regulations) at its coke oven battery at the facility in order to comply with the terms of §§129.15 and 123.13 of DER Regulations. The description and plans for such device are set forth and referred to in the contract between PCC and Hawley/Envirotech dated April 15, 1980, which is attached hereto as Exhibit A. Installation of such device shall be deemed complete when all the structures

and equipment constituting the hooded quench car land-based Trav-L-Vent system described in such contract are erected and installed, all modifications described in such contract have been made to the PCC facility, and all power connections referred to in such contract have been completed; "completion of installation" does not mean that the device is successfully operating.

(b) If installation of the device for the enclosure of pushing operations is not completed by November 15, 1980 PCC shall pay a stipulated penalty of \$2,000 per day until such installation is complete; provided, however, that if, from and after the entry of this decree PCC has used its best efforts in good faith to complete installation as soon as possible, such penalty shall not, in the aggregate, exceed \$60,000.

(c) PCC shall conduct performance tests on or before January 15, 1981 in accordance with the test procedures set forth in Appendix A which is attached hereto and made a part hereof.

(d) On or after January 15, 1981, PCC shall conduct all pushing operations at its coke oven battery at the facility in compliance with §§129.15 and 123.13 of DER Regulations.

(e) §129.15(c) of DER Regulations shall apply at PCC's coke oven battery at the facility until

such time as the United States Environmental Protection Agency ("EPA") approves as part of the Pennsylvania State Implementation Plan pursuant to Section 110(a) of the Clean Air Act, 42 U.S.C. §7410(a), any finding of minor significance made by the City of Philadelphia.

(f) The outlet of the air cleaning device(s) installed to achieve compliance with the provisions of this paragraph shall meet the emissions standards contained in §123.13(b) of DER Regulations and Philadelphia Air Management Code Regulation II, Section IV.

Pushing Emission Control Device Spares

5. No later than January 15, 1981, PCC shall have available on site at the facility the following pushing emission control device spares:

- (a) one spare electric motor stator and one set of bearings or one complete motor;
- (b) one set of spare parts for a Trav-L Vent Carriage including, but not limited to, rollers and bearings;
- (c) one spare set of lower panel sections for the hood;
- (d) one spare locomotive;
- (e) one spare 60 ft. section of belt; and,

(f) two spare sets of bags for one compartment.

Charging

6. On and after the date of this decree, PCC shall operate its coke oven facility in compliance with §123.44(a)(1) of DER Regulations, and compliance therewith shall be enforced by EPA in accordance with the provisions of the Clean Air Act and by the City of Philadelphia in accordance with the terms of the complementary State-Court decree referred to in paragraph 16 hereof. Monitoring results shall be measured and recorded in accordance with the provisions of §123.44(b) of DER Regulations.

Charging Ports

7. On and after the date of this decree, PCC shall operate its coke oven facility in compliance with §123.44(a)(4) of DER Regulations, and compliance therewith shall be enforced by EPA in accordance with the provisions of the Clean Air Act and by the City of Philadelphia in accordance with the terms of the complementary State-Court decree referred to in paragraph 16 hereof. Monitoring

results shall be measured and recorded in accordance with the provisions of §123.44(b) of DER Regulations.

Offtake Piping

8. On and after the date of this decree, PCC shall operate its coke oven facility in compliance with §123.44(a)(5) of DER Regulations, and compliance therewith shall be enforced by EPA in accordance with the provisions of the Clean Air Act and by the City of Philadelphia in accordance with the terms of the complementary State-Court decree referred to in paragraph 16 hereof. Monitoring results shall be measured and recorded in accordance with the provisions of §123.44(b) of DER Regulations.

Topside - Other than Ports and Offtake Piping

9. On and after the date of this decree, PCC shall operate its coke oven facility in compliance with §123.44(a)(5) of DER Regulations, and compliance therewith shall be enforced by EPA in accordance with the provisions of the Clean Air Act and by the City of Philadelphia in accordance with the terms of the complementary State-Court decree referred to in paragraph 16 hereof. Monitoring

results shall be measured and recorded in accordance with the provisions of §123.44(b) of DER Regulations.

Collection Main

10. On and after the date of this decree, PCC shall operate its coke oven facility in compliance with §123.44(a)(7) of DER Regulations, and compliance therewith shall be enforced by EPA in accordance with the provisions of the Clean Air Act and by the City of Philadelphia in accordance with the terms of the complementary State-Court decree referred to in paragraph 16 hereof. Monitoring results shall be measured and recorded in accordance with the provisions of §123.44(b) of DER Regulations.

Monitoring and Reporting

11. PCC shall conduct monitoring of its coke oven battery at the facility and make reports in conformity with the requirements of §§139.51-61 of DER Regulations. In addition to submitting such reports to the City of Philadelphia, PCC shall submit copies to EPA and to counsel for BCC. PCC shall submit quarterly progress reports to EPA, the City of Philadelphia, and counsel for BCC until the requirements of paragraph 4 (a) and (c) are met. Any failure to file a report or to submit a requisite copy

within ten (10) days after the end of a quarter shall subject PCC to a stipulated penalty of \$500 for each day until the report is filed or the requisite copy is submitted.

Stack Tests

12. EPA reserves the right to conduct stack tests at the facility or to require PCC to perform stack tests at the facility to determine whether the stack (or stacks) is in compliance with mass particulate matter emission standards contained in the Pennsylvania State Implementation Plan.

Inspections and Evaluations

13. (a) Upon completion of installation of the equipment and/or process changes required herein, PCC shall notify EPA, the City of Philadelphia, and counsel for BCC, and PCC shall allow representatives of EPA, the City of Philadelphia, and BCC to inspect and evaluate such equipment and/or process changes. Subject to the terms and conditions of PCC's contract with Hawley/Envirotech dated April 15, 1980 (attached as Exhibit A), if requested,

PCC shall provide EPA, the City of Philadelphia, and BCC copies of all system plans and specifications to assist such inspection and evaluation.

(b) PCC shall notify EPA, the City of Philadelphia, and BCC of its intention to perform performance tests in accordance with paragraph 4(c) no less than seven (7) days prior to such tests, and PCC shall allow representatives of EPA, the City of Philadelphia, and BCC to observe such tests at the time of performance. Upon conclusion of such tests, PCC shall allow EPA and the City of Philadelphia to inspect and evaluate all related sources and operations at the facility. Nothing herein shall be construed as limiting EPA's right to make inspections of any and all sources at the facility or of records related to the operation of any and all sources at the facility.

Noncompliance Penalties

14. PCC acknowledges that it has been notified that EPA reserves the right to assess penalties under Section 120 of the Clean Air Act, 42 U.S.C. §7420. PCC reserves the right to contest the assessment and attempted collection of noncompliance penalties under that section and shall not be deemed to have waived hereunder any factual or legal defense to such assessment.

Payment of Stipulated Penalties

15. Stipulated penalties provided for in this decree shall be paid by check payable to the Treasurer of the United States and deposited with the Clerk of this Court within thirty (30) days after EPA has made demand for payment of the penalty.

Complementary Decrees

16. The parties have agreed that their settlement shall be embodied in two complementary decrees: this decree and a decree in the Philadelphia County Court of Common Pleas in the action captioned City of Philadelphia v. Philadelphia Coke Co., Inc., Trial Division, November Term, 1979, No. 877. The settlement shall be effective in its entirety when both decrees are entered of record.

General Provisions

17. The provisions of this decree shall apply to the coke oven facility operated by PCC and shall bind PCC, each of its agents, servants, employees, successors and assigns, and all persons, firms and corporations acting under, through or for it, and all persons in active concert

or participation with it who have actual notice of such decree by personal service or otherwise; this decree shall not apply to other or different uses of the land now occupied by PCC.

18. Prior to the effective date of PCC's transfer of any legal or equitable interest in the facility, or in any part thereof, PCC shall serve a copy of this decree on the prospective successor or assignee in interest.

19. It is the intent of the parties hereto that the clauses hereof are severable. Should any clause hereof be declared by a court of law to be invalid and unenforceable, the remaining clauses shall remain in full force and effect as between the parties and any of their successors to and assigns of this decree.

20. It is agreed that any changes, additions, or amendments to this decree shall be set forth in writing as an amendment to this decree and signed by the parties hereto.

21. All the provisions of this decree shall expire 24 months from the date of entry of this decree except for paragraph 3, which shall remain in effect while the present coke oven provisions of the Pennsylvania State Implementation Plan are in effect.

22. The Court retains jurisdiction to enforce and administer this decree.

FOR BRIDESBURG CIVIC COUNCIL:

By Jerome Balter, Attorney

James S. Lanard, Attorney

FOR THE UNITED STATES OF AMERICA:

By James Moorman

Peter F. Vaira
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FOR THE CITY OF PHILADELPHIA:

By Frank M. Thomas, Jr.
Deputy City Solicitor

Kenneth S. Cooper
Assistant City Solicitor

FOR PHILADELPHIA COKE CO., INC.:

By Raymond K. Denworth, Jr.,
Attorney

After a thirty day public comment period, entered
this day of _____, 1980, by

DISTRICT JUDGE