Natural Resources Council of Maine

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May 1, 2019

E-Submitted to: *pubcomment-ees.enrd@usdoj.gov*
And in writing to: Assistant Attorney General, USDOJ-ENRD
P.O. Box 7611
Washington, DC 20044-7611

Re: Proposed Consent Decree: *United States v. Global Partners, LP, Global Companies LLC, and Chelsea Sandwich LLP*, Civil Action No. 19-cv-00122, United States District Court for the District of Maine

To the Assistant Attorney General:

The Natural Resources Council of Maine ("NRCM"), on behalf of itself and its supporters in Maine and elsewhere, respectfully submits these comments to the Proposed Consent Decree lodged by the United States Department of Justice ("DOJ") in *United States v. Global Partners LP, Global Companies LLC, and Chelsea Sandwich*, LLC, Civil Action 2:19-cv-00122-DBH, with the United States District Court for the District of Maine on March 25, 2019. NRCM is a nonprofit membership organization that has worked for sixty (60) years to protect, restore, and conserve Maine's environment. NRCM has more than 20,000 members and supporters in Maine and elsewhere.

INTRODUCTION

The Complaint in this action alleges that the Defendants Global Partners LP, Global Companies LLC, and Chelsea Sandwich, (collectively "Global") violated the Clean Air Act and the Maine State Implementation Plan by failing to obtain an emission license that addresses volatile organic compounds ("VOCs") from heated asphalt and No. 6 oil storage tanks, by exceeding total VOC emission limits under an existing state license, by failing to take appropriate VOC emission control measures, and by failing to apply for an operating permit under Title V of the Act, in connection with the Global's ownership and operation of a petroleum storage and distribution facility known as Global Portland, located at 1 Clark Road, South Portland, Cumberland County, Maine 04106 (the "Global Facility").

While NRCM welcomes EPA's enforcement action against Global, the Proposed Consent Decree does not do enough to sufficiently protect the public interest. NRCM's comments focus on three inadequacies of the Proposed Consent Decree:

1. There are no requirements for monitoring of hazardous air pollutants and public reporting of the results;
2. The community was not involved in the consent decree process and the creation of the Supplemental Environmental Project ("SEP"); and
3. The SEP providing for wood stove replacement was not developed with input from the South Portland community and has not shown that this mitigation strategy will result in significant, local environmental or public health benefits.

As more fully described in the following paragraphs, the Proposed Consent Decree should be amended to include monitoring and public reporting to assure that Global controls its operations in the future. The public reporting should be provided to the City of South Portland and made accessible to members of the public. The SEP should be modified so that it provides tangible environmental or public health benefits to South Portland and is closely related to the VOC emissions from Global's facilities.

COMMENTS

1. The Proposed Consent Decree Must Include Air Pollution Monitoring.

The Proposed Consent Decree is inadequate, in part, because it does not require monitoring, and public reporting of future emissions from the Global facilities. Without such monitoring and reporting, the public cannot have confidence that public health is being protected.

Global is located in close proximity to schools, day care facilities, senior citizen housing and residential properties. According to City records, there are more than 195 households living within 500 feet of the Global property. Tar-like smells permeate the neighborhood.[1] Neighbors have complained that they can't open their windows, they fear for their children's health, and believe there are increased cases of cancer in the neighborhood.[2]

Although the Proposed Consent Decree is an important step in protecting the health of local residents, the City of South Portland and its residents have a direct interest in knowing the types

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[1] "Something like hot tar or burning rubber, the smell shocked the sinuses, provoked coughs and lingered in the nostrils long after this reporter left the residential area off Broadway, on the banks of the Fore River." Kelley Bouchard, Portland Press Herald, April 7, 2019. https://www.pressherald.com/2019/04/07/epa-lawsuit-over-south-portland-oil-tanks-raises-neighborhood-fears/.

[2] Testimony before the South Portland City Council on April 9, 2019, as reported in *South Portland – Cape Elizabeth Sentry*, April 12, 2019 at p. 14. https://sentry.mainelymediallc.com/articles/epa-lawsuit-raises-fears/.

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and amounts of pollutants that Global emits in the future. There is precedent in other similar consent decrees for requiring monitoring and public reporting. For example, in February of this year, EPA announced a consent decree with a company that emitted contaminants that are similar to Global.[3] Under that consent decree, the polluting company will rent an infrared camera to use during four semi-annual sampling and monitoring events for two consecutive years during the life of the agreement. The summary of the decree notes that an infrared camera is a very effective and reliable tool for finding and confirming leaks. The polluting company is required to spend a minimum of $16,000 on the monitoring project and the results will be made available to the public.

The Proposed Consent Decree should include monitoring that is at least as rigorous as this, along with requirement that the results be made publicly available at the time they are collected. The monitoring program should be developed by the State of Maine Department of Environmental Protection, in consultation with the City of South Portland, and Global should be required to pay its fair share as a condition of any consent decree related to the current violations.

2. The City of South Portland and Members of the Community Should Have Been Involved Before the SEP Was Agreed Upon.

The City of South Portland has a direct interest in this action, yet it was completely unaware that EPA had commenced an enforcement proceeding against Global until city council members read local newspapers and learned about the Proposed Consent Decree. As far as we can ascertain, no residents in the surrounding residential areas had any knowledge of the pending action.

The failure to consult the local community is inconsistent with EPA's applicable procedures and practice. EPA's guidance on SEPs states that "EPA should encourage input on project proposals from the local community that may have been adversely impacted by the violations." [4] The EPA policy goes on to state that:

> Involving communities in consideration of SEPs enables the EPA and defendant to focus on the particular environmental priorities and concerns of a community . . . . The community also can be a valuable source of SEP ideas, including ideas that result in creative or innovative SEPs that might not otherwise have been considered.[5]

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[3] EPA, Drummond Company Clean Air Act Settlement Information Sheet, available at: https://www.epa.gov/al/drummond-company-clean-air-act-settlement-information-sheet.

[4] U.S. ENVTL. PROT. AGENCY, SUPPLEMENTAL ENVIRONMENTAL PROJECTS POLICY 2015 UPDATE 18 (Mar. 10, 2015). https://www.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf.

[5] *Id.* at 19.

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This guidance is critical in this situation because the City of South Portland has demonstrated a strong interest in protecting its residents from hydrocarbons that adversely affect public health. The City has taken numerous actions to protect public health, including requesting an EPA grant to install air monitoring equipment in the City (which the City did not receive) and passing an ordinance to prohibit the bulk loading of crude oil because of health and safety concerns. The ordinance, called the Clear Skies Ordinance (Ordinance #1-14/15) was passed in 2014 and prohibits the bulk loading of crude oil onto any marine tank vessel in the Shipyard Zoning District or Shoreland Overlay District. The findings to that ordinance clearly describe the City's interest in protecting its citizens from the harmful effects of air pollutants.

Here, the Proposed Consent Decree failed to follow EPA's policy of involving impacted communities and sets forth a SEP that has no relationship with the City of South Portland or the needs of the community.

3. The Supplemental Environmental Project for Wood Stove Replacement Has not been demonstrated to be a good fit for South Portland.

The SEP in the Proposed Consent Decree requires Global to spend $150,000 "to replace and/or retrofit inefficient, higher-polluting wood-burning appliances."[6] The SEP is intended to remove inefficient wood stoves that are "in regular use . . . and preferences shall be given to those appliances that are a primary or significant source of heat."[7] The recipients are supposed to be low income people.[8] While this measure can provide significant benefits to communities with wood heating practices, there is no evidence that it is a good fit for South Portland where low-income residents typically live in rentals without wood-burning appliances[9] and primarily heat with oil, gas, or propane. We are not aware of a significant population of low-income residents in South Portland who heat primarily with wood. In the absence of such residents, a wood stove replacement program could end up being used by those who use wood stoves as an amenity, which would neither significantly reduce pollution nor benefit low income people. The SEP must provide tangible environmental or public health benefits to South Portland and be closely related to mitigating the VOC emissions from Global's facilities.

With input from the City, the EPA could develop a revised SEP to help reduce emissions in South Portland. For example, the South Portland Housing Authority owns approximately 685 units of affordable housing. There are undoubtedly capital improvements, such as weatherization, heat pumps, or other more efficient heating systems, that might be made to those properties to reduce air pollution and benefit low income people. Alternatively, it might be appropriate to

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6 Proposed Consent Decree: *United States v. Global Partners,* at p. 8, para 13.

7 *Id.* at p. 10, para 14.b.

8 *Id.* at pp. 11-12, para 14.f.

9 In fact, most insurance carriers will not permit wood-burning stoves in rental units.

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spend SEP funds to implement a community-wide air monitoring program that could be supported in the future by additional payments from other oil storage companies with facilities in South Portland.

CONCLUSION

Before approving a consent decree in an action initiated by the EPA, the Court must first determine whether the decree is "fair, reasonable, adequate, and consistent with applicable law."[10] The parties are not entitled to rubber stamp approval of the decree. Instead, in deciding whether to approve a proposed consent decree, the Court must determine whether its terms are consistent with the purposes that the statute is intended to serve. A decree will not be approved if it is "contrary to the public good" or "inequitable."[11] The Proposed Consent Decree, in its current form, is not reasonable or adequate.

For the reasons stated above, the Proposed Consent Decree should be revised to promote the public good by requiring monitoring and public reporting of air pollutants, and the local community should be involved in developing a revised SEP that will provide tangible environmental or public health benefits to South Portland and be closely related to mitigating the VOC emissions from Global's facilities.

Thank you for your consideration of these comments.

Respectfully submitted,

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10 *Unites States v. BP Exploration & Oil Co.*, 167 F. Supp. 2d 1045, 1049 (N.D. Ind. 2001).

11 *Id.*

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