

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

PAPER, ALLIED-INDUSTRIAL,
CHEMICAL AND ENERGY WORKERS
INTERNATIONAL UNION (“PACE”)
and THE PONCA TRIBE (“TRIBE”),

Plaintiffs,

v.

CONTINENTAL CARBON COMPANY,

Defendant.

Case No. CIV-02-1677-R

AGREEMENT AND CONSENT DECREE

This Agreement and Consent Decree (“Decree”) is made and entered into by Paper, Allied-Industrial, Chemical and Energy Workers International Union (“PACE”) and PACE Local 5-587 (“Union Local”) both now a part of United Steelworkers (USW) (“Union”) and the Ponca Tribe (“Tribe”) (collectively, “Plaintiffs”), and Continental Carbon Company (“Continental Carbon” or the “Company”), the Defendant in this action. Plaintiffs and Continental Carbon are referred to herein as “the Parties.”

I. INTRODUCTION

WHEREAS, on November 26, 2002, Plaintiffs commenced this citizen suit alleging that Continental Carbon has violated the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.* (the “Act”), and seeking a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorney fees and expert witness fees, for Continental Carbon’s alleged violations of the Act;

WHEREAS, after the filing of this action PACE and Union Local have become a part of the

Union;

WHEREAS, Continental Carbon, a corporation organized under the laws of the State of Delaware, owns and operates a carbon black plant in Kay County, near Ponca City, Oklahoma, (“the Plant”) where carbon black, a component of tires and other rubber and plastic products, is stored, processed, packaged, and shipped;

WHEREAS, on May 6, 2002, Continental Carbon entered a Consent Order (the “Consent Order”) with the Oklahoma Department of Environmental Quality (“DEQ”) (Case No. 02-116) to resolve certain issues of alleged noncompliance with the Act, regulations adopted under the Act, the Oklahoma Pollutant Discharge Elimination Act or any other portion of the Oklahoma Environmental Quality Code relating to industrial wastewater, any rule adopted by DEQ pursuant to the Oklahoma Pollutant Discharge Elimination Act, or industrial wastewater permits issued by DEQ to Continental Carbon;

WHEREAS, on April 11, 2003, Continental Carbon and DEQ agreed to an Addendum to the Consent Order;

WHEREAS, on June 23, 2003, this Court entered an Order (“the June 23rd Order”) dismissing the Plaintiffs’ claims for the imposition of civil penalties against Continental Carbon pursuant to 33 U.S.C. § 1319(g)(6)(A)(ii), based upon the prior enforcement action taken against Continental Carbon by DEQ, which resulted in the entry of the Consent Order and the Addendum thereto;

WHEREAS, on August 7, 2003, the United States Court of Appeals for the Tenth Circuit (Cause No. 03-703) granted Continental Carbon's petition for interlocutory appeal of this Court's June 23rd Order;

WHEREAS, the United States Court of Appeals for the Tenth Circuit, by written opinion dated November 8, 2005, affirmed the District Court's decision;

WHEREAS, effective June 1, 2005, DEQ issued Continental Carbon a renewal Oklahoma Pollutant Discharge Elimination System permit, Permit No. W-69-015 (the "OPDES Permit"), which replaces the permit originally at issue in this action;

WHEREAS, Continental Carbon denies that it has violated the Act and that Plaintiffs are entitled to any relief of any kind under the Act;

WHEREAS, bona fide disputes exist between the Parties, including disputes on whether there have been any violations of any environmental statutes or regulations by Continental Carbon, whether any remedy should be imposed upon Continental Carbon, and the extent of such remedy, if any;

WHEREAS, Continental Carbon and Plaintiffs enter into this Decree without trial or adjudication of any of the factual or legal allegations or issues in this action; and

WHEREAS, pursuant to 33 U.S.C. § 1365(c)(3) of the Act, this Decree is being forwarded to the United States Attorney General and to the United States Environmental Protection Agency ("EPA") for the statutorily-mandated forty-five (45) day review period;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

II. JURISDICTION

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Section 505(a) of the Act, 33 U.S.C. § 1365(a).

2. Solely for purposes of this Decree, and for no other purpose, the Parties agree that the complaint states a claim upon which relief may be granted against Continental Carbon for injunctive and declaratory relief.

III. APPLICABILITY

3. The provisions of this Decree shall apply to and be binding upon the Parties and their successors and assigns, with respect to matters covered by this Decree.

IV. EFFECT OF DECREE

4. Upon approval and entry of this Decree by the District Court, this Decree shall constitute a complete and final judgment on the merits in this action between Plaintiffs and Continental Carbon in accordance with its terms, and shall not affect the claims involved in any separately pending action between The Ponca Tribe and Continental Carbon, or CCC USA, formerly CSRC USA. Furthermore, the defendants covenant not to raise the settlement of this action as a defense in Case # CIV-05-445-C in the Western District of Oklahoma.

5. Plaintiffs hereby release and covenant not to sue Continental Carbon, its directors, officers, employees, successors, agents, representatives, attorneys, insurers, and all persons, firms, or corporations in privity with them, for any liability, action, cause of action, or claim arising from any act or omission of Continental Carbon that occurred at the Plant on or before the Effective Date of this Decree for any violation of the Act, regulations adopted under the Act, the Oklahoma Pollutant Discharge Elimination Act or any other portion of the Oklahoma Environmental Quality

Code relating to industrial wastewater, any rule adopted by DEQ pursuant to the Oklahoma Pollutant Discharge Elimination Act, and the OPDES Permit issued by DEQ to Continental Carbon, including, but not limited to, any claim that was or could have been asserted in the Amended Complaint or in or based upon the Plaintiffs' sixty (60) day notice of intent to sue letter occurring on or before the Effective Date of this Decree.

Further, for a period of three (3) years from the Effective Date of this Decree, Plaintiffs hereby release and covenant not to sue Continental Carbon, its directors, officers, employees, successors, agents, representatives, attorneys, insurers, or any of them, and all persons, firms, or corporations in privity with them, for any future liability, action, cause of action or claim of violation at the Plant of the Act, regulations adopted under the Act, the Oklahoma Pollutant Discharge Elimination Act or any other portion of the Oklahoma Environmental Quality Code relating to the acts and omissions addressed herein, any rule adopted by DEQ pursuant to the Oklahoma Pollutant Discharge Elimination Act, and any OPDES Permit issued by DEQ to Continental Carbon, so long as Continental Carbon complies with provisions of this Decree.

6. This Decree is entered into for the purposes of settlement only. The fact that a Party has entered into this Decree shall not be offered, alleged, pled, or otherwise used in this or any other proceeding to allege, claim, assert or prove the truth of any fact or allegation appearing herein; provided, however, that entry into this Decree may be used to enforce the terms of this Decree by the Parties hereto.

7. As to others who are not parties to this Decree, nothing contained herein shall constitute an admission of any fact or allegation contained herein or in any document filed in this action, and entry into this Decree shall not constitute a waiver of any right, cause of action, or

defense otherwise available to the Parties. Except as specifically provided otherwise herein, the Parties expressly reserve any and all rights, causes of action, and defenses available to them. By entering into this Decree, the Parties do not intend, and shall not be deemed, to create or confer any third-party-beneficiary right of any kind in any person.

V. FUTURE COMPLIANCE

8. Groundwater Monitoring Plan.

a. Pursuant to the renewal OPDES Permit issued by DEQ, certain outstanding issues involving Continental Carbon's compliance with the Act were addressed. The OPDES Permit was issued following notice and a public meeting with comment. In Part II(F) of the OPDES Permit, DEQ ordered Continental Carbon to implement one of three options for meeting surface impoundment requirements. Continental Carbon has proposed to implement a "Groundwater Monitoring Plan" for surface impoundments T01, T03/T04, T05, and T06, per optional requirement (1)(c) of Part II(F) of the OPDES Permit. Continental Carbon has provided the draft Groundwater Monitoring Plan for the Plaintiffs' review, and the Plaintiffs' have reviewed it carefully with the assistance of counsel. The draft Groundwater Monitoring Plan has been submitted to DEQ for comment.

b. The Company will provide Plaintiffs information generated pursuant to the Groundwater Monitoring Plan or pursuant to any regulatory requirements of its OPDES Permit as and to the extent that information becomes available for reporting/responding to DEQ. The Plaintiffs have reviewed the draft Groundwater Monitoring Plan that has been submitted to DEQ. Plaintiffs agree to first address with the Company any concerns they may have with the implementation of the final approved plan or with results of implementing the Groundwater Monitoring Plan in an attempt to resolve such issues without the need for

raising such concerns with DEQ or any other regulatory agency.

VI. PENALTIES

9. Continental Carbon shall not be required to pay any civil penalty for any of the alleged violations encompassed by this Decree. This Court has previously dismissed Plaintiffs' civil penalty claims pursuant to 33 U.S.C. § 1319(g)(6)(A)(ii), and Plaintiffs acknowledge that significant litigation risks attend reinstatement of that remedy.

VII. COSTS AND ATTORNEY FEES

10. Within thirty (30) days of the Effective Date of this Decree, Continental Carbon shall pay to Plaintiffs' attorneys Sixty Thousand Dollars (\$60,000) to reimburse reasonable attorney fees and costs related to this action. Payment shall be made via a cashier's check to Lowerre & Frederick.

VIII. NOTICE OF DECREE

11. The Parties agree to cooperate in good faith to obtain the Court's review and entry of this Decree. Furthermore, pursuant to 33 U.S.C. § 1365(c)(3), this Decree is being lodged with the Court and presented to the United States Attorney General and the EPA ("the United States") for review and comment for a period of up to forty-five (45) days from receipt. Within ten (10) days after the United States' review period has ended and unless the United States objects to entry of this Decree, the Parties will by joint motion request that this Decree be signed and entered by the Court. If the United States does not approve all or any part of this Decree, the Parties agree to use their best efforts to attempt to amend this Decree appropriately so as to obtain approval from the United States. Within three (3) working days of the date of signature on this Decree by the last of the Party representatives (but not the Judge) signing it, the Parties will file a joint motion with the United

States Court of Appeals for the Tenth Circuit informing that court of the pendency of this Decree in the court below.

IX. GENERAL PROVISIONS

12. Survival and Termination. Unless otherwise specified, the requirements of Paragraphs (5), (6), (7), and (8) shall survive termination of this Decree. This Decree shall remain an enforceable order of the Court until: (1) all payments due under this Decree have been paid, and (2) either the Court determines in response to a motion by any Party that the obligations in this Decree have been fulfilled, or two (2) years from the Effective Date of this Decree if no such Court determination has been made.

13. Press Releases. The Company and the Union agree to release a joint press release on the Effective Date of this Decree. A copy of the press release is attached as Exhibit "A". The Company and the Union further agree that the joint press release, together with this Decree will be the only public statements made to the media or any other publication or news source regarding the settlement, this Decree, or both of them.

14. Signatories. The undersigned representative(s) for each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and Consent Decree and legally bind that Party.

15. Notifications. Whenever this Agreement and Consent Decree requires notice to, or service of documents on, any Party, the communication to Plaintiffs shall be directed to:

David Frederick
Lowerre & Frederick
44 East Avenue, Suite 100
Austin, TX 78701

Communications to Continental Carbon shall be directed to:

Mark D. Coldiron

Ryan, Whaley & Coldiron, P.C.
900 Robinson Renaissance
119 North Robinson
Oklahoma City, OK 73102

16. Modifications. The terms of this Decree shall not be changed, revised, or modified except by a written instrument signed by the Parties to this Decree or by further orders of the Court, and shall not take effect until approved by the Court.

17. Headings. Headings have been used in this Decree for the purpose of organization only. Headings are not part of this Decree.

18. Dismissal of Appeal. Within ten (10) days of the Effective Date of this Decree, the Parties will file a joint motion for dismissal of the appeal with the Tenth Circuit Court of Appeals.

19. Effective Date. The Effective Date of this Decree shall be the date on which it is entered by this Court.

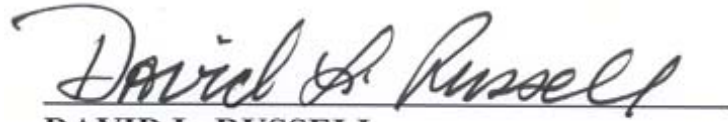
20. Counterparts. This Decree is signed in four (4) originals, one (1) to be provided to the Court, one (1) to be retained by the Company, one (1) to be retained by the Union and one (1) to be retained by the Tribe. This Decree may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute the one and the same Decree.

21. Non-Severability. If any provision of this Decree is not approved or is void, the entire Decree will be considered void.

The UNDERSIGNED PARTIES enter into this Decree and submit it to this Court for approval and entry.

IT IS SO ORDERED.

Dated: May 15, 2006.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

For PLAINTIFFS:

UNITED STEELWORKERS (USW), formerly known as PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION:

Dated: May 12, 2006

s/ Joe Drexler*
Joe Drexler
Director of Special Projects

** I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action*

Approved as to Form:

Dated: May 12, 2006

s/ David Frederick
David Frederick, Esq.
Attorney for Plaintiff UNITED STEELWORKERS (USW) formerly known as PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION

PONCA TRIBE:

Dated: May 12, 2006

s/ Dan Jones*
Dan Jones
Chairman Ponca Tribe

** I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action*

Approved as to Form:

Dated: May 12, 2006

s/ David Frederick
David Frederick, Esq.
Attorney for Plaintiff PONCA TRIBE

For DEFENDANT:

CONTINENTAL CARBON COMPANY:

Dated: May 12, 2006

s/ Kim K.T. Pan*

Kim K.T. Pan

President

** I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

Approved as to Form:

Dated: May 12, 2006

s/ Mark D. Coldiron

Mark D. Coldiron, Esq.

Attorney for Defendant CONTINENTAL
CARBON COMPANY