

November 17, 2017

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VIA ELECTRONIC MAIL

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Re: Limetree Bay Terminals, Inc. – Refinery Restart and Renewable Diesel Projects

Dear David and Alex:

Thank you for meeting with Limetree Bay Terminals, LLC (LBT) and the US Virgin Islands (USVI) last week to discuss the restart of certain idled refinery process units and the renewable diesel project at the St. Croix refinery in the USVI. Based on our discussions, I am providing additional background materials and reference information for your consideration and, as soon as you are able, would like to meet to discuss your feedback on our proposed approach.

As we discussed at the meeting, LBT purchased the refinery from HOVENSA out of bankruptcy in early 2016. Prior to the bankruptcy, HOVENSA had entered into a Consent Decree with the United States and the USVI under the National Petroleum Refining Initiative (NPRI). LBT, the Department of Justice (DOJ), and the U.S. Environmental Protection Agency (EPA), have been negotiating the assignment of the Consent Decree to LBT through a modification. The Consent Decree modification is near final, and the addition of several relatively simple paragraphs will help facilitate both projects.

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LBT has sent proposed Consent Decree modification language options to the LBT Consent Decree team—Myles Flint and Peter Kautsky at DOJ, Providence Spina and Patrick Foley at EPA headquarters, and Flaire Mills and Harish Patel at EPA, Region 2. As we discussed, the Consent Decree team has indicated that it will require further direction before it can move forward with LBT's proposals.

Specifically, LBT needs certainty that EPA's reactivation policy will not apply. The refinery is a single stationary source, which includes the terminal, the turbines, the wastewater treatment system, and other process units, some or all of which have been in continuous operation. The reactivation policy has always been interpreted in published EPA interpretations to apply to the resumption of operations at a major stationary source that has been permanently shut down, rather than to the resumption of operations of individual process units that have been temporarily idled at an existing major stationary source. We believe that interpreting the reactivation policy to apply to individual emissions units would be inconsistent with 40 C.F.R. § 52.21(b)(7), defining existing emissions units.

Another important permitting issue is the use of "project netting," i.e., the consideration of both projected increases and projected decreases in emissions from existing emissions units when determining if a project will cause a significant emissions increase. The refinery restart will involve only existing emissions units. In a March 30, 2010 letter to HOVENSA, EPA incorrectly suggested that "project netting" could not be used even though the GT NOx Reduction Project that HOVENSA was seeking to permit involved only existing emissions units. See attached. In light of the potential confusion caused by this incorrect assertion, it is important to confirm that, because all idled emissions units at LBT are existing emissions units for purposes of the baseline actual-to-projected-actual calculations in 40 C.F.R. § 52.21(a)(2)(iv)(c), project netting is allowed, consistent with EPA's interpretive statements in a 2006 Federal Register notice. 71 Fed. Reg. 54244 (Sept. 14, 2006).

Also, for a decrease in actual emissions resulting from the permanent shutdown of an emissions unit, we have asked EPA to confirm that the date on which the decrease "occurs" (as that term is used in 40 C.F.R. § 52.21(b)(3)(ii)) is the date when permits for idled units are surrendered, rather than when the units were idled. This reading is consistent with existing language in the Consent Decree.

The renewable diesel project is a separate project from the restart and will require the installation of a new hydrogen plant. It is important that the restart and the renewable diesel project not be treated as a single project simply due to the fact that they will occur within a relatively short time period. LBT can demonstrate that the projects are separate, i.e., that they are not technically or economically dependent on each other. The same is true for the other two

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projects mentioned in the Governor's August 8, 2017 letter to the President, asking that three projects—the single point mooring (SPM), terminal expansion, and refinery restart—be treated as high priority infrastructure projects under Executive Order 13766.

The SPM project will enhance the existing marine dock system by adding the capability to load/unload current generation deep draft crude oil tank vessels. The SPM is a modification to the existing docks emission unit and not a new unit. A new unit classification would have significant permitting implications and make the refinery restart project ineligible for in-project netting under the rules as currently written. The project is also subject to permitting by the Army Corps of Engineers, and potential issues with NOAA because of the presence of threatened corals in the region.

Another approach that we proposed in the Consent Decree modification was the use of credits from Consent Decree required reductions for clean fuels projects. The restart of the refinery is tied to meeting the new MARPOL low sulfur marine fuel standards that become effective on January 1, 2020, and the renewable diesel project would result in the production of renewable fuel under the Renewable Fuel Standard. In most Consent Decrees under the NPRI, the US/EPA has allowed refiners to use an agreed number of tons from Consent Decree required reductions for clean fuels projects. Therefore, we have included this as an option in our proposed Consent Decree modification. The Consent Decree could clarify that the credits can be used without regard to when the Consent Decree required emission reductions occurred.

The Consent Decree modification is the quickest vehicle to clarify and address these issues and there is precedent to expand the ability of a source to use netting reductions to facilitate the operation of a refinery under circumstances like these. For example, Sunoco was shutting down its refineries in Philadelphia and Marcus Hook, Pennsylvania. In a fourth amendment to the Consent Decree, Philadelphia Energy Solutions agreed to acquire the refineries and assume Sunoco's Consent Decree obligations. In the modification transferring the Consent Decree obligations to PES, the US/EPA agreed to allow PES to use thousands of tons of emissions reductions from the shutdown of the Marcus Hook refinery as credits and/or offsets at the Philadelphia refinery nearly 20 miles away. A copy of the fourth modification to the Consent Decree is attached.

An alternative mechanism that could be used is a Clean Air Act section 325(a) waiver. However, even if it was done through a direct final rule, this mechanism could take more than 8 months to secure, based on the last time it was done. Also, application of major new source review to the restart would both substantially delay the project, jeopardizing the window for the business opportunity, and change the economic viability of the project. Therefore, the Consent

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Decree modification approach offers the best opportunity to speed the approval of the projects and the economic recovery of the USVI.

During the meeting, I mentioned that the Consent Decree required emissions reductions, highlighted in the attached press release, will be achieved even with the refinery restart and renewable diesel project. This is because any units that are restarted will have to meet the Consent Decree required emissions reductions/control requirements, and many of the refinery process units will not be restarted. Therefore, in any announcement of a Consent Decree modification, the US/EPA would be able to report that the bargained-for emissions reductions will be achieved and that the emissions from the refinery after the restart and renewable diesel project will be even lower than contemplated by the Consent Decree. Therefore, we would not anticipate setting adverse precedent or raising NGO opposition.

As you know, the timing is critical to both the business opportunities and the economic recovery of the US Virgin Islands. A recent NPR story, attached, highlighted the fiscal situation in the US Virgin Islands, including the shuttering of the refinery and exacerbated by the severe damage caused by Hurricanes Maria and Irma.

We are hoping to have these issues resolved in the next several weeks. Please let us know what additional information we can provide to facilitate your review and when you would be available to discuss next steps. Thank you for your time and consideration of this request.

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Sincerely,

A handwritten signature in black ink, appearing to read "LeAnn Johnson Koch". The signature is stylized and somewhat cursive.

LeAnn Johnson Koch

LMJ:lm
Enclosure

cc: Mandy Gunasekara (via electronic mail w/attachments)
Patrick Traylor, Esquire (via electronic mail w/attachments)
John Fehrenbach, Esquire (via electronic mail w/attachments)
Robert Haugen (via electronic mail w/attachments)
Chris Colman, Esquire (via electronic mail w/attachments)
Karl Karg, Esquire (via electronic mail w/attachments)

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