UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
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September 24, 2021

***Via* Electronic Mail**
All Potential Buyers of Limetree Bay Refinery
c/o Elizabeth A. Green
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Re: Environmental information about the Limetree Bay Refinery; *In re Limetree Bay Services, LLC, et al.*, Case No. 21-32351, pending in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

The United States Environmental Protection Agency ("EPA") provides this letter to potential buyers of the Limetree Bay Refinery in an attempt to provide a common base of information for all potential bidders and minimize the risk of misunderstanding or surprise. This letter is merely informational, and buyers should not interpret it as designed to either encourage or discourage a sale or any particular use of the facility. This letter is not intended to be nor should be read as an exhaustive list of environmental compliance, permitting, or liability issues related to the debtors or the refinery.

Limetree Bay Terminals, LLC, and Limetree Bay Refining, LLC (jointly, "Limetree Bay") are also subject to requirements contained in environmental permits issued by EPA and the Virgin Islands Department of Planning and Natural Resources ("VIDPNR"), including Prevention of Significant Deterioration permits issued by the EPA and a Clean Air Act Title V operating permit issued by VIDPNR. Any potential purchaser of the facility will have to perform its own environmental due diligence, and any entity that becomes an owner/operator of the refinery will have to employ environmental compliance staff who maintain familiarity with all applicable environmental requirements and ensure that the refinery is operated in compliance with applicable law.

I. Audit Reports

The EPA issued an emergency order on May 14, 2021, requiring the refinery to cease operations for sixty days. This order also required the debtors to retain independent third-party auditors to conduct an environmental compliance audit and process area audits.

The debtors have obtained (a) an environmental compliance audit report, and (b) process area audits of (1) the flare system, (2) the amine unit and sulfur recovery unit system, and (3) the delayed coker system. The EPA sent a letter to the debtors on July 28, 2021, concerning the environmental compliance audit report, and therein referenced a letter the EPA had sent to the debtors on June 9, 2021.

These audits and letters detail compliance issues under environmental law of which potential buyers should be aware. The EPA recommends that any buyer review these documents.

II. 2021 Complaint and Joint Stipulation

On July 12, 2021, the United States filed suit against Limetree Bay in the United States District Court for the Virgin Islands, for injunctive relief for compliance with environmental law. Case No. 1:21-cv-264. On the same day, the United States filed with the court a joint stipulation with Limetree Bay.

The joint stipulation requires Limetree Bay, among other things, to:

(a) Submit a plan for purging hydrocarbons from the refinery to bring the refinery to an indefinite state of shutdown, including operation of ambient air monitors during the purging process;[1]

(b) Conduct the purging process in accordance with the EPA-approved Hydrocarbon Purge Plan, subject to any modification necessary, and not begin purging without the EPA's approval;

(c) Except as otherwise provided in the stipulation, at least ninety days before restarting the refinery or any refinery process unit:

(1) Notify both the presiding court and the United States,
(2) Submit the Corrective Action Plan required by the May 14 order to the EPA. The plan must specify which measures must be completed before restarting the refinery or a refinery process unit, and
(3) Submit an ambient air monitoring plan to the EPA that includes operation of hydrogen sulfide (H_2S) and sulfur dioxide (SO_2) monitors at nine EPA-identified monitoring sites;

(d) Except as otherwise provided in the stipulation, at least thirty days before restarting the refinery or any refinery process unit, install and operate the nine ambient air monitoring sites plus a meteorological tower; and

(e) Before restarting the refinery or any refinery process unit, complete all measures necessary to eliminate any imminent and substantial endangerment to public health or welfare or the environment.

III. 2011 Consent Decree

On January 26, 2011, the United States and the United States Virgin Islands filed suit against HOVENSA in the United States District Court for the Virgin Islands seeking injunctive relief and civil penalties for alleged violations of the Clean Air Act, 42 U.S.C. §§ 7401-7671, and the Virgin Islands Air Pollution Control Act. In conjunction with the filing of the complaint, the United States lodged a consent decree resolving the claims alleged in the complaint. The court entered the consent decree on June 7, 2011. The claims addressed in the 2011 consent decree included alleged violations of the Clean Air Act and its

[1] Limetree has submitted to EPA, and EPA has approved, Phases 1 and 2 of the Hydrocarbon Purge Plan. Information about Phases 1 and 2 can be found on the EPA website at https://www.epa.gov/vi/limetree-bay-terminals-and-limetree-bay-refining-llc. Limetree has indicated that it expects to provide at least one additional plan (Phase 3) to EPA for hydrocarbon purging, and that additional phases after Phase 3 may be necessary to fully complete the purging process.

implementing regulations, including prevention of significant deterioration provisions, the New Source Performance Standards ("NSPS"), leak detection and repair ("LDAR") provisions for equipment leaks, and National Emission Standards for Hazardous Air Pollutants for benzene waste operations provisions. The 2011 consent decree required HOVENSA to: reduce nitrogen oxide ("NO_x") emissions and control SO_2, particulate matter ("PM"), and carbon monoxide ("CO") emissions from the refinery's fluid catalytic cracking unit; significantly reduce NO_x emissions from the refinery's heaters, boilers, generating turbines, and compressor engines through the installation of pollution control equipment; reduce SO_2 emissions by burning lower sulfur fuel oil and complying with H_2S limits for fuel gas combustion requirements for heaters, boilers, flares, and sulfur recovery plants; comply with regulatory requirements for acid gas and hydrocarbon flaring, and implement a program to investigate and correct the causes of flaring incidents and take preventive action; create a preventive maintenance and operation plan for minimizing SO_2 emissions from the sulfur recovery plant; reduce emissions of volatile organic compounds ("VOCs") through stricter LDAR requirements for equipment leaks and by replacing valves that are leaking above a specified level with low emissions valves or low emissions valve packing; and reduce emissions of benzene by improving management of benzene waste streams. The 2011 consent decree also required HOVENSA to pay $5,375,000 in civil penalties and deposit $4,875,000 into an escrow account to be used to implement Territorial Supplemental Environmental Projects.

IV. Modification of 2011 Consent Decree

On August 25, 2020, the United States lodged the proposed First Modification of the Consent Decree with the court. The first modification was subject to a thirty day public comment period. After reviewing and responding to public comments, the United States filed a motion to enter the First Modification of the Consent Decree on April 26, 2021. The motion to enter is still pending before the court. A second, non-material modification of the consent decree that does not require court approval was also submitted to the court on April 26, 2021.

The First Modification adds Limetree Bay and the Environmental Response Trust ("ERT") as parties to the consent decree and transfers uncompleted or ongoing decree responsibilities to Limetree Bay and the ERT, such that Limetree Bay and the ERT effectively step into the shoes of HOVENSA, and HOVENSA is released from its decree obligations and liabilities as of the date of entry of the First Modification. The First Modification also modifies the following deadlines and injunctive relief obligations to reflect the changed operational realities of the refinery: (1) briefly extends the deadline for Limetree Bay to install Qualifying Controls and apply for emission limits from the appropriate permitting authority sufficient to achieve 3,663 tons per year of NO_x emission reductions; (2) modifies the language to reflect the current configuration of the East Side sulfur recovery plant ("SRP") and extends the deadline for installing control technology to control the sulfur emissions from the East Side SRP and comply with NSPS Subparts A and Ja; (3) modifies the requirement to install and operate flare gas recovery systems ("FGRS") on certain flares in order to comply with NSPS Subpart Ja and potentially requires Limetree Bay to perform mitigation projects if emissions exceed a specified level. Specifically, because the operational profile of the refinery is now significantly different as compared to when the consent decree was entered into in 2011, the First Modification conditions the installation of FGRS on the refinery's flaring emission levels after restart (as defined in the First Modification); providing that FGRS is not required if flaring emissions remain below specified gas flow rates, but requiring Limetree Bay to install and operate FGRS if the specified gas flow rates are exceeded[2], thereby ensuring the expected emission

[2] On April 13, 2021, Limetree Bay submitted a letter to EPA acknowledging that it had exceeded the specified gas flow rates, requiring Limetree Bay to install and operate FGRS on the FCCU Low Pressure Flare (Flare 8) by March 14, 2023.

reduction benefits that were required by the 2011 consent decree are obtained while taking into account the modified operating profile of the refinery; (4) modifies Section V.P (Benzene Waste NESHAP Program) to reflect that HOVENSA selected the 6 BQ compliance option set forth in 40 C.F.R. § 61.342(e), and that Limetree Bay has agreed to redo the one-time review and verification of the refinery's total annual benzene ("TAB") report following restart; (5) modifies Section V.R (LDAR Program) to make the terms consistent with the more recent LDAR regulations, including lower leak definitions, to ensure that a minimum of three audits will be conducted before the decree is terminated, and to update the Valve Preventative Leak Maintenance Program; (6) modifies Section VIII.B (NSPS Applicability: Boilers and Generating Turbines) to extend the deadline for demonstrating compliance with NSPS Subparts A and GG at GT-4, GT-7, and GT-8, and to reflect that Limetree Bay has installed combustion liner systems on GT-7 and GT-8 to reduce NO_x emissions, and to operate at lower maximum load limits on GT-4, GT-7, and GT-8 until Limetree Bay demonstrates compliance with NSPS Subparts A and GG; (7) modifies Section IX.A (Territorial Supplemental Environmental Project) to reflect the transfer of HOVENSA's obligation to disburse monies for the Territorial Supplemental Environmental Project to the ERT; and (8) modifies Section IX.B (Additional Work) to reflect that HOVENSA's remaining obligations for the VIWAPA Emissions Monitoring Assistance Program were transferred to the ERT [First Modification ¶ 140A].

The consent decree conditions any transfer on the transferee executing a modification of the consent decree which makes the terms and conditions applicable to the transferee.

V. Prevention of Significant Deterioration Permit

A prospective purchaser may also be required to obtain a Prevention of Significant Deterioration ("PSD") permit under the Clean Air Act to restart the refinery. 42 U.S.C. § 7475; 40 C.F.R. § 52.21.

A PSD permit is required to construct any new "major stationary source" of air pollutants, as defined by 40 C.F.R. § 52.21(b)(1), or to make a "major modification" to any existing major stationary source, as defined by 40 C.F.R. § 52.21(b)(2). *See* 40 C.F.R. § 52.21(a)(2)(iii). EPA has required PSD permits for restarting long-dormant facilities that qualify as major stationary sources because this action can qualify as either the construction of a new source or a major modification of an existing one. PSD permits must include emission limits that constitute the Best Available Control Technology ("BACT") to minimize the emission of regulated pollutants. 42 U.S.C. §§ 7475(a)(4) and 7479(3); 40 C.F.R. § 52.21(b)(12), (j)(2)-(3).

PSD permitting is factually-driven. If the refinery is required to obtain a PSD permit, the permit will require BACT to be installed and operational prior to restart of the refinery.

VI. Additional Clean Air Act Requirements

As described in its complaint referenced in Section II, above, EPA has concerns about incidents of excess release of H_2S and SO_2. The refinery must adhere to the H_2S input gas concentration limit specified in 40 C.F.R. § 60.103a(h) and the refinery's Title V operating permit of (a) 162 parts per million volume, determined hourly on a 3-hour rolling average basis, for Flare #8 and the East Mix Drum Fuel Gas System, and (b) 75 parts per million volume at the Coker Mix Drum Fuel Gas System. During incidents where emissions exceed the 500-lb. SO_2 threshold in a twenty-four hour period, the refinery is also subject to requirements in 40 C.F.R. Part 60, Subpart Ja. Subpart Ja requires a regulated entity to conduct a root cause and corrective action analysis whenever SO_2 emissions from a flare exceed the 500-lb/day threshold.

The Environmental Compliance Audit Report and the Flare Systems Audit Report also identified a number of compliance issues related to Clean Air Act Risk Management Program (RMP) requirements, such as requirements relating to Process Safety Information, Process Hazard Analysis, Operating Procedures, and Training. Potential issues in these RMP elements are intended to be captured during Prestartup Review, prior to introducing a regulated RMP substance to a process. The recent release events at the refinery indicate potential failure of one or more RMP elements. A new owner or operator would be responsible for ensuring that all RMP requirements are implemented and that the interconnections between the program elements have been characterized to ensure compliance. Attention to Process Safety Information and Mechanical Integrity program elements, especially as they pertain to the safe design and maintenance of process areas in accordance with recognized and generally accepted good engineering practices, will be important for any future owner/operator of the refinery as they evaluate conformance with Prestartup Review and other program elements.

Prospective purchasers should evaluate the need for modifications to the facility's Title V operating permit under the Clean Air Act.

Finally, the EPA's Petroleum Refinery Sector Rule, NESHAP Subpart CC, requires, among other things, that oil refineries conduct fence line monitoring for benzene and that the annual average benzene emissions stay below 9 $\mu g/m^3$. Any purchaser will need to ensure compliance with this requirement.

VII. Resource Conservation and Recovery Act

The Environmental Response Trust is addressing legacy contamination at the facility, in part with funding from Limetree Bay Terminals. The trust is remediating contamination from HOVENSA's operations pursuant to a federal permit issued by EPA under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, *et seq.*, under the oversight of EPA. While the legacy contamination includes impacted groundwater subject to remediation under the permit, new contamination tied to refinery and/or terminal operations is not covered by the RCRA permit. According to the ERT, new (non-legacy) contamination has been detected in the groundwater. The ERT and Limetree Bay are working to gather and analyze data to determine whether the refinery, terminal, or both caused the release(s) resulting in the new contamination. Any future refinery owner will be obligated under RCRA to remediate contamination on or migrating from the property it acquires. A future owner subject to such obligations may seek contribution and/or cost recovery from any liable third party to the extent allowed by law, and may propose to reach an understanding, or enter into an agreement, with the federal and/or local government concerning such obligations.

VIII. Clean Water Act

On August 13, 2021, the EPA sent a letter to Limetree Bay notifying them of potential violations of Sections 301(a), 308, and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1318(a) and 1342, and providing them with a copy of EPA's inspection report. A purchaser of the refinery will need to comply with the Clean Water Act, including by correcting any violations that are ongoing at the time of the transfer.

IX. Additional Matters

As previously stated, any prospective purchaser should carry out its own due diligence concerning potential environmental liabilities and obligations. EPA has not performed a comprehensive environmental compliance review of the refinery facility, and EPA does not represent that the information contained in this letter identifies all environmental violations that a new owner would have to address, nor all environmental obligations for which a new owner would be responsible.

Sincerely,

DORE LAPOSTA

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