

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION**

UNITED STATES OF AMERICA, and
STATE OF UTAH,

Plaintiffs,

v.

BIG WEST OIL, LLC

Defendant.

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Civil Action No. 1:13-CV-00121 BCW

Magistrate Judge Brooke C. Wells

CONSENT DECREE

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WHEREAS, plaintiff, the United States of America (“Plaintiff” or “the United States”), by the authority of the Attorney General of the United States, through its undersigned counsel and at the request and on behalf of the United States Environmental Protection Agency (“EPA”), and co-plaintiff State of Utah (“Utah”) at the request and on behalf of the Department of Environmental Quality, Division of Air Quality (“UDEQ”), have simultaneously filed a Complaint and lodged this Consent Decree against Big West Oil, LLC (“Big West Oil”), for alleged environmental violations at its petroleum refinery in North Salt Lake, Davis County, Utah (“BWO Refinery”) and civil penalties;

WHEREAS, the United States alleges that Big West Oil has violated and/or continues to violate the following statutory and regulatory provisions:

1) Prevention of Significant Deterioration (“PSD”) requirements found at Part C of Subchapter I of the Clean Air Act (the “Act”), 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the “PSD Rules”); and “Plan Requirements for Non-Attainment Areas” at Part D of Subchapter I of the Act, 42 U.S.C. §§ 7502-7503, and the regulations promulgated thereunder at 40 C.F.R. § 51.165(a) and (b) and at Title 40, Part 51, Appendix S, and at 40 C.F.R. § 52.24 (“PSD/NSR Regulations”), for heaters and boilers and fluid catalytic cracking unit catalyst regenerators for nitrogen oxide (“NO_x”), sulfur dioxide (“SO₂”), carbon monoxide (“CO”) and particulate matter (“PM”);

2) New Source Performance Standards (“NSPS”) found at 40 C.F.R. Part 60, Subparts A and J, under Section 111 of the Act, 42 U.S.C. § 7411 (“Refinery NSPS Regulations”), for sulfur recovery plants, fuel gas combustion devices, and fluid catalytic cracking unit catalyst regenerators;

3) Leak Detection and Repair (“LDAR”) requirements promulgated pursuant to Sections 111 and 112 of the Act, and found at 40 C.F.R. Part 60 Subparts VV and GGG; 40 C.F.R. Part 61, Subparts J and V; and 40 C.F.R. Part 63, Subparts F, H, and CC (“LDAR Regulations”); and

4) National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Benzene Waste Operations promulgated pursuant to Section 112(e) of the Act, and found at 40 C.F.R. Part 61, Subpart FF (“Benzene Waste NESHAP Regulations”).

WHEREAS, Big West Oil denies that it has violated and/or continues to violate the foregoing statutory and regulatory rules and maintains that it has been and remains in compliance with all applicable statutes and regulations and is not liable for civil penalties and injunctive relief as alleged in the Complaint;

WHEREAS, Utah has sought to join in this matter alleging violations of its respective applicable SIP provisions and other state rules incorporating and implementing the foregoing federal requirements;

WHEREAS, Big West Oil consents to the simultaneous filing of the Complaint, despite its denial of the United States’ allegations, and lodging of this Consent Decree against Big West Oil to accomplish its objective of resolving the allegations and cooperatively reconciling the goals of the United States, Big West Oil and the State of Utah under the Clean Air Act and the Utah Air Conservation Rules, and therefore agrees to undertake the installation of air pollution control equipment and enhancements to its air pollution management practices at the BWO Refinery to reduce air emissions by participating in a federal strategy for reaching cooperative agreements to achieve across-the-board reductions in emissions (“Global Settlement Strategy”);

WHEREAS, with respect to the provisions of Part V.J (Compliance for Flaring), EPA maintains that “[i]t is the intent of the proposed standard [40 C.F.R. § 60.104] that hydrogen-sulfide-rich gases exiting the amine regenerator [or sour water stripper gases] be directed to an appropriate recovery facility, such as a Claus sulfur plant,” see Information for Proposed New Source Performance Standards: Asphalt Concrete Plants, Petroleum Refineries, Storage Vessels, Secondary Lead Smelters and Refineries, Brass or Bronze Ingot Production Plants, Iron and Steel Plants, Sewage Treatment Plants, Vol. 1, Main Text at 28;

WHEREAS, EPA further maintains that the failure to direct hydrogen-sulfide-rich gases to an appropriate recovery facility -- and instead to flare such gases under circumstances that are not sudden or infrequent or that are reasonably preventable -- circumvents the purposes and intentions of the standards at 40 C.F.R. Part 60, Subpart J;

WHEREAS, EPA recognizes that “Malfunctions,” as defined in Paragraph 10 (Definitions) of this Consent Decree and 40 C.F.R. § 60.2, of the “Sulfur Recovery Plant” or of “Upstream Process Units” may result in flaring of “Acid Gas” or “Sour Water Stripper Gas” on occasion, as those terms are defined herein, and that such flaring does not violate 40 C.F.R. § 60.11(d) if the owner or operator, to the extent practicable, maintains and operates such units in a manner consistent with good air pollution control practice for minimizing emissions during these periods;

WHEREAS, by entering into this Consent Decree Big West Oil is committed to resolving concerns related to meeting environmental requirements associated with its operation of the BWO Refinery;

WHEREAS, on December 22, 2008, Big West Oil filed a petition for reorganization under Chapter 11 in the United States Bankruptcy Court for the District of Delaware, the United States thereafter filed a timely proof of claim in that matter, and Big West Oil's plan of reorganization was confirmed by the court on July 7, 2010, and the United States has dismissed its claim;

WHEREAS, the United States anticipates that the affirmative relief and environmental projects identified in Parts V and VIII of this Consent Decree will reduce emissions of nitrogen oxide by approximately 32 tons annually, will reduce emissions of sulfur dioxide by approximately 158 tons annually, will reduce emissions of particulate matter by approximately 36 tons annually, and will also result in reductions of volatile organic compounds;

WHEREAS, discussions between the Parties have resulted in the settlement embodied in the Consent Decree;

WHEREAS, Big West Oil has waived any applicable federal or state requirements of statutory notice of the alleged violations with respect to claims resolved by this Consent Decree;

WHEREAS, notwithstanding the foregoing reservations, the Parties agree that: (a) settlement of the matters set forth in the Complaint (filed herewith) is in the best interests of the Parties and the public; and (b) entry of the Consent Decree without litigation is the most appropriate means of resolving this matter; and

WHEREAS, the Parties recognize, and the Court by entering the Consent Decree finds, that the Consent Decree has been negotiated at arm's length and in good faith and that the Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, with respect to the matters set forth in the Complaint and in

Part XVI of the Consent Decree (Effect of Settlement) and before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the Parties to the Consent Decree, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367. In addition, this Court has jurisdiction over the subject matter of this action pursuant to Sections 113(b), 167 and 304 of the CAA, 42 U.S.C. §§ 7413(b), 7477 and 7604. The United States' Complaint states a claim upon which relief may be granted for injunctive relief and civil penalties against Big West Oil under the Clean Air Act. Authority to bring this suit is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519, Section 305 of the CAA, 42 U.S.C. § 7605.

2. Venue is proper in the United States District Court for the District of Utah pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a). Big West Oil consents to the personal jurisdiction of this Court, and waives any objections to venue in this District.

3. Notice of the commencement of this action has been given to Utah in accordance with Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1), and as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

II. APPLICABILITY AND BINDING EFFECT

4. The provisions of the Consent Decree shall apply to the BWO Refinery and be binding upon the United States, Utah, and Big West Oil , its agents, successors and assigns.

5. Big West Oil agrees not to contest the validity of the Consent Decree in any

subsequent proceeding to implement or enforce its terms.

6. Effective from the Date of Entry of the Consent Decree until its termination, Big West Oil agrees that its BWO Refinery is covered by this Consent Decree. Effective from the Date of Lodging of the Consent Decree, Big West Oil shall give written notice of the Consent Decree to any successors in interest prior to the transfer of ownership or operation of any portion of the BWO Refinery and shall provide a copy of the Consent Decree to any successor in interest. Big West Oil shall notify the United States and Utah in accordance with the notice provisions set forth in Paragraph 241 (Notice) of any successor in interest thirty (30) days, or sooner, if possible, prior to any such transfer.

7. Big West Oil shall condition any transfer, in whole or in part, of ownership of, operation of, or other ownership interest (exclusive of any security interest as defined by the Uniform Commercial Code, non-controlling non-operational shareholder interest, or access or utility easement) in the BWO Refinery upon the execution by the transferee of a modification to the Consent Decree which makes the terms and conditions of the Consent Decree, except for Parts VIII (Supplemental Environmental Project) and X (Civil Penalty), applicable to the transferee. In the event of such transfer, Big West Oil shall notify and certify to the parties listed in Paragraph 241 (Notice) that the transferee has the financial and technical ability to assume the obligations and liabilities under this Consent Decree. By no later than sixty (60) days after the transferee executes a document agreeing to substitute itself for Big West Oil for all provisions in this Consent Decree except for Parts VIII (Supplemental Environmental Project) and X (Civil Penalty), the Parties may jointly file a motion requesting the Court to substitute the transferee as Defendant and releasing Big West Oil from the obligations and liabilities of this Consent Decree,

except for Parts VIII (Supplemental Environmental Project) and X (Civil Penalty). If the United States and Utah do not agree to file a joint motion with Big West Oil within sixty (60) days, then Big West Oil and the transferee may file a motion without the agreement of the United States and Utah. The United States and/or Utah thereafter may file an opposition to the motion, and the Court will then determine whether the transferee has the financial and technical ability to assume the obligations and liabilities under this Consent Decree. Big West Oil shall not be released from the obligations and liabilities of this Consent Decree unless and until the Court grants the joint motion.

8. Big West Oil shall provide a copy of the applicable provisions of this Consent Decree to each consulting or contracting firm that is retained to perform work required under this Consent Decree upon execution of any contract relating to such work. No later than thirty (30) days after the Date of Entry, Big West Oil also shall provide a copy of the applicable provisions of this Consent Decree to each consulting or contracting firm that Big West Oil already has retained to perform the work required under this Consent Decree. Copies of the Consent Decree do not need to be supplied to firms who are retained to supply materials or equipment to satisfy requirements under this Consent Decree.

III. OBJECTIVES

9. It is the purpose of the Parties to this Consent Decree to further the objectives of the federal Clean Air Act and the Utah Air Conservation Rules.

IV. DEFINITIONS

10. Unless otherwise defined herein, terms used in the Consent Decree shall have the meaning given to those terms in the Clean Air Act, and the implementing regulations

promulgated thereunder. The following terms used in the Consent Decree shall be defined for purposes of the Consent Decree and the reports and documents submitted pursuant thereto as follows:

A. “Acid Gas” shall mean any gas that contains hydrogen sulfide and is generated at a refinery by the regeneration of an amine solution.

B. “Acid Gas Flaring” or “AG Flaring” shall mean the combustion of an Acid Gas and/or Sour Water Stripper Gas in an AG Flaring Device.

C. “Acid Gas Flaring Device” or “AG Flaring Device” shall mean any device at the BWO Refinery that is used for the purpose of combusting Acid Gas and/or Sour Water Stripper Gas, except facilities in which gases are combusted to produce sulfur or sulfuric acid. The AG Flaring Devices currently in service at BWO Refinery are the North and South flares. To the extent that, during the duration of the Consent Decree, the BWO Refinery utilizes AG Flaring Devices other than those identified above for the purpose of combusting Acid Gas and/or Sour Water Stripper Gas, those AG Flaring Devices shall also be covered under this Consent Decree.

D. “Acid Gas Flaring Incident” or “AG Flaring Incident” shall mean the continuous or intermittent combustion of Acid Gas and/or Sour Water Stripper Gas that results in the emission of sulfur dioxide equal to, or in excess of, five-hundred (500) pounds in any twenty-four (24) hour period; provided, however, that if five-hundred (500) pounds or more of sulfur dioxide have been emitted in a twenty-four (24) hour period and AG Flaring continues into subsequent, contiguous, non-overlapping twenty-four (24) hour period(s), each period of which results in emissions equal to, or in excess

of five-hundred (500) pounds of sulfur dioxide, then only one AG Flaring Incident shall have occurred. Subsequent, contiguous, non-overlapping periods are measured from the initial commencement of AG Flaring within the AG Flaring Incident.

E. “Big West Oil” shall mean Big West Oil, LLC, its agents, successors and assigns.

F. “Calendar quarter” shall mean the three month period ending on March 31st, June 30th, September 30th, and December 31st.

G. “CEMS” shall mean continuous emissions monitoring system.

H. “Certified Low-Leaking Valves” shall mean valves for which a manufacturer has issued: (i) a written guarantee that the valve will not leak above 100 parts per million (ppm) for five (5) years; (ii) a written guarantee, certification or equivalent documentation that the valve has been tested pursuant to generally-accepted good engineering practices and has been found to be leaking at no greater than 100 ppm; or (iii) a written guarantee, certification or equivalent documentation that the valve has been designed not to leak above 100 ppm.

I. “Certified Low-Leaking Valve Packing Technology” shall mean valve packing technology for which a manufacturer has issued: (i) a written guarantee that the valve packing technology will not leak above 100 ppm for five (5) years; (ii) a written guarantee, certification or equivalent documentation that the valve packing technology has been tested pursuant to generally-accepted good engineering practices and has been found to be leaking at no greater than 100 ppm; or (iii) a written guarantee, certification or equivalent documentation that the valve packing technology has been designed not to

leak above 100 ppm.

J. “CO” shall mean carbon monoxide.

K. “Consent Decree” or “Decree” shall mean this Consent Decree, including any and all appendices attached to the Consent Decree.

L. “Covered Heaters and Boilers” shall mean the heaters and boilers that are listed in Paragraph 44.

M. “Co- Plaintiff” shall mean the State of Utah.

N. “Date of Entry” shall mean the date the Consent Decree is entered by the United States District Court for the District of Utah.

O. “Date of Lodging” shall mean the date the Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Utah.

P. “Day” or “Days” as used herein shall mean a calendar day or days, unless otherwise specified.

Q. “FCCU” as used herein shall mean a fluidized catalytic cracking unit and its regenerator and associated CO boiler(s) where present.

R. “Flaring Device” shall mean an AG and/or an HC Flaring Device.

S. “BWO Refinery” or the “Refinery” shall mean the refinery owned and operated by Big West Oil, LLC located in North Salt Lake, Davis County, Utah.

T. “Fuel Oil” shall mean any liquid fossil fuel with sulfur content of greater than 0.05% by weight.

U. “Hydrocarbon Flaring” or “HC Flaring” shall mean the combustion of

refinery-generated gases, except for Acid Gas and/or Sour Water Stripper Gas and/or Tail Gas, in a Hydrocarbon Flaring Device.

V. “Hydrocarbon Flaring Device” or “HC Flaring Device” shall mean a flare device used to safely control (through combustion) any excess volume of a refinery-generated gas other than Acid Gas and/or Sour Water Stripper Gas and/or Tail Gas. The HC Flaring Devices currently in service at the BWO Refinery are identified as the North and South flares. To the extent that, during the duration of the Consent Decree, the BWO Refinery utilizes HC Flaring Devices other than those specified above for the purpose of combusting any excess of a refinery-generated gas other than Acid Gas and/or Sour Water Stripper Gas, those HC Flaring Devices shall also be covered under this Consent Decree.

W. “Hydrocarbon Flaring Incident” or “HC Flaring Incident” shall mean the continuous or intermittent combustion of refinery-generated gases, except for Acid Gas or Sour Water Stripper Gas or Tail Gas, at a Hydrocarbon Flaring Device that results in the emission of sulfur dioxide equal to, or greater than five hundred (500) pounds in a 24-hour period; provided, however, that if five-hundred (500) pounds or more of sulfur dioxide have been emitted in a twenty-four (24) hour period and HC Flaring continues into subsequent, contiguous, non-overlapping twenty-four (24) hour period(s), each period of which results in emissions equal to, or in excess of five-hundred (500) pounds of sulfur dioxide, then only one HC Flaring Incident shall have occurred. Subsequent, contiguous, non-overlapping periods are measured from the initial commencement of HC Flaring within the HC Flaring Incident.

X. “Malfunction” shall mean, as specified in 40 C.F.R. Part 60.2, “any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.”

Y. “Natural Gas Curtailment” shall mean a restriction imposed by a public utility limiting Big West Oil’s ability to obtain natural gas.

Z. “Next Generation Ultra-Low NO_x Burners” or “Next Generation ULNBs” shall mean those burners new to the market that are designed to achieve a NO_x emission rate of less than or equal to 0.025 lb/MMBTU (HHV) when firing natural gas at 3% stack oxygen at full design load without air preheat, even if upon installation actual emissions exceed 0.025 lb/MMBTU.

AA. “NO_x” shall mean nitrogen oxides.

BB. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

CC. “PM” shall mean particulate matter as measured by 40 C.F.R. Part 60, Appendix A, Method 5B or 5F.

DD. “Parties” shall mean the United States, State of Utah, and Big West Oil.

EE. “Root Cause” shall mean the primary cause(s) of an AG Flaring Incident(s), HC Flaring Incident(s), or a Tail Gas Incident(s) as determined through a process of investigation.

FF. “Shutdown,” as specified in 40 C.F.R. Part 60.2, shall mean the cessation

of the operation of an “affected facility” for any purpose.

GG. “SO₂” shall mean sulfur dioxide.

HH. “Sour Water Stripper Gas” or “SWS Gas” shall mean the gas produced by the process of stripping refinery sour water.

II. “Startup”, as specified in 40 C.F.R. Part 60.2, shall mean the setting into operation of an “affected facility” for any purpose.

JJ. “Sulfur Recovery Plant” or “SRP” shall mean a process unit that recovers sulfur from hydrogen sulfide by a vapor phase catalytic reaction of sulfur dioxide and hydrogen sulfide.

KK. “Tail Gas” shall mean exhaust gas from the Claus trains and the tail gas unit (“TGU”) section of the SRP.

LL. “Tail Gas Incident” shall mean, for the purpose of this Consent Decree, combustion of Tail Gas that is either:

(1) Combusted in a flare and results in 500 pounds or more of SO₂ emissions in any twenty-four (24) hour period; or

(2) Combusted in a thermal incinerator and results in excess emissions of 500 pounds or more of SO₂ emissions in any twenty-four (24) hour period.

Only those time periods which are in excess of a SO₂ concentration of 250 ppm (rolling twelve-hour average) shall be used to determine the amount of excess SO₂ emissions from the incinerator.

MM. “Tail Gas Unit” or “TGU” shall mean a control system utilizing a technology for reducing emissions of sulfur compounds from a Sulfur Recovery Plant.

NN. “Torch Oil” shall mean FCCU feedstock or cycle oils that are combusted in the FCC regenerator to assist in starting up or restarting the FCCU, to allow hot standby of the FCCU, or to maintain regenerator heat balance in the FCCU.

OO. “UDEQ” shall mean the State of Utah, Department of Environmental Quality and any successor departments or agencies of the State of Utah.

PP. “Upstream Process Units” shall mean all amine contactors, amine scrubbers, and sour water strippers at the Refinery, as well as all other specific process unit operations (the primary vessel that produces the stream) at the Refinery that produce gaseous or aqueous waste streams that feed the amine contactors and/or the SRP.

V. AFFIRMATIVE RELIEF / ENVIRONMENTAL PROJECTS

A. NO_x EMISSIONS REDUCTIONS FROM FCCUS

11. Big West Oil shall implement a program to reduce NO_x emissions from the FCCU at the BWO Refinery. Pursuant to Part V.M (Incorporation into Federally-Enforceable Permits), Big West Oil shall incorporate emission limits established under Paragraph 12 into federally-enforceable permits. Big West Oil will monitor compliance with the emission limits through the use of CEMS.

12. **NO_x Emission Limit at FCCU.** By no later than the Date of Entry, Big West Oil shall comply with NO_x emission limits of 40 ppmvd at 0% O₂ on a 365-day rolling average basis and 60 ppmvd at 0% O₂ on a 7-day rolling average basis from the FCCU.

13. NO_x emissions during periods of Startup, Shutdown, or Malfunction of the FCCU, will not be used in determining compliance with the 7-day average NO_x emission limit established pursuant to Paragraph 12, provided that during such periods Big West Oil

implements good air pollution control practices to minimize NO_x emissions. Nothing in this Paragraph shall be construed to relieve Big West Oil of any obligation under any federal or state law, regulation, or permit to report emissions during periods of Startup, Shutdown, or Malfunction, or to document the occurrence and/or cause of a Startup, Shutdown, or Malfunction event.

14. **Demonstrating Compliance with FCCU NO_x Emission Limits.** Beginning no later than the Date of Entry, Big West Oil shall use NO_x and O₂ CEMS to monitor performance of the FCCU and to report compliance with the terms and conditions of this Consent Decree. The CEMS will be used to demonstrate compliance with the respective NO_x emission limits established pursuant to Paragraph 12. Big West Oil shall make CEMS data available to EPA and the State of Utah upon request as soon as practicable.

15. RESERVED

16. RESERVED

17. RESERVED

18. RESERVED

19. RESERVED

20. RESERVED

21. RESERVED

B. SO₂ EMISSIONS REDUCTIONS FROM FCCU

22. Big West Oil shall implement a program to reduce SO₂ emissions from the FCCU at the BWO Refinery. Pursuant to Part V.M. (Incorporation into Federally-Enforceable Permits) of this Consent Decree, Big West Oil shall incorporate SO₂ emission limits established under

Paragraph 23 into federally-enforceable permits. Big West Oil will monitor compliance with the emission limits through the use of CEMS.

23. **SO₂ Emission Limit.** By no later than the Date of Entry, Big West Oil shall comply with SO₂ emission limits of 25 ppmvd at 0% O₂ on a 365-day rolling average basis and 50 ppmvd at 0% O₂ on a 7-day rolling average basis from the FCCU. For purposes of clarity, the first day used in the SO₂ emission limits of 25 ppmvd at 0% O₂ on a 365-day rolling average basis is the first day on which the emission limit is effective, and the first complete 365-day average compliance period is 365 days later (*e.g.*, if the Date of Entry is, and the limit therefore becomes effective on, September 1, the first day in the period is September 1 and the first complete 365-day period is September 1 through August 31).

24. SO₂ emissions during periods of startup, shutdown, or Malfunction of the FCCU if it is controlled by catalyst additives, or during periods of Malfunction of the FCCU if it is controlled by a wet gas scrubber, or, where applicable, during periods of Malfunction of a wet gas scrubber or SO₂ Reducing Catalyst Additive system, will not be used in determining compliance with the 7-day average SO₂ emission limits established pursuant to Paragraph 23, provided that during such periods Big West Oil implements good air pollution control practices to minimize SO₂ emissions.

25. **Demonstrating Compliance with FCCU SO₂ Emission Limits.** Beginning no later than the Date of Entry, Big West Oil shall use SO₂ and O₂ CEMS to monitor performance of the FCCU and to report compliance with the terms and conditions of this Consent Decree. The CEMS will be used to demonstrate compliance with the respective SO₂ emission limits. Big West Oil shall make CEMS data available to EPA and the State of Utah upon request as soon as

practicable.

26. RESERVED

27. RESERVED

28. RESERVED

29. RESERVED

30. RESERVED

31. RESERVED

C. PM EMISSIONS REDUCTIONS FROM FCCU.

32. By the completion of Big West Oil's next turnaround, or by November 30, 2015, whichever comes first, Big West Oil shall install a Flue Gas Filter system, manufactured by Pall Corporation, including foundation, structural supports, and associated piping and instrumentation, at the BWO Refinery's FCCU to control emissions of particulate matter from the FCCU.

33. **Emission Limits.** By no later than the completion of Big West Oil's next turnaround, or by November 30, 2015, whichever comes first, Big West Oil shall comply with a FCCU PM emission limit of 0.5 pounds of PM per 1000 pounds of coke burned on a 3-hour average basis as measured by either 40 C.F.R. Part 60, Appendix A Methods 5B or 5F, and continue to comply with all other applicable requirements regarding emission of PM from the FCCU that have been established by UDEQ.

34. **Interim Emission Limit for PM for the FCCU.** Until Big West Oil completes the installation of the filter system and related infrastructure required pursuant to Paragraph 32, it shall take all reasonable measures to minimize PM emissions from the FCCU.

35. **PM Testing for FCCU.** Big West Oil shall follow the stack test protocol specified in 40 C.F.R. § 60.106(b)(2) to measure PM emissions from the FCCU. Big West Oil shall conduct the first stack test no later than October 31, 2016, and shall thereafter conduct annual stack tests at the FCCU no later than October 31st of each year and shall submit the results of all stack tests in the first semi-annual report due under Part IX (Reporting and Record Keeping) that is at least ninety (90) days after the test. Upon demonstrating that the PM limits are not being exceeded at the FCCU through at least three (3) annual tests under this Consent Decree, Big West Oil may request approval to conduct such tests less frequently than annually at that FCCU. EPA shall act upon such request after an opportunity for consultation with the State of Utah.

36. PM emissions during periods of Startup, Shutdown, or Malfunction shall not be used in determining compliance with the 3-hour average emission limits set forth in Paragraph 33, provided that during such periods Big West Oil implements good air pollution control practices to minimize PM emissions.

37. **Opacity Monitoring at FCCUs.** By the Date of Entry, Big West Oil shall install and operate a Continuous Opacity Monitoring System (“COMS”) to monitor opacity at the FCCU. Big West Oil shall install, certify, calibrate, maintain, and operate all COMS required by this Consent Decree in accordance with 40 C.F.R §§ 60.11, 60.13 and Part 60 Appendix A, and the applicable performance specification test of 40 C.F.R. Part 60 Appendix B.

38. **Reporting.** Big West Oil shall include detailed reporting regarding the status of the installation of the filter system and related infrastructure required pursuant to Paragraph 32 in the reports required by Section IX (Reporting and Record Keeping).

D. CO EMISSIONS REDUCTIONS FROM FCCU

39. **CO Emissions Limit for the FCCU.** By no later than the Date of Entry, Big West Oil shall comply with an FCCU CO emission limit of 500 ppmvd on a 1-hour average basis at 0% O₂ and continue to comply with all other applicable requirements regarding emissions of CO from the FCCU that have been established by UDEQ.

40. **NSR Emission Limit for CO for FCCU.** At any time during the term of the Consent Decree, Big West Oil may accept a Final CO Limit of 100 ppmvd on a 365-day rolling average basis at 0% O₂ for its FCCU. If Big West Oil accepts such a limitation, liability for potential NSR violations for CO emissions from the FCCU shall be resolved pursuant to Paragraph 219.c, provided that such limits are incorporated into an appropriate permit under Part V.M (Incorporation into Federally-Enforceable Permits) of this Consent Decree.

41. CO emissions during periods of startup, shutdown or Malfunction of the FCCU will not be used in determining compliance with the emission limits of 500 ppmvd CO on a 1-hour average basis at 0% O₂, provided that during such periods Big West Oil implements good air pollution control practices to minimize CO emissions.

E. DEMONSTRATING COMPLIANCE WITH FCCU EMISSION LIMITS

42. CEMS will be used to demonstrate compliance with the NO_x, SO₂ and CO emission limits established pursuant to Paragraphs 12, 23, and 39. Big West Oil shall make CEMS data available to EPA upon request as soon as practicable. Big West Oil shall install, certify, calibrate, maintain, and operate all CEMS required by this Consent Decree in accordance with 40 C.F.R. §§ 60.11, 60.13 and Part 60 Appendix A, and the applicable performance specification test of 40 C.F.R. Part 60 Appendices B and F. With respect to 40 C.F.R. Part 60,

Appendix F, in lieu of the requirements of 40 C.F.R. Part 60, Appendix F §§ 5.1.1, 5.1.3 and 5.1.4, Big West Oil must conduct either a Relative Accuracy Audit (“RAA”) or a Relative Accuracy Test Audit (“RATA”) on each CEMS at least once every three (3) years. Big West Oil must also conduct Cylinder Gas Audits (“CGA”) each Calendar quarter during which a RAA or a RATA is not performed.

F. NSPS APPLICABILITY OF THE FCCU REGENERATOR

43. By no later than the Date of Entry, the FCCU Catalyst Regenerator at the Refinery shall be an affected facility, as that term is used in the Standards of Performance for New Stationary Sources (“NSPS”), 40 C.F.R. Part 60, and shall be subject to and comply with the requirements of NSPS Subparts A and J for all pollutants.

a. If prior to the termination of the Consent Decree, the FCCU becomes subject to NSPS Subpart Ja for a particular pollutant due to a "modification" (as that term is defined in the final Subpart Ja rule), the modified affected facility shall be subject to and comply with NSPS Subpart Ja in lieu of NSPS, Subpart J for that regulated pollutant to which a standard applies as a result of the modification.

b. If prior to the termination of the Consent Decree, the FCCU becomes subject to NSPS Subpart Ja due to a "reconstruction" (as that term is defined in the final Subpart Ja rule), the reconstructed facility shall be subject to and comply with NSPS Subpart Ja in lieu of Subpart J.

G. NO_x EMISSIONS REDUCTIONS FROM HEATERS AND BOILERS

44. Big West Oil shall install Next Generation Ultra-Low NO_x Burners on BLR-1, BLR-2, and BLR-6, shall demonstrate compliance with the following emission limits for the

Covered Heaters and Boilers (listed below) by the dates specified, and shall incorporate the following emission limits into federally-enforceable permits in accordance with Part V.M:

Heater/Boiler	Design Rate (mmBTU/hr)	NO_x Emission Limit	Averaging Period	Compliance Deadline
H-404	41.7	0.035 lb/mmBTU	3-hour	Date of Entry
BLR-1	83.0	0.035 lb/mmBTU	3-hour	December 31, 2013
BLR-2	71.0	0.035 lb/mmBTU	3-hour	Date of Entry
BLR-6	42.0	0.035 lb/mmBTU	3-hour	Date of Entry

For purposes of compliance with this Consent Decree, the ultra-low NO_x burner currently installed on H-404 shall be deemed to meet the design specifications for Next Generation Ultra-Low NO_x Burners identified in this Consent Decree, but must still comply with the NO_x emission limit set forth in this Paragraph.

45. **Monitoring NO_x Emissions from Covered Heaters and Boilers.** Big West Oil shall monitor and test the Covered Heaters and Boilers to meet the requirements of Paragraph 44 as follows:

a. For heaters and boilers with a heat input capacity greater than 100 MMBTU/hr (HHV), Big West Oil shall install or continue to operate CEMS to measure NO_x and O₂ by no later than the compliance deadlines set forth in Paragraph 44. Big West Oil shall install, certify, calibrate, maintain and operate all CEMS required by this Part V.G in accordance with the requirements of 40 C.F.R. §§ 60.11, 60.13 and Part 60 Appendix A and the applicable performance specification test of 40 C.F.R. Part 50 Appendices B and F. These CEMS will be used to demonstrate compliance with emission limits. Big West Oil shall make CEMS and process data available to EPA and UDEQ upon request as soon as practicable; and

b. For heaters and boilers with a heat input capacity of equal to or less than 100 MMBTU/hr (HHV), Big West Oil shall conduct an initial performance test for NO_x by no later than the compliance deadlines set forth in Paragraph 44 to demonstrate compliance with the emission limits set forth in Paragraph 44. The results of these tests shall be reported based upon the average of three (3) one hour testing periods, in accordance with EPA methods at 40 C.F.R. Part 60, Appendix A, and shall be used to develop representative operating parameters for each unit, which will be used as indicators of compliance.

46. Big West Oil shall include in the semi-annual reports required pursuant to Paragraph 127, a section describing the progress of installation of Next Generation Ultra-Low NO_x Burners on BLR-1, BLR-2, and BLR-6. This section of the semi-annual report shall contain:

a. A list of all Covered Heaters and Boilers on which Next Generation Ultra-Low NO_x Burners was installed;

b. A detailed description of the manufacturer name and model and the designed emission factors of the Next Generation Ultra-Low NO_x Burners installed on BLR-1, BLR-2, and BLR-6;

c. The results of all performance tests conducted on each heater and boiler pursuant to the requirements of Subparagraph 45.b; and

d. A list of all Covered Heaters and Boilers scheduled to have Next Generation Ultra-Low NO_x Burners installed during the current and subsequent calendar years, the projected date of installation, and the anticipated manufacturer name and model

and the designed emission factors of the Next Generation Ultra-Low NO_x Burners that will be installed on those units.

H. SO₂ EMISSIONS REDUCTIONS FROM AND NSPS APPLICABILITY OF HEATERS AND BOILERS.

47. Big West Oil shall undertake measures to reduce SO₂ emissions from Refinery heaters and boilers by restricting H₂S in Refinery fuel gas and by agreeing not to continue and/or commence combusting Fuel Oil except under the provisions set forth herein.

48. **NSPS Applicability of Heaters and Boilers.** Upon the Date of Entry, all heaters and boilers at the BWO Refinery shall be affected facilities as that term is used in 40 C.F.R. Part 60, Subparts A and J, and shall be subject to and comply with the requirements of NSPS Subparts A and J. By no later than the Date of Entry, Big West Oil shall install, certify, calibrate, maintain and operate a fuel gas CEMS in accordance with the requirements of 40 C.F.R. §§ 60.11, 60.13 and Part 60, Appendix A, and the applicable performance specification test of 40 C.F.R. Part 60, Appendices B and F. This CEMS will be used to demonstrate compliance with emission limits.

a. If prior to the termination of the Consent Decree, a Covered Heater or Boiler becomes subject to NSPS Subpart Ja for a particular pollutant due to a "modification" (as that term is defined in the final Subpart Ja rule), the modified affected facility shall be subject to and comply with NSPS Subpart Ja in lieu of NSPS, Subpart J for that regulated pollutant to which a standard applies as a result of the modification.

b. If prior to the termination of the Consent Decree, a Covered Heater or Boiler becomes subject to NSPS Subpart Ja due to a "reconstruction" (as that term is defined in the final Subpart Ja rule), the reconstructed facility shall be subject to and

comply with NSPS Subpart Ja in lieu of Subpart J.

49. **Elimination/Reduction of Fuel Oil Burning.** From and after the Date of Entry, Big West Oil shall not combust Fuel Oil in any fuel gas combustion device except during periods of Natural Gas Curtailment, test runs and operator training. Nothing herein is intended to limit, or shall be interpreted as limiting, the use of torch oil during FCCU Startups.

I. SULFUR RECOVERY PLANT

50. Big West Oil owns and operates a Sulfur Recovery Plant located at the BWO Refinery (“Big West Oil SRP”) that consists of one 3 stage Claus sulfur recovery unit with a tail gas incinerator with a rated capacity of 4 long tons per day.

51. **Caustic Scrubbers.** By no later than six-hundred eight (608) days after the Date of Entry, Big West Oil shall, at the Big West Oil Refinery: (1) install and operate a caustic scrubber system to contact the sour fuel gas with caustic solution to extract H₂S; and (2) either install and operate a second caustic scrubber system to contact sour water stripper (“SWS”) overhead gas with caustic solution to extract H₂S, or sufficiently expand its sour water storage capacity to shut down the SWS and store sour water during outages of the SRP. Under either option above, the caustic scrubber systems and/or sour water storage capacity expansion shall be designed to ensure compliance with NSPS Subpart J at the fuel gas combustion devices (heaters and boilers) and NSPS Subpart Ja at the flares during amine unit and SRP outages.

52. **Sulfur Tank Emissions.** By no later than the Date of Entry, Big West Oil shall route all sulfur tank emissions from the Big West Oil SRP so that sulfur tank emissions are either eliminated or included and monitored as part of the applicable Sulfur Recovery Plant (SRP) tail gas emissions limits set forth in the applicable State of Utah Administrative Order.

53. **Sulfur Recovery Plant Emissions Compliance.** No later than one-hundred eighty (180) days after the Date of Entry, Big West Oil shall comply with a 95% recovery efficiency requirement for all periods of operation except during periods of scheduled startup, scheduled shutdown, or Malfunction of the Big West Oil SRP. Recovery efficiency will be determined on a daily basis; however, compliance will be determined on a rolling 30-day average basis. Big West Oil shall determine the percent recovery by measuring the flow rate and concentration of hydrogen sulfide in the feed streams going to the SRP and by measuring the sulfur dioxide emissions with a CEMS at the SRP incinerator. The flow rate will be determined continuously; the hydrogen sulfide concentration will be determined quarterly for the first 4 quarters from the Date of Entry of the Consent Decree and at least semiannually thereafter (samples may be collected as manual grabs or through remote monitoring). The flow rate and hydrogen sulfide concentration values will be used to determine the daily feed rate.

54. No later than one hundred and twenty (120) days from the date the sulfur input to the SRP exceeds twenty (20) long tons in any calendar day, Big West Oil shall submit to EPA and the State of Utah a proposed schedule to comply with all applicable NSPS provisions, including the installation of a Tail Gas Unit. Any schedule proposed by Big West Oil shall require it to be in compliance with all applicable NSPS regulatory requirements no later than thirty (30) months from the date the sulfur input to the Big West Oil SRP exceeded twenty (20) long tons in any calendar day. If Big West Oil initiates a dispute as to the accuracy or reliability of the data indicating that sulfur input exceeded twenty (20) long tons per day, then the deadlines for submission of the compliance schedule and achieving compliance with the NSPS shall be extended by the period needed to resolve such dispute under and pursuant to the dispute

resolution provisions in Part XV. Big West Oil shall immediately notify EPA and the State of Utah in writing if monitoring during any calendar day indicates that sulfur input to the Big West Oil SRP exceeds twenty (20) long tons for that calendar day. The notice required by the preceding sentence shall include such monitoring data. To the extent that Big West Oil believes that such monitoring data is neither accurate nor reliable, it shall so notify EPA and the State of Utah and provide the basis(es) for such an assertion.

55. **Good Operation and Maintenance.** By no later than one-hundred eighty (180) days after the Date of Entry, Big West Oil shall submit to EPA and UDEQ, a summary of a plan, implemented or to be implemented, for enhanced maintenance and operation of the Big West Oil SRP, any alternate control devices (e.g., scrubber systems), and Upstream Process Units. This plan shall be termed a Preventive Maintenance and Operation Plan (“PMO Plan”). The PMO Plan shall be a compilation of approaches for exercising good air pollution control practices for minimizing SO₂ emissions at the BWO Refinery. The PMO Plan shall provide for continuous operation of the Big West Oil SRP between scheduled maintenance turnarounds with minimization of emissions from the Big West Oil SRP. The PMO Plan shall include, but not be limited to, sulfur shedding procedures, new startup and shutdown procedures, emergency procedures, and schedules to coordinate maintenance turnarounds of the Claus train and any alternate control device to coincide with scheduled turnarounds of major Upstream Process Units. The PMO Plan shall have as a goal the elimination of Acid Gas Flaring. Big West Oil shall comply with the PMO Plan at all times, including periods of scheduled start up, scheduled shut down, and Malfunction of the Big West Oil SRP. Modifications made by Big West Oil to the PMO Plan that are related to further minimizing Acid Gas Flaring and/or SO₂ emissions shall

be summarized in the semi-annual reports required to be submitted pursuant to Part IX (Reporting and Record Keeping) of this Consent Decree until termination of the Decree.

56. EPA and UDEQ do not, by their review of the PMO Plan and/or by their failure to comment on the PMO Plan, warrant or aver in any manner that any of the actions that Big West Oil may take pursuant to the PMO Plan will result in compliance with the provisions of the Clean Air Act, the Utah Air Conservation Act, or their implementing regulations. Notwithstanding EPA's or UDEQ's review of the PMO Plan, Big West Oil shall remain solely responsible for compliance with the Clean Air Act, the Utah Air Conservation Act, and their implementing regulations.

57. **Optimization Study.** Big West Oil shall complete an optimization study (internal or external) on the Big West Oil SRP and report to EPA and UDEQ by no later than twelve (12) months after Date of Entry. Big West Oil shall implement the recommendations of the optimization study and incorporate the results of that study into the PMO Plan by no later than ninety (90) days after completion of the optimization study, provided that any equipment changes recommended in the optimization study shall be completed during the next turnaround that occurs more than one-hundred eighty (180) days after completion of the optimization study, or within 1.5 years after completion of the optimization study, whichever comes first. The optimization study shall consider:

- a. A detailed evaluation of plant design and capacity, operating parameters and efficiencies - including catalytic activity and material balances;
- b. An analysis of the composition of the Acid Gas and Sour Water Stripper Gas resulting from the processing of the crude slate actually used, or expected to be used,

in the BWO Refinery SRP;

c. A thorough review of each critical piece of process equipment and instrumentation within each Claus train that is designed to correct deficiencies or problems that prevent each Claus train from achieving their optimal sulfur recovery efficiency and expanded periods of operation;

d. Establishment of baseline data through testing and measurement of key parameters throughout each Claus train;

e. Establishment of a thermodynamic process model of each Claus train;

f. For any key parameters that have been determined to be at less than optimal levels, initiation of logical, sequential, or stepwise changes designed to move such parameters toward their optimal values;

g. Verification through testing, analysis of continuous emission monitoring data, or other means, of incremental and cumulative improvements in sulfur recovery efficiency, if any;

h. Establishment of new operating procedures for long term efficient operation; and

i. Each study shall be conducted to optimize the performance of the Claus trains in light of the actual characteristics of the feeds to the Big West Oil SRP.

58. **Reporting.** Big West Oil shall include detailed reporting regarding the status of the installation of the caustic scrubber systems required pursuant to Paragraph 51 in the reports required by Section IX (Reporting and Record Keeping).

J. NSPS APPLICABILITY OF AND COMPLIANCE FOR FLARING DEVICES

59. Big West Oil owns and operates two Flaring Devices designated the North Flare and the South Flare. Both flares are affected facilities, as that term is used in NSPS, 40 C.F.R. Part 60, and are currently, and will continue to be, subject to and required to comply with the requirements of 40 C.F.R. Part 60, Subparts A and Ja for flares used as emergency control devices for quick and safe release of gases as follows:

a. Notwithstanding any provision in 40 C.F.R. Part 60, Subpart Ja that permits the owner or operator of a flare to apply for an exemption from the H₂S monitoring requirements in the Subpart or to otherwise avoid installing an H₂S CEMS, Big West Oil shall, within six-hundred eight (608) days after the Date of Entry for the South Flare, and within two (2) years after the Date of Entry for the North Flare, and consistent with 40 C.F.R. § 60.107a(a)(2), install, operate, calibrate and maintain H₂S CEMS at both the North Flare and the South Flare and comply with all requirements in Subpart Ja regarding the installation, operation, calibration and maintenance of such CEMS, and the monitoring to be performed by such CEMS.

b. Big West Oil shall have until six-hundred eight (608) days after the Date of Entry to comply with the H₂S concentration requirements of 40 C.F.R. Part 60, Subpart Ja at the North Flare and the South Flare, and shall comply with all other requirements of 40 C.F.R. Part 60, Subpart Ja at the North Flare and the South Flare, except for those requirements regarding H₂S monitoring described in Paragraph 59.a, in accordance with the deadlines specified in 40 C.F.R. Part 60, Subpart Ja.

60. **Good Air Pollution Control Practices.** For all Flaring Devices at the BWO

Refinery, Big West Oil shall comply with the NSPS obligation to implement good air pollution control practices as required by 40 C.F.R. § 60.11(d) to minimize HC and AG Flaring Incidents.

61. **Flaring History.** Big West Oil has submitted a report to EPA identifying each AG Flaring Incident that occurred between November 10, 2004, and August 20, 2010, its probable cause(s), estimated emissions and any corrective actions taken to avoid future AG Flaring Incidents.

62. **Provisions Applicable to Control of Flaring Incidents.**

a. For the period beginning upon the Date of Entry and continuing until the root cause analysis and corrective action requirements for flares in Subpart Ja become applicable, Big West Oil shall comply with the provisions of Paragraphs 63 through 70.

b. Beginning upon the date the root cause analysis and corrective action requirements for flares in Subpart Ja become applicable, Big West Oil shall comply with the provisions in Subpart Ja regarding the investigation of the cause of flaring incidents subject to investigation and corrective action under Subpart Ja, steps to take to correct the conditions that have caused or contributed to such flaring incidents, and steps to take to minimize such flaring incidents, and shall record the actions taken to comply with those provisions in a report (the "Incident Report") that shall also include all of the information regarding excess emission reporting set forth in 40 C.F.R. § 108a, including the certification required by 40 C.F.R. § 108a(d)(7). Each Incident Report shall be included in the Semi-Annual Report required by Paragraph 69 which Big West Oil shall continue to prepare and submit after the requirements of this Subparagraph 62.b become effective.

63. **Interim Control of Acid Gas Flaring Incidents.** Big West Oil agrees to

implement a program to investigate the cause of future AG Flaring Incidents, to take reasonable steps to correct the conditions that have caused or contributed to such AG Flaring Incidents, and to minimize AG Flaring Incidents. Big West Oil shall follow the procedures in this Part V.J to evaluate whether future AG Flaring Incidents are due to Malfunctions or are subject to stipulated penalties. The procedures, as set forth below, require a root cause analysis and corrective action for all types of AG Flaring Incidents and require stipulated penalties for AG Flaring Incidents if the root causes were not due to Malfunctions.

64. **Investigation and Reporting.** No later than forty-five (45) days following the end of an Acid Gas Flaring Incident occurring on and after the Date of Entry, Big West Oil shall conduct an investigation into the root cause(s) of the Flaring Incident and record the result of the investigation in a report (the “Incident Report”). Each Incident Report shall be included in the Semi-Annual Report required by Paragraph 69. The Incident Report for each Flaring Incident shall include the following:

a. The date and time that the Acid Gas Flaring Incident started and ended.

To the extent that the Acid Gas Flaring Incident involved multiple releases either within a twenty-four (24) hour period or within subsequent, contiguous, non-overlapping twenty-four (24) hour periods, Big West Oil shall set forth the starting and ending dates and times of each release;

b. An estimate of the quantity of sulfur dioxide that was emitted and the calculations that were used to determine that quantity;

c. The steps, if any, that Big West Oil took to limit the duration and/or quantity of sulfur dioxide emissions associated with the Acid Gas Flaring Incident;

d. A detailed analysis that sets forth the Root Cause and all contributing causes of that Acid Gas Flaring Incident, to the extent determinable;

e. An analysis of the measures, if any, that are available to reduce the likelihood of a recurrence of an Acid Gas Flaring Incident resulting from the same Root Cause or contributing causes in the future. The analysis shall discuss the alternatives, if any, that are available, the probable effectiveness and cost of the alternatives, and whether or not an outside consultant should be retained to assist in the analysis. Possible design, operation and maintenance changes shall be evaluated. If Big West Oil concludes that corrective action(s) is (are) required under Paragraph 65, the report shall include a description of the action(s) and, if not already completed, a schedule for its (their) implementation, including proposed commencement and completion dates. If Big West Oil concludes that corrective action is not required under Paragraph 65, the report shall explain the basis for that conclusion;

f. The Root Cause Analysis shall also include statements that:

(1) specifically identifies each of the grounds for stipulated penalties in Subparagraphs 66.a and 66.b of this Decree and describes whether or not the Acid Gas Flaring Incident falls under any of those grounds, provided, however, that Big West Oil may choose to submit with the Semi-Annual Report required by Paragraph 69 a payment of stipulated penalties in the nature of settlement without the need to specifically identify the grounds for the penalty. Such payment of stipulated penalties shall not constitute an admission of liability, nor shall it raise any presumption whatsoever about the nature, existence or strength of the

potential defenses of Big West Oil;

(2) if an Acid Gas Flaring Incident falls under Subparagraph 66.c of this Decree, describes whether Subparagraph 66.c.(1), 66.c.(2) or 66.c.(3) applies and why; and

(3) if an Acid Gas Flaring Incident falls under either Subparagraph 66.b or Subparagraph 66.c.(3), states whether or not Big West Oil asserts a defense to the Flaring Incident, and if so, a description of the defense;

g. To the extent that investigations of the causes and/or possible corrective actions still are underway on the due date of a Semi-Annual Report required pursuant to Paragraph 69, Big West Oil shall include a statement of the anticipated date by which a follow-up report fully conforming to the requirements of Subparagraph 64.d and 64.e shall be submitted. If, however, Big West Oil has not completed an Incident Report containing the information required to be submitted under this Paragraph within the 45 day time period set forth in Paragraph 64 (or such additional time as EPA may allow) after which the initial Incident Report for the Acid Gas Flaring Incident is due to be completed, the stipulated penalty provisions of Paragraph 154 (Stipulated Penalties, Requirements for NSPS Applicability of Flaring Devices) shall apply. Big West Oil shall retain the right to dispute, under the dispute resolution provision of this Consent Decree, any demand for stipulated penalties that was issued as a result of Big West Oil's failure to submit the report required under this Paragraph within the time frame set forth. Nothing in this Paragraph shall be deemed to excuse Big West Oil from its investigation, reporting, and corrective action obligations under this Part for any Acid Gas Flaring

Incident which occurs after an Acid Gas Flaring Incident for which Big West Oil has requested an extension of time under these Paragraphs 64 and 65; and

h. To the extent that completion of the implementation of corrective action(s), if any, is not finalized at the time of the completion of the Incident Report required under this Paragraph, then, by no later than thirty (30) days after completion of the implementation of corrective action(s), Big West Oil shall supplement the Incident Report identifying the corrective action(s) taken and the dates of commencement and completion of implementation.

65. **Corrective Action.** In response to any AG Flaring Incident, Big West Oil shall take, as expeditiously as practicable, such interim and/or long-term corrective actions, if any, as are consistent with good engineering practice to minimize the likelihood of a recurrence of the Root Cause and all contributing causes of that AG Flaring Incident.

a. After a review of any report required by Paragraph 64 and submitted as required by Paragraph 69, EPA shall notify Big West Oil in writing of (1) any deficiencies in the corrective action(s) listed in the findings and/or (2) any objections to the schedule(s) of implementation, and explain the basis for EPA's objection(s). Big West Oil shall implement an alternative or revised corrective action or implementation schedule based on EPA's comments. If a corrective action that EPA has identified as deficient is already completed, then Big West Oil is not obligated to implement the corrective action identified by EPA for that Flaring Incident. However, Big West Oil shall be on notice that such corrective action is deficient and not acceptable for remedying any subsequent, similar root cause(s) of any incident.

b. EPA does not, however, by its consent to the entry of this Consent Decree or by its failure to object to any corrective action that Big West Oil may take in the future, warrant or aver in any manner that any corrective actions in the future shall result in compliance with the provisions of the Clean Air Act or its implementing regulations. Notwithstanding EPA's review of any plans, reports, corrective actions or procedures under this Part V.J, Big West Oil shall remain solely responsible for non-compliance with the Clean Air Act and its implementing regulations. Nothing in this Part V.J shall be construed as a waiver of EPA's rights under the Clean Air Act and its regulations for future violations of the Act or its regulations.

c. Nothing in this Part V.J shall be construed to limit the right of Big West Oil to take such corrective actions as it deems necessary and appropriate immediately following an Acid Gas Flaring Incident or in the period during preparation and review of any reports required under this Part.

66. **Stipulated Penalties.** The provisions of this Paragraph 66 are intended to implement the process outlined in the logic diagram attached hereto as Appendix A (Decision Flow Chart) to this Consent Decree. These provisions shall be interpreted and construed, to the maximum extent feasible, to be consistent with that Attachment. However, in the event of a conflict between the language of this Paragraph 66 and Appendix A, the language of this Paragraph shall control.

a. The stipulated penalty provisions of Paragraph 156 shall apply to any Acid Gas Flaring Incident for which the Root Cause was one or more of the following acts, omissions, or events:

(1) Error resulting from careless operation by the personnel charged with the responsibility for the Sulfur Recovery Plant or Upstream Process Units;

(2) Failure to follow written procedures;

(3) Failure of equipment that is due to a failure by Big West Oil to operate and maintain that equipment in a manner consistent with good engineering practice;

(4) Root Causes Previously Addressed. The following Root Causes shall not provide a basis for asserting a Malfunction defense at the BWO Refinery, unless Big West Oil can demonstrate to EPA that such root cause(s) differs substantially from the Root Causes listed in this Paragraph 66.a.(4), which were identified prior to Lodging of this Consent Decree pursuant to Paragraph 61:

(a) shutdown of the sour water stripper to repair a leak in the sour water stripper knock-out drum;

(b) shutdown of sulfur recovery unit to replace acid gas line from amine unit to sulfur recovery unit; and

(c) pressure drop through the Sulfur Recovery Unit due to incomplete burning from the John Zink HTR-6 reaction furnace burner.

b. If the Acid Gas Flaring Incident is not a result of one of the root causes identified in Paragraph 66.a, then the stipulated penalty provisions of Paragraph 156 shall apply if the Acid Gas Flaring Incident:

(1) Results in emissions of sulfur dioxide at a rate greater than twenty (20.0) pounds per hour continuously for three (3) consecutive hours or more and

Big West Oil failed to act consistent with the PMO plan and/or to take any action during the AG Flaring Incident to limit the duration and /or quantity of SO₂ emissions associated with such incident; or

(2) Causes the total number of Acid Gas Flaring Incidents in a rolling twelve (12) month period to exceed five (5).

c. With respect to any Acid Gas Flaring Incident not identified in Subparagraphs 66.a or 66.b, the following provisions shall apply:

(1) Malfunction: If the Root Cause of the Acid Gas Flaring Incident was sudden, infrequent, and not reasonably preventable through the exercise of good engineering practice, then that cause shall be designated as an agreed-upon malfunction for purposes of reviewing subsequent Acid Gas Flaring Incidents;

(2) First Time: If the Root Cause of the Acid Gas Flaring Incident was sudden and infrequent but reasonably preventable through the exercise of good engineering practices (not a Malfunction), then Big West Oil shall implement corrective action(s) pursuant to Paragraph 65, and the stipulated penalty provisions of Paragraph 156 shall not apply;

(3) Recurrence: If the Root Cause of the Acid Gas Flaring Incident is a recurrence of the same Root Cause that caused a previous Acid Gas Flaring Incident occurring after the Date of Entry, the stipulated penalty provisions of Paragraph 156 shall apply unless:

(a) the Acid Gas Flaring Incident resulted from a Malfunction;

or

(b) the Root Cause previously was designated as an agreed-upon Malfunction under Subparagraph 66.c.(1); or

(c) the Acid Gas Flaring Incident had as its Root Cause the recurrence of a Root Cause for which Big West Oil had previously developed, or was in the process of developing, a corrective action plan for which Big West Oil had not yet completed implementation.

d. The stipulated penalty provisions of Paragraph 156 shall not apply to any Acid Gas Flaring Incident that occurs during any turnaround that requires catalyst replacement in the reactors of the Sulfur Recovery Plant that occurs prior to the deadline for installing the caustic scrubber systems pursuant to Paragraph 51.

e. Defenses: Big West Oil may raise the following affirmative defenses in response to a demand by the United States for stipulated penalties:

(1) Force majeure.

(2) As to Subparagraphs 66.a.(1), 66.a.(2), 66.a.(3), and 66.c.(3) only, the Acid Gas Flaring Incident does not meet their identified criteria.

(3) As to Subparagraph 66.a.(4), only, the Root Cause substantially differs from the Root Causes that caused such an Acid Gas Flaring Incident, as reported under Paragraph 61.

(4) As to Subparagraphs 66.b, and 66.c.(3), only, Malfunction.

(5) As to Subparagraph 66.c.(3), only, Big West Oil was in the process of timely developing or implementing a corrective action plan under Subparagraph 65.a for the previous Acid Gas Flaring Incident.

f. In the event a dispute under Subparagraph 66.b is brought to the Court pursuant to the dispute resolution provisions of this Consent Decree, Big West Oil may also assert a start up, shutdown and/or upset defense, but the United States shall be entitled to assert that such defenses are not available. If Big West Oil prevails in persuading the Court that the defenses of startup, shutdown, and upset are available for AG Flaring Incidents under 40 C.F.R. 60.104(a)(1), Big West Oil shall not be liable for stipulated penalties for emissions resulting from startup, shutdown or upset. If the United States prevails in persuading the Court that the defenses or startup, shutdown, or upset are not available, Big West Oil shall be liable for such stipulated penalties.

g. Other than for a Malfunction or force majeure, if no Acid Gas Flaring Incident and no violation of the emission limit under Part V.I (Compliance for Sulfur Recovery Plant) occur at the BWO Refinery for a rolling 36 month period, then the stipulated penalty provisions of Paragraph 156 shall no longer apply. EPA may elect to reinstate the stipulated penalty provision if Big West Oil has an Acid Gas Flaring Incident which would otherwise be subject to stipulated penalties. EPA's decision shall not be subject to dispute resolution. Once reinstated, the stipulated penalty provision shall continue for the remaining life of this Consent Decree.

67. **Emission Calculations.**

a. **Calculation of the Quantity of Sulfur Dioxide Emissions from AG Flaring.** For purposes of this Consent Decree, the quantity of SO₂ emissions resulting from AG Flaring shall be calculated by the following formula:

$$\text{Tons of SO}_2 = [\text{FR}][\text{TD}][\text{ConcH}_2\text{S}][8.44 \times 10^{-5}].$$

The quantity of SO₂ emitted shall be rounded to one decimal point. (Thus, for example, for a calculation that results in a number equal to 10.050 tons, the quantity of SO₂ emitted shall be rounded to 10.1 tons.) For purposes of determining the occurrence of, or the total quantity of SO₂ emissions resulting from, an AG Flaring Incident that is comprised of intermittent AG Flaring, the quantity of SO₂ emitted shall be equal to the sum of the quantities of SO₂ flared during each such period of intermittent AG Flaring.

b. **Calculation of the Rate of SO₂ Emissions During AG Flaring.** For purposes of this Consent Decree, the rate of SO₂ emissions resulting from AG Flaring shall be expressed in terms of pounds per hour, and shall be calculated by the following formula:

$$ER = [FR][\text{ConcH}_2\text{S}][0.169].$$

The emission rate shall be rounded to one decimal point. (Thus, for example, for a calculation that results in an emission rate of 19.95 pounds of SO₂ per hour, the emission rate shall be rounded to 20.0 pounds of SO₂ per hour; for a calculation that results in an emission rate of 20.05 pounds of SO₂ per hour, the emission rate shall be rounded to 20.1.)

c. **Meaning of Variables and Derivation of Multipliers used in the Equations in Subparagraphs 67.a and 67.b:**

ER = Emission Rate in pounds of SO₂ per hour

FR = Average Flow Rate to Flaring Device(s) during Flaring, in standard cubic feet per hour

TD = Total Duration of Flaring in hours

ConcH₂S = Average Concentration of Hydrogen Sulfide in gas during Flaring (or immediately prior to Flaring if all gas is being flared) expressed as a volume fraction (scf H₂S/scf gas)

$$8.44 \times 10^{-5} = [\text{lb mole H}_2\text{S}/379 \text{ scf H}_2\text{S}][64 \text{ lbs SO}_2/\text{lb mole H}_2\text{S}][\text{Ton}/2000 \text{ lbs}]$$

$$0.169 = [\text{lb mole H}_2\text{S}/379 \text{ scf H}_2\text{S}][1.0 \text{ lb mole SO}_2/1 \text{ lb mole H}_2\text{S}][64 \text{ lb SO}_2/1.0 \text{ lb mole SO}_2]$$

The flow of gas to the AG Flaring Device(s) (“FR”) shall be as measured by the relevant flow meter or reliable flow estimation parameters. Hydrogen sulfide concentration (“ConcH₂S”) shall be determined from the Sulfur Recovery Plant feed gas analyzer, from knowledge of the sulfur content of the process gas being flared, by direct measurement by tutwiler or draeger tube analysis or by any other method approved by EPA or the UDEQ. In the event that any of these data points is unavailable or inaccurate, the missing data point(s) shall be estimated according to best engineering judgment. The report required under Paragraph 64 shall include the data used in the calculation and an explanation of the basis for any estimates of missing data points.

68. **Tail Gas Incidents.**

a. Investigation, Reporting, Corrective Action and Stipulated Penalties. For Tail Gas Incidents occurring on or after the Date of Entry, Big West Oil shall follow the same investigative, reporting and corrective action requirements as set forth in Paragraphs 64 and 65 and the same assessment of stipulated penalty procedures, as set forth in Paragraph 66. These procedures shall be applied to TGU shutdowns, bypasses of a TGU, or other events which result in a Tail Gas Incident, including unscheduled Shutdowns of a Claus Sulfur Recovery Plant.

b. Calculation of the Quantity of SO₂ Emissions Resulting from a Tail Gas Incident. For the purposes of this Consent Decree, the quantity of SO₂ emissions resulting from a Tail Gas Incident shall be calculated by one of the following methods, based on the type of event:

(1) If Tail Gas is combusted in a flare, the SO₂ emissions are calculated using the methods outlined in Paragraph 67; or

(2) If Tail Gas exceeding the 250 ppmvd (NSPS J limit) is emitted from a monitored SRP incinerator, then the following formula applies:

$$ER_{TGI} = \frac{TD_{TGI}}{\sum_{i=1} [FR_{Inc.}]_i [Conc. SO_2 - 250]_i [0.169 \times 10^{-6}] [20.9 - \% O_2 / 20.9]_i}$$

Where:

ER_{TGI} = Emissions from Tail Gas Unit at the SRP incinerator, pounds of SO₂ over a 24 hour period

TD_{TGI} = Hours when the incinerator CEM was exceeding 250 ppmvd SO₂ on a rolling twelve hour average, corrected to 0% O₂, in each 24 hour period of the Incident

i = Each hour within TDTGI

$FR_{Inc.}$ = Incinerator Exhaust Gas Flow Rate (standard cubic feet per hour, dry basis) (actual stack monitor data or engineering estimate based on the acid gas feed rate to the SRP) for each hour of the Incident

Conc. SO₂ = The average SO₂ concentration (CEMS data) that is greater than 250 ppm in the incinerator exhaust gas, ppmvd corrected to 0% O₂, for each hour of the Incident

% O₂ = O₂ concentration (CEMS data) in the incinerator exhaust gas in volume % on dry basis for each hour of the Incident

$$0.169 \times 10^{-6} = \frac{[\text{lb mole of SO}_2 / 379 \text{ SO}_2] [64 \text{ lbs SO}_2 / \text{lb mole SO}_2] [1 \times 10^{-6}]}$$

Standard
conditions = 60 degree F; 14.7 lb_{force}/sq.in. absolute

In the event the concentration SO₂ data point is inaccurate or not available or a flow meter for FR_{Inc}, does not exist or is inoperable, then Big West Oil shall estimate emissions based on best engineering judgment.

69. **Semi-Annual Reporting.** Within thirty (30) days after the end of the first semi-annual period after the Date of Entry of this Consent Decree (i.e., on or before January 31 or July 31), and on or before each subsequent January 31 and July 31 thereafter, Big West Oil shall submit to EPA and the State of Utah a Semi-Annual report that includes copies of each and every report of all Acid Gas Flaring Incidents, Tail Gas Incidents and Hydrocarbon Flaring Incidents that Big West Oil was required to prepare under Paragraphs 62.b, 64, 68 and 70 during the previous six month period (e.g., July to December). Big West Oil may elect to submit the Semi-Annual report required by this Paragraph with the Semi-Annual progress report required by Paragraph 127. Each Semi-Annual report shall also include a summary of the Incidents including the following:

- a. Date;
- b. Summary of root cause(s);
- c. Duration;
- d. Amount of SO₂ released;
- e. Any associated penalties for each Incident;
- f. Corrective Action completed; and

- g. A list of all Acid Gas Flaring Incidents, Tail Gas Incidents, and Hydrocarbon Flaring Incidents for which corrective actions are still outstanding.

Such Semi-Annual report shall also include a summary analysis of any trends identified by Big West Oil in the number, Root Cause, types of corrective action, or other relevant information regarding Acid Gas and Tail Gas Incidents during the previous six-month period.

70. **Control of Hydrocarbon Flaring Incidents.** For future Hydrocarbon Flaring Incidents, Big West Oil shall follow the same investigative, reporting, and corrective action procedures as those outlined in Paragraphs 64-65 for Acid Gas Flaring Incidents; provided however, that in lieu of analyzing possible corrective actions under Paragraph 64.e and taking interim and/or long-term corrective action under Subparagraph 65.a for a Hydrocarbon Flaring Incident attributable to the start up or shut down of a unit that Big West Oil has previously analyzed under this Paragraph 70, Big West Oil may identify such prior analysis when submitting the report required under this Paragraph 70. Stipulated penalties under Paragraphs 66 and 156 shall not apply to Hydrocarbon Flaring Incident(s). The formulas at Paragraph 67, used for calculating the quantity and rate of sulfur dioxide emissions during AG Flaring Incidents, shall be used to calculate the quantity and rate of sulfur dioxide emissions during HC Flaring Incidents. Unless the root cause analysis and corrective action requirements of 40 C.F.R. Part 60, Subpart Ja are effective at the time of termination of the Consent Decree, the investigative and corrective action procedures (only) are applicable through and after termination of the Consent Decree as one of the limits and standards that are required to be incorporated into a permit pursuant to Paragraph 107.

K. BENZENE WASTE OPERATIONS NESHAP PROGRAM ENHANCEMENTS.

71. In addition to continuing to comply with all applicable requirements of 40 C.F.R. Part 61, Subpart FF (“Benzene Waste Operations NESHAP” or “Subpart FF”), Big West Oil agrees to undertake, at the BWO Refinery, the measures set forth in this Part V.K to ensure continuing compliance with Subpart FF and to minimize or eliminate fugitive benzene waste emissions.

72. **Current Compliance Status.** As of the Date of Lodging of this Consent Decree, Big West Oil believes that the BWO Refinery has a Total Annual Benzene (“TAB”) of less than 10 Mg/yr. Big West Oil will review and verify the TABs at the BWO Refinery consistent with the requirements of Paragraph 74 (One-Time Review and Verification).

73. **Refinery Compliance Status Changes.** If at any time from the Date of Entry of the Consent Decree through termination of the Consent Decree the BWO Refinery is determined to have a TAB equal to or greater than 10 Mg/yr, Big West Oil shall comply with the compliance option set forth at 40 C.F.R. § 61.342(e) (hereinafter referred to as the “6 BQ compliance option”).

74. **One-Time Review and Verification of the BWO Refinery’s TAB.**

a. **Phase One of the Review and Verification Process.** By no later than two-hundred seventy (270) days after Date of Entry, Big West Oil shall complete a review and verification of the TAB of the BWO Refinery. For the BWO Refinery, the review and verification process shall include, but not be limited to:

- (1) an identification of each waste stream that is required to be included in the BWO Refinery’s TAB (e.g., slop oil, spent caustic, caustic

hydrocarbon, desalter vessel process sampling points, desalter hydrocarbon undercarry, tank water draws, other sample wastes, materials transported via vacuum truck, maintenance wastes, and turnaround wastes);

(2) a review and identification of the calculations and/or measurements used to determine the flows of each waste stream for the purpose of ensuring the accuracy of the annual waste quantity for each waste stream;

(3) an identification of the benzene concentration in each 40 C.F.R. Part 61, Subpart FF waste stream, including sampling for benzene concentration at no less than 10 waste streams consistent with the requirements of 40 C.F.R. § 61.355(c)(1) and (3); provided however, that previous analytical data or documented knowledge of waste streams may be used, 40 C.F.R. § 61.355(c)(2), for streams not sampled; and

(4) an identification of whether or not the stream is controlled consistent with the requirements of Subpart FF.

By no later than sixty (60) days following the completion of Phase One of the review and verification process, Big West Oil shall submit a Benzene Waste Operations NESHAP Compliance Review and Verification report (“BWON Compliance Review and Verification Report”) to EPA and UDEQ that sets forth the results of Phase One, including but not limited to the items identified in a.(1) through (4) of this Paragraph.

b. Phase Two of the Review and Verification Process. Based on EPA’s review of the BWON Compliance Review and Verification Report, EPA may select up to 20 additional waste streams at the BWO Refinery for sampling for benzene concentration

to assess the waste streams flow weighted annual average benzene concentration. Big West Oil will conduct the required sampling and submit the sample results to EPA within ninety (90) days of receipt of EPA's request. Big West Oil will use the results of this additional sampling to recalculate the TAB and to amend the BWON Compliance Review and Verification Report, as needed. To the extent that EPA requires Big West Oil to re-sample a waste stream that was sampled by Big West Oil under Phase One, Big West Oil may average the results of the two sampling events. Big West Oil shall submit to EPA and Big West Oil an amended BWON Compliance Review and Verification Report ("Amended BWON Compliance Review and Verification Report") within one-hundred twenty (120) days following the date of the completion of the required Phase Two sampling, if Phase Two sampling is required by EPA.

75. **Implementation of Actions Necessary to Correct Non-Compliance.**

a. **Amended TAB Reports.** If the results of the BWON Compliance Review and Verification Report or Amended BWON Compliance Review and Verification Report indicate that the BWO Refinery has failed to file the reports required by 40 C.F.R. § 61.357(c), or that the BWO Refinery's most recently filed report is inaccurate and/or otherwise does not satisfy the requirements of Subpart FF, Big West Oil shall submit, by no later than one-hundred twenty (120) days after completion of the BWON Compliance Review and Verification Report or Amended BWON Compliance Review and Verification Report, an amended TAB report ("Amended TAB Report") to EPA and UDEQ. Big West Oil's BWON Compliance Review and Verification Report or Amended BWON Compliance Review and Verification Report shall be deemed an

amended TAB report for purposes of Subpart FF reporting to EPA.

b. If the results of the BWON Compliance Review and Verification Report or Amended BWON Compliance Review and Verification Report indicate that the BWO Refinery has a TAB of over 10 Mg/yr, Big West Oil shall submit to EPA and UDEQ by no later than ninety (90) days after completion of the BWON Compliance Review and Verification Report or Amended BWON Compliance Review and Verification Report, a plan that identifies with specificity the compliance strategy and schedule that Big West Oil will implement to ensure that the BWO Refinery complies with the 6 BQ compliance option as soon as practicable.

c. Review and Approval of Plans Submitted Pursuant to Subparagraph 75.b. Any plan submitted pursuant to Subparagraph 75.b shall be subject to approval, disapproval or modification by EPA, which shall act after an opportunity for consultation with UDEQ. Within sixty (60) days after receiving any notification of disapproval or request for modification from EPA, Big West Oil shall submit to EPA and UDEQ a revised plan that responds to all deficiencies identified by EPA. Upon receipt of approval or approval with conditions, Big West Oil shall implement the plan.

d. Certification of Compliance with the 6 BQ Compliance Option. By no later than thirty (30) days after completion of the implementation of all actions, if any, required pursuant to Subparagraph 75.b or Subparagraph 75.c to come into compliance with the 6 BQ Compliance Option, Big West Oil shall submit a report to EPA and UDEQ that the BWO Refinery complies with the Benzene Waste Operations NESHAP.

76. **Annual Program.** Big West Oil shall establish, maintain, and conduct an annual

program for reviewing process information for the BWO Refinery, including but not limited to construction projects, to ensure that all new benzene waste streams are included in the BWO Refinery's waste stream inventory and TAB.

77. **Benzene Spills.** For each spill at the BWO Refinery from the Date of Entry, Big West Oil shall review such spills to determine if benzene waste was generated. Big West Oil shall include benzene generated by each spill(s) of 10 pounds or more of benzene in any 24-hour period in the annual program TAB for the BWO Refinery.

78. **Training.**

a. By no later than ninety (90) days after the Date of Entry, Big West Oil shall develop and begin implementation of annual (i.e., once each calendar year) training for all employees asked to draw benzene waste samples.

b. If the BWO Refinery's TAB reaches 10 Mg/yr or more, Big West Oil shall develop and maintain standard operating procedures for all control equipment used to comply with the Benzene Waste Operations NESHAP. Big West Oil shall complete an initial training program regarding these procedures for all operators assigned to this equipment. Comparable training shall be provided to any persons who subsequently become operators, prior to their assumption of this duty. "Refresher" training shall be performed on a periodic basis. Big West Oil shall propose a schedule for the initial and refresher training at the same time that Big West Oil proposes a plan, pursuant to either Subparagraph 75.b, or Subparagraph 75.c, that identifies the compliance strategy and schedule that Big West Oil will implement to come into compliance with the 6 BQ compliance option.

c. As part of Big West Oil's training program, it must ensure that the employees of any contractors hired to perform the requirements are properly trained to implement all provisions of this Part V.K at the BWO Refinery.

79. **Waste/Slop/Off-Spec Oil Management.**

a. By no later than two-hundred seventy (270) days after Date of Entry, Big West Oil shall prepare for the BWO Refinery, schematics that: (a) depict the waste management units (including sewers) that handle, store, and transfer waste/slop/off-spec oil streams; (b) identify the control status of each waste management unit; and (c) show how such oil is transferred within the Refinery. The schematics shall be submitted as part of the EOL Sampling Plan pursuant to Subparagraph 80.c (EOL Sampling Plan).

Representatives from Big West Oil and EPA thereafter may confer about the appropriate characterization of the BWO Refinery's waste/slop/off-spec oil streams for the waste management units handling such oil streams and shall confer about whether such streams should be included in the BWO Refinery's TAB calculation. At a mutually-agreed upon time, Big West Oil shall submit, if necessary, revised schematics that reflect the agreements between EPA and Big West Oil regarding the characterization of these oil streams and the appropriate control standards.

b. **Organic Benzene Waste Streams.** If and when the BWO Refinery's TAB reaches 10 Mg/yr or greater and a compliance strategy is approved, all waste management units handling "organic" benzene wastes, as defined in Subpart FF, shall meet the applicable control standards of Subpart FF. If, as a result of the discussions between the EPA and Big West Oil pursuant to Subparagraph 79.a, EPA and Big West

Oil agree that controls not already in place on any waste management unit handling organic benzene wastes are necessary, the Parties shall agree, in writing, to a schedule for the completion of the installation of the necessary controls.

c. Aqueous Benzene Waste Streams. For purposes of calculating the BWO Refinery's TAB pursuant to the requirements of 40 C.F.R. § 61.342(a), Big West Oil shall include all waste/slop/off-spec oil streams that become "aqueous" until such streams are recycled to a process or put into a process feed tank (unless the tank is used primarily for the storage of wastes). Appropriate adjustments will be made to any such calculations to avoid the double counting of benzene. If and when the BWO Refinery's TAB reaches 10 Mg/yr and for purposes of complying with the 6BQ compliance option, all waste management units handling aqueous benzene waste streams shall either meet the applicable control standards of Subpart FF or shall have their uncontrolled benzene quantity count toward the applicable 6 Megagram limit.

d. Plan to Quantify Uncontrolled Waste/Slop/Off-Spec Oil Streams. Big West Oil shall prepare a plan to quantify waste/slop/off-spec oil movements at the BWO Refinery for all benzene waste streams which are not controlled. This plan shall be submitted as part of the EOL Sampling Plan pursuant Subparagraph 80.c.

80. **Periodic Sampling (TAB less than 10 Mg/yr).**

a. The provisions of this Paragraph 80 shall apply from the date that the final BWON Compliance Review and Verification Report or Amended BWON Compliance Review and Verification Report submitted for the BWO Refinery pursuant to Paragraph 74 (One-Time Review and Verification) shows that the BWO Refinery's TAB is equal to

or greater than 1 Mg/yr but less than 10 Mg/yr until such time as the BWO Refinery reaches a TAB of 10 Mg/yr or more (in which case, the provisions of Paragraph 81 shall begin to apply).

b. Big West Oil shall conduct sampling no less frequently than annually, consistent with the requirements of 40 C.F.R. § 61.355(c)(1) and (3), of all waste streams containing benzene that contributed 0.05 Mg/yr or more to the TAB set forth in the final BWON Compliance Review and Verification Report, Amended BWON Compliance Review and Verification Report or the previous year's TAB, whichever is later;

c. EOL Sampling Plan. By no later than two-hundred seventy (270) days after Date of Entry, Big West Oil shall submit an end of line sampling plan ("EOL Sampling Plan") to EPA for approval that contains proposed sampling locations and methods for flow calculations to be used in the EOL determination of benzene quantity. A copy of this plan shall be submitted to the UDEQ. If, during the life of this Consent Decree, changes in processes, operations, or other factors lead Big West Oil to conclude that either the approved sampling locations and/or the approved methods for determining flow calculations no longer provide an accurate measure of the BWO Refinery's EOL benzene quantity, Big West Oil shall submit a revised plan to EPA for approval. A copy of this revised plan also shall be submitted to the UDEQ.

d. EOL Determination. On a quarterly basis, Big West Oil shall conduct an EOL determination of benzene quantity, commencing in the first full Calendar quarter after submittal of the EOL Sampling Plan (regardless of whether or not the EOL Sampling Plan is approved at that time). Big West Oil shall take and have analyzed at

least three representative samples per Calendar quarter from each approved sampling location, with three of the samples in each Calendar quarter spaced at least one month apart. Big West Oil shall use the average of these three samples as the benzene concentration for the stream at the approved location. Based on the EOL quarterly sampling results and the approved flow calculations, Big West Oil shall calculate the quarterly EOL benzene quantity and a projected calendar year TAB, utilizing all EOL results for that calendar year and any other information (such as process turnarounds) to undertake the projection.

(1) If the quarterly EOL benzene quantity is calculated to exceed 2.5 Mg, Big West Oil shall submit to EPA and UDEQ an explanation of the excess benzene waste generated. Big West Oil shall submit this explanation within thirty (30) days after the end of the quarter which resulted in an EOL benzene quantity greater than 2.5 Mg.

(2) If the projected calendar year TAB at the BWO Refinery is calculated to equal or exceed 10 Mg, Big West Oil shall submit to EPA and UDEQ a plan that identifies with specificity the actions and schedule for such actions that Big West will take to ensure that the TAB for the BWO Refinery does not exceed 10 Mg in the calendar year. Big West Oil shall submit this plan within thirty (30) days after the end of the quarter which resulted in a projection of greater than 10 Mg.

e. If it appears that appropriate action cannot be taken to ensure that the BWO Refinery maintains a TAB of under 10 Mg/yr for such calendar year under

Subparagraph 80.d.(2), Big West Oil shall retain a third party contractor to undertake a comprehensive TAB study and compliance review (“Third-Party TAB Study and Compliance Review”). Within sixty (60) days of submitting the plan required in Subparagraph 80.d.(2), Big West Oil shall submit a proposal to EPA and UDEQ that identifies the contractor, the contractor’s scope of work, and the contractor’s schedule for the Third-Party TAB Study and Compliance Review. Unless EPA disapproves or seeks modifications within thirty (30) days of its receipt of the proposal, Big West Oil shall authorize the contractor to commence work. By no later than thirty (30) days after Big West Oil receives the results of the Third-Party TAB Study and Compliance Review, Big West Oil shall submit the results to EPA and UDEQ. EPA, UDEQ, and Big West Oil subsequently shall discuss informally the results of the Third-Party TAB Study and Compliance Review. By no later than one-hundred twenty (120) days after Big West Oil receives the results of the Third-Party TAB Study and Compliance Review, or such other time as Big West Oil and EPA may agree, Big West Oil shall submit to EPA and UDEQ a plan that identifies with specificity the compliance strategy and schedule that Big West Oil will implement to ensure that the BWO Refinery either does not have a TAB greater than 10 Mg for that calendar year or will comply with the 6BQ compliance option as soon as practicable. The review and approval of this Plan shall be done in accordance with Subparagraph 75.c (Review and Approval of Plans) of this Decree. Certification of Compliance shall be done in accordance with Subparagraph 75.d (Certification of Compliance).

81. **Periodic Sampling (TAB of 10 Mg/yr or More).**

a. If the BWO Refinery's TAB reaches or exceeds 10 Mg/yr, the provisions of this Paragraph 81 shall apply.

b. By no later than its certification under Subparagraph 75.d (Certification of Compliance), Big West Oil shall submit to EPA for approval an EOL Plan for determining the benzene quantity in uncontrolled waste streams. A copy of this plan shall be submitted to the UDEQ. The proposed plan shall include, but not be limited to, sampling locations, methods for flow calculations, and the assumed volatilization rate(s) to be used in calculating the uncontrolled benzene quantity. Such plan shall also require quarterly sampling of all uncontrolled waste streams that count toward the 6 BQ calculation and contain greater than 0.05 Mg/yr of benzene.

c. If changes in processes, operations, or other factors lead Big West Oil to conclude that the approved sampling locations, approved methods for determining flow calculations, and/or assumed volatilization rates no longer provide an accurate measure of the BWO Refinery's EOL benzene quantity, Big West Oil shall submit a revised plan to EPA for approval. Thereafter, a copy of this revised plan also shall be provided to UDEQ.

d. **EOL Sampling Plan.** On a monthly basis, Big West Oil shall conduct EOL sampling, commencing during the first month of the first full Calendar quarter after Big West Oil receives written approval from EPA of the sampling plan for the BWO Refinery. Big West Oil shall take and have analyzed at least three representative samples from each approved sampling location. Big West Oil shall use the average of these three

samples as the benzene concentration for the stream at the approved location. Based on the EOL monthly sampling results, the approved flow calculations, and the volatilization assumptions, Big West Oil shall calculate the sum of the EOL benzene quantity for the three months contained within the respective quarter. Nothing in this Paragraph 81 shall preclude Big West Oil from taking representative samples more frequently within any calendar month, provided that Big West Oil identifies the basis for the additional samples. Such samples shall be included in calculating the average monthly EOL benzene quantity.

e. If the sum of the EOL benzene quantity for the three month period contained within a quarter equals or exceeds 1.5 Mg or if the estimated calendar year value exceeds 6 Mg/yr., Big West Oil shall prepare and provide to EPA and UDEQ a written summary and schedule of activities necessary to minimize benzene wastes so as to ensure that it complies with the 6BQ Compliance Option for that calendar year. This summary and schedule are due no later than thirty (30) days after the close of such quarter.

f. If the sum of the EOL benzene quantity for two consecutive quarters indicates that the EOL benzene quantity, prorated on a yearly basis, will exceed 6 Mg/yr and Big West Oil has not discovered and corrected the cause of the potentially elevated benzene, Big West Oil shall retain a third party contractor to undertake a comprehensive TAB study and compliance review (“Third-Party TAB Study and Compliance Review”). At a mutually agreed upon date, Big West Oil shall submit a proposal to EPA and UDEQ that identifies the contractor, the contractor’s scope of work, and the contractor’s

schedule for the Third-Party TAB Study and Compliance Review. Unless EPA disapproves or seeks modifications within thirty (30) days of its receipt of the proposal, Big West Oil shall authorize the contractor to commence work. By no later than thirty (30) days after Big West Oil receives the results of the Third-Party TAB Study and Compliance Review, Big West Oil shall submit the results to EPA and UDEQ. EPA, UDEQ, and Big West Oil subsequently shall discuss informally the results of the Third-Party TAB Study and Compliance Review. By no later than one-hundred twenty (120) days after Big West Oil receives the results of the Third-Party TAB Study and Compliance Review, or such other time as Big West Oil and EPA may agree, Big West Oil shall submit to EPA and UDEQ a plan that identifies with specificity the compliance strategy and schedule that Big West Oil will implement to ensure that the BWO Refinery does not exceed 6 Megagrams of uncontrolled benzene for that calendar year. If Big West Oil is unable to propose a plan to ensure that the BWO Refinery's uncontrolled benzene for the calendar year will be 6 Megagrams or less, then it shall identify the actions to be taken to minimize the uncontrolled benzene for the remainder of the year. The review and approval of this plan shall be done in accordance with Subparagraph 75.c (Review and Approval of Plans) of this Decree. Certification of Compliance shall be done in accordance with Subparagraph 75.d (Certification of Compliance).

82. **Miscellaneous Measures.** If the BWO Refinery's TAB reaches or exceeds 10Mg/yr, the following provisions of this Paragraph 82 shall apply:

- a. Big West Oil shall conduct monthly visual inspections of all water traps within the BWO Refinery's individual drain systems;

b. On a weekly basis, Big West Oil shall visually inspect all conservation vents or indicators on process sewers for detectable leaks; reset any vents where leaks are detected; and record the results of the inspections. After two (2) years of weekly inspections, and based upon an evaluation of the recorded results, Big West Oil may submit a request to the applicable EPA Region to modify the frequency of the inspections. EPA shall not unreasonably withhold its consent. Nothing in this Subparagraph 82.b shall require Big West Oil to monitor conservation vents on fixed roof tanks;

c. Big West Oil shall conduct quarterly monitoring of the controlled oil-water separators in benzene service in accordance with the “no detectable emissions” provision in 40 C.F.R. § 61.347, or quarterly measurements of the oil-water separator seal gap if using the alternative control requirements allowed under 40 C.F.R. § 61.352, if the separator is a control device under Subpart FF; and

d. If carbon canisters are used to comply with Subpart FF, they must be operated in series as a dual system. Monitoring for hydrocarbon breakthrough will be measured between the primary and secondary canister. Upon detecting 50 ppm VOC, the primary canister will be replaced within 24 hours.

83. **Recordkeeping and Reporting Requirements for this Part V.K.** At the times specified in the applicable provisions of this Part, Big West Oil shall submit, as and to the extent required, the following reports to EPA and UDEQ. Reports required pursuant to 40 C.F.R. § 61.357 and the Semi-annual Progress Report Procedures of Part IX (Reporting and Record Keeping) shall continue to apply.

- a. BWON Compliance Review and Verification Report (Paragraph 74), as amended, if necessary;
- b. Amended TAB Report, if necessary, pursuant to Subparagraph 75.a;
- c. Plan for the BWO Refinery to come into compliance with the 6 BQ compliance option upon discovering that its TAB equals or exceeds 10 Mg/yr through the BWON Compliance Review and Verification Report (Subparagraph 75.b), or the Third-Party TAB Study and Compliance Review that may result from EOL sampling (Subparagraph 80.e);
- d. Compliance certification, if necessary (Subparagraph 75.d);
- e. Schedule to complete implementation of controls on waste management units handling organic benzene waste, if necessary (Subparagraph 79.b);
- f. EOL Sampling Plans (Subparagraphs 80.c and 81.b), and revised EOL Sampling Plans, if necessary (Subparagraphs 80.c and 81.c);
- g. Plan, if necessary, to ensure that uncontrolled benzene does not equal or exceed, as applicable, 6 or 10 Mg/yr, or is minimized, based on projected calendar year uncontrolled benzene quantities as determined through EOL sampling (Subparagraphs 80.d.(1), 80.d.(2), and 80.e);
- h. Proposal for a Third-Party TAB Study and Compliance Review, if necessary (Subparagraphs 80.e and 81.f);
- i. Third-Party TAB Study and Compliance Review, if necessary (Subparagraphs 80.e and 81.f); and
- j. Plan to implement the results of the Third-Party TAB Study and

Compliance Review, if necessary (Subparagraphs 80.e and 81.f).

84. **Reports Required under the Semi-annual Progress Report Procedures of**

Part IX (Reporting and Record Keeping).

a. TAB is equal to or greater than 1 Mg/yr but less than 10 Mg/yr. From the date that the final BWON Compliance Review and Verification Report submitted for the BWO Refinery pursuant to Paragraph 74 (One-time Review and Verification) shows that the BWO Refinery's TAB is equal to or greater than 1 Mg/yr but less than 10 Mg/yr through termination of this Consent Decree (unless the BWO Refinery reaches a TAB of 10 Mg/yr or more, in which case the provisions of Subparagraph 84.b (TAB is 10MG/yr or More) shall begin to apply), Big West Oil shall submit the following information in Semi-annual Progress Reports pursuant to the requirements of Part IX (Reporting and Record Keeping) of this Consent Decree:

(1) A description of the measures that it took to comply with the training provisions of Paragraph 78;

(2) The annual, non-EOL sampling required at the BWO Refinery pursuant to the requirements of Subparagraph 80.b (Periodic Sampling<10MG) (this information shall be submitted in the first Semi-annual progress report of each year);

(3) The results of the quarterly EOL sampling undertaken pursuant to Subparagraph 80.d (Periodic Sampling) for the Calendar quarter. The report shall include a list of all waste streams sampled, the results of the benzene analysis for each sample, and the computation of the EOL benzene quantity for the respective

quarter. The BWO Refinery shall identify whether the quarterly benzene quantity equals or exceeds 2.5 Mg and whether the projected calendar year benzene quantity equals or exceeds 10 Mg. If either condition is met, the BWO Refinery shall include in the Semi-annual report the plan required pursuant to Subparagraph 80.e, and shall specifically seek EPA's concurrence in the plan.

b. TAB is 10 Mg/yr or More. The provisions of this Paragraph 84 shall apply if the BWO Refinery's TAB reaches or exceeds 10 Mg/yr prior to termination of this consent decree. Big West Oil shall submit the following information in Semi-annual Progress Reports pursuant to the requirements of Part IX (Reporting and Record Keeping) of this Consent Decree:

(1) A description of the measures that it took to comply with the training provisions of Paragraph 78;

(2) The results of the three months of monthly EOL sampling undertaken pursuant to Subparagraph 81.d for the Calendar quarter. The report shall include a list of all waste streams sampled, the results of the benzene analysis for each sample, and the computation of the EOL benzene quantity for the three months contained within the respective quarter;

85. **Agencies to Receive Reports, Plans and Certifications Required in the Part.**

Big West Oil shall submit all reports, plans and certifications required to be submitted under this Part to EPA and UDEQ.

86. **Laboratory Audits.**

a. Big West Oil shall conduct audits of all laboratories that perform analyses

of Big West Oil's benzene waste operations NESHAP samples to ensure that proper analytical and quality assurance/quality control procedures are followed. These audits may be conducted either by Big West Oil personnel or third parties. Big West Oil may retain third parties to conduct these audits or use audits conducted by others as its own, but Big West Oil has the sole responsibility and obligation to ensure compliance with this Consent Decree and Subpart FF.

b. By no later than one (1) year after Date of Entry, Big West Oil shall complete initial audits of the laboratories used by it. In addition, Big West Oil shall audit any new laboratory used for analyses of benzene samples prior to use of the new laboratory.

c. During the life of this Consent Decree, Big West Oil shall conduct subsequent laboratory audits, such that each laboratory is audited every two (2) years.

L. LEAK DETECTION AND REPAIR ("LDAR") PROGRAM ENHANCEMENTS

87. Big West Oil shall undertake the following measures to improve the BWO Refinery's LDAR program, to minimize or eliminate fugitive emissions from equipment in light liquid and/or in gas/vapor service at the BWO Refinery, and to make all existing facilities at the BWO Refinery "affected facilities," within the meaning of 40 C.F.R. §§ 60.2 and 60.590(a)(3), subject to NSPS Subpart GGG.

88. In order to minimize or eliminate fugitive emissions of volatile organic compounds ("VOCs"), benzene, volatile hazardous air pollutants ("VHAPs"), and organic hazardous air pollutants ("HAPs") from equipment in light liquid and/or in gas/vapor service, Big West Oil shall implement at the BWO Refinery the enhancements at this Part V.L to the

BWO Refinery's LDAR program under Title 40 of the Code of Federal Regulations, Part 60, Subpart GGG; Part 61, Subparts J and V; Part 63, Subparts F, H, and CC. For purposes of this Part V.L, the terms "equipment," "in light liquid service" and "in gas/vapor service" shall have the definitions set forth in the applicable provisions of Title 40 of the Code of Federal Regulations, Part 60, Subparts VV and GGG; Part 61, Subparts J and V; Part 63, Subparts F, H and CC.

89. Affected Facilities. Upon the Date of Entry, all equipment, as defined by 40 C.F.R. § 60.591, within each process unit and all compressors at BWO Refinery shall become "affected facilities" for purposes of 40 C.F.R. Part 60, Subpart GGG, and shall become subject to and comply with the requirements of 40 C.F.R. Part 60, Subpart GGG, and the requirements of Part V.L of this Consent Decree, provided that any such equipment or compressors that are subject to 40 C.F.R. Part 63, Subparts CC, F, or H, or 40 C.F.R. Part 60, Subpart GGGa, shall comply with those Subparts, as applicable, not Subpart GGG.

90. Written Refinery-Wide LDAR Program. By no later than one-hundred twenty (120) days after Date of Entry, Big West Oil shall develop and maintain, for the BWO Refinery, a written, Refinery-wide program for compliance with all applicable federal and State LDAR regulations. Big West Oil shall implement this program on a Refinery-wide basis, and Big West Oil shall update the program as necessary to ensure continuing compliance. Pursuant to the provisions of Part IX of this Consent Decree (Reporting and Record Keeping), Big West Oil shall submit a copy of the facility's initial written LDAR Program to EPA and UDEQ. A description of program changes shall be maintained on-site during the life of the Consent Decree but need not be submitted to the agencies. The Refinery-wide program shall include at a

minimum:

- a. An overall, Refinery-wide leak rate goal that will be a target for achievement on a process-unit by process-unit basis;
- b. An identification of all equipment in light liquid and/or in gas/vapor service that has the potential to leak VOCs, HAPs, VHAPs, and benzene within process units that are owned and maintained by the BWO Refinery;
- c. Procedures for identifying leaking equipment within process units that are owned and maintained by the BWO Refinery;
- d. Procedures for repairing and keeping track of leaking equipment;
- e. A process for evaluating new and replacement LDAR equipment that includes active consideration of equipment or techniques that will minimize leaks and/or eliminate chronic leakers;
- f. A definition of “LDAR Personnel” and a description of how Big West Oil will assure program accountability. It must identify the person or position that will be the “LDAR Coordinator” and, consistent with Big West Oil management authorities, provide that this person shall have the responsibility to implement improvements to the LDAR program; and
- g. Procedures (e.g., a Management of Change program) to ensure that components subject to LDAR requirements that are added to each facility during scheduled maintenance and construction activities are integrated into the LDAR program.

91. **Training.** Except as provided in Subparagraph 91.a below, by no later than one-hundred eighty (180) days after Date of Entry, Big West Oil shall implement the following

training programs at the BWO Refinery:

- a. For personnel newly assigned to LDAR responsibilities, Big West Oil shall require LDAR training prior to each employee beginning such work;
- b. For all personnel assigned LDAR responsibilities, including but not limited to, monitoring technicians, database users, QA/QC personnel and the LDAR Coordinator, Big West Oil shall provide and require completion of initial LDAR training and annual training thereafter; and
- c. For all other Refinery operations and maintenance personnel including, but not limited to, operators and mechanics performing valve packing and designated unit supervisors reviewing for delay of repair work, Big West Oil shall provide and require completion of an initial training program that includes instruction on aspects of LDAR that are relevant to the person's duties. "Refresher" training in LDAR for these personnel shall be performed at a minimum on a three (3) year cycle.
- d. If contract employees are performing LDAR work, Big West Oil's contractor shall comply with the training requirements in Subparagraphs 91.a, b, and c for all such contractor employees and, if such training is provided by anyone other than Big West Oil, shall provide its training information and records to Big West Oil.

92. **LDAR Audits.**

- a. Big West Oil shall implement at the BWO Refinery, the Refinery-wide audits set forth in Subparagraphs 92.b and c, to ensure the Refinery's compliance with all applicable LDAR requirements. The LDAR audits shall include but not be limited to, comparative monitoring, records review to ensure monitoring and repairs were completed

in the required periods, component identification procedures, tagging procedures, data management procedures and observation of the LDAR technicians' calibration and monitoring techniques. During the LDAR audits, leak rates shall be calculated for each process unit where comparative monitoring was performed. Big West Oil shall notify EPA and the UDEQ before each audit is conducted. EPA and or State may audit Big West Oil facilities for compliance with the terms of this CD.

b. Third-Party Audits. Big West Oil shall retain an independent contractor(s) with expertise in LDAR program requirements to perform a third-party audit of the BWO Refinery's LDAR Program at least once every four (4) years. The first third-party audit for the BWO Refinery shall be completed no later than twelve (12) months after Date of Entry. Subsequent third-party audits shall be held every four (4) years thereafter.

c. Internal Audits. Big West Oil shall conduct internal audits of the BWO Refinery's LDAR Program by sending personnel associated with Big West Oil's LDAR contractor(s) who are familiar with the LDAR program and its requirements but are not routinely assigned to the BWO Refinery. Big West Oil shall complete the first round of these internal LDAR audits within two (2) years following completion of the first third-party audit required under Subparagraph 92.b. Internal audits of the BWO Refinery shall be held every four (4) years thereafter.

d. To ensure that an audit at the BWO Refinery occurs every two (2) years, third-party and internal audits shall be separated by two (2) years.

e. Alternative. As an alternative to the internal audits required by Subparagraph 92.c, Big West Oil may elect to retain third parties to undertake these

audits, provided that an audit of the BWO Refinery occurs every two (2) years.

93. **Implementation of Actions Necessary to Correct Non-Compliance.** If the results of any of the audits conducted pursuant to Paragraph 92 at the BWO Refinery identify any areas of non-compliance, Big West Oil shall implement all steps necessary to correct the area(s) of non-compliance as soon as practicable, and to prevent a recurrence of the cause of the non-compliance to the extent practicable. Until two (2) years after termination of this Consent Decree, Big West Oil shall retain the audit reports generated pursuant to Paragraph 92 and shall maintain a written record of the corrective actions that Big West Oil takes at the BWO Refinery in response to any deficiencies identified in any audits. Pursuant to the provisions of Part IX of this Consent Decree (Reporting and Record Keeping), Big West Oil shall submit the audit reports and corrective action records for audits performed and actions taken during the previous year.

94. **Internal Leak Definition for Valves and Pumps.** Big West Oil shall utilize the following internal leak definitions for valves in light liquid or gas/vapor service and pumps in light liquid service, unless other permit(s), regulations, or laws require the use of lower leak definitions.

a. **Leak Definition for Valves.** By no later than one-hundred eighty (180) days after Date of Entry, Big West Oil shall utilize an internal leak definition of 500 ppm VOCs for all of the BWO Refinery's valves, excluding pressure relief devices, in light liquid or gas/vapor service.

b. **Leak Definition for Pumps.** Except as otherwise provided in Subparagraphs 94.b.(1) and (2), by no later than one-hundred eighty (180) days after Date

of Entry, Big West Oil shall utilize an internal leak definition of 2,000 ppm VOCs for all of the BWO Refinery's pumps in light liquid service.

(1) By no later than one (1) year after Date of Entry, Big West Oil shall utilize an internal leak definition of 2,000 ppm VOCs for all of the BWO Refinery's pumps in light liquid service listed in Appendix C.

(2) By no later than five-hundred forty-five (545) days after Date of Entry, Big West Oil shall utilize an internal leak definition of 2,000 ppm VOCs for all of the BWO Refinery's pumps in light liquid service listed in Appendix D.

95. **Reporting, Recording, Tracking, Repairing and Re-monitoring Leaks of Valves and Pumps Based on the Internal Leak Definitions.**

a. Reporting. For regulatory reporting purposes, Big West Oil may continue to report leak rates in valves and pumps against the applicable regulatory leak definition, or may use the lower, internal leak definitions specified in Paragraph 94. Big West Oil will identify in the report which definition is being used.

b. Recording, Tracking, Repairing and Re-monitoring Leaks. Beginning no later than one-hundred eighty (180) days after Date of Entry, Big West Oil shall record, track, repair and re-monitor all leaks in excess of the internal leak definitions of Paragraph 94 at such time as those definitions become applicable, except that Big West Oil shall have five (5) days to make an initial attempt and re-monitor the component, and have thirty (30) days to make repairs and re-monitor leaks that are greater than the internal leak definitions but less than the applicable regulatory leak definitions, or to place on the delay of repair list according to Paragraph 103.

96. **Initial Attempt at Repairs on Valves.** Beginning no later than ninety (90) days after Date of Entry, Big West Oil shall promptly make an “initial attempt” at repair on any valve that has a reading greater than 200 ppm of VOCs, excluding control valves and other valves that LDAR personnel are not authorized to repair. Big West Oil, or its designated contractor, shall re-monitor the leaking valve within five (5) days of identification. If the re-monitored leak reading is below the internal leak definition in Subparagraph 94.a, no further action will be necessary. If the re-monitored leak reading is greater than the internal leak definition in Subparagraph 94.a, Big West Oil shall repair the leaking valve according to the requirements under Subparagraph 95.b. All records of repairs, repair attempts, and re-monitoring shall be maintained for the life of the Consent Decree.

97. **LDAR Monitoring Frequency.**

a. **Pumps.** Unless more frequent monitoring is required by a federal or state regulation, when the lower internal leak definition for pumps becomes applicable pursuant to the provisions of Subparagraph 94.b, Big West Oil shall begin monitoring pumps in light liquid service, other than dual-mechanical seal pumps or pumps vented to a control device, at the lower leak definition on a monthly basis.

b. **Valves.** Unless more frequent monitoring is required by a federal or state regulation, when the lower internal leak definition for valves becomes applicable pursuant to the provisions of Subparagraph 94.a, and by no later than one-hundred eighty (180) days after the Date of Entry, Big West Oil shall monitor valves, other than difficult to monitor or unsafe to monitor valves, on a quarterly basis, with no ability to skip periods.

98. **Electronic Monitoring, Storing, and Reporting of LDAR Data.**

a. **Electronic Storing and Reporting of LDAR Data.** Big West Oil shall continue to maintain an electronic database for storing and reporting LDAR monitoring and repair data from the BWO Refinery.

b. **Electronic Data Collection During LDAR Monitoring and Transfer Thereafter.** By no later than the Date of Entry, Big West Oil shall use dataloggers and/or electronic data collection devices during LDAR monitoring. Big West Oil, or its designated contractor, shall use its/their best efforts to transfer, at least every seven (7) days, electronic data from electronic datalogging devices to the electronic database required in Subparagraph 98.a. For all monitoring events in which an electronic data collection device is used, the collected monitoring data shall include a time and date stamp, and instrument and operator identification. Big West Oil may use paper logs where necessary or more feasible (e.g., small rounds, re-monitoring, or when dataloggers are not available or broken), and shall record, at a minimum, the identification of the technician undertaking the monitoring, the date, the daily start and end time for monitoring, and the identification of the monitoring equipment. Big West Oil shall transfer any manually recorded monitoring data to the electronic database required in Subparagraph 98.a within seven (7) days of monitoring.

99. **QA/QC of LDAR Data.** By no later than sixty (60) days after the Date of Entry, Big West Oil, or a third party contractor retained by Big West Oil, shall develop and implement a review procedure to ensure a quality assurance/quality control (“QA/QC”) of all data generated by LDAR monitoring technicians. Big West Oil or contractor monitoring technicians shall

review monitoring data each day after monitoring is conducted to ensure QA/QC of the data. At least once per Calendar quarter, Big West Oil shall perform QA/QC of the monitoring data which shall include, but not be limited to: number of components monitored per technician, time between monitoring events, and abnormal data patterns. Big West Oil shall communicate monitoring results to unit supervisors on a weekly basis.

100. **LDAR Personnel.** By no later than the Date of Entry, Big West Oil shall establish a program that will hold LDAR personnel accountable for LDAR performance. Big West Oil shall maintain a position within the BWO Refinery responsible for LDAR management, with the authority to implement improvements (“LDAR Coordinator”).

101. **Adding New Valves and Pumps.**

a. **Management of Change.** By no later than the Date of Entry, Big West Oil shall establish a tracking program for maintenance records (e.g., a Management of Change program) to ensure that valves and pumps added to the BWO Refinery during maintenance and construction are integrated into the LDAR Program.

b. **Newly-Installed Valves.** By no later than one-hundred eighty (180) days after the Date of Entry, Big West Oil shall:

(1) ensure that all newly installed valves (other than sampling and instrumentation valves in service on piping with a diameter of 5/8” or less) are fitted, prior to installation, with Certified Low-Leaking Valves or Certified Low-Leaking Valve Packing Technology; and

(2) Modify its purchasing procedures to ensure that the BWO Refinery evaluates the availability of valves and valve packing that meets the requirements

for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology at the time that the valves, valve packing and/or equipment is acquired for the BWO Refinery.

c. Commercial Unavailability. Big West Oil shall not be required to utilize a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology to replace or repack a valve if a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is commercially unavailable, in accordance with the provisions of Appendix B.

d. If Big West Oil exercises the Commercial Unavailability Exception under this Paragraph for any valve, then Big West Oil shall:

(1) Include the following in the Semi-Annual Reports required under Part IX (Reporting and Record Keeping):

(a) identify each valve for which it could not comply with the requirement to replace or repack the valve with a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology;

(b) all of the information and documentation specified in Appendix B for each valve claimed to be commercially unavailable; and

(c) identify the commercially-available valve or packing technology that comes closest to meeting the requirements for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology.

(2) Install the valve(s) or packing technology it has identified to be

commercially available that comes closest to meeting Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology requirements.

e. Ongoing Assessment of Availability. Big West Oil may use a prior determination of Commercial Unavailability of a valve or valve packing pursuant to this Paragraph and Appendix B for a subsequent Commercial Unavailability claim for the same valve or valve packing (or valve or valve packing in the same or similar service), provided that the previous determination was completed within the preceding 12-month period. After one (1) year, Big West Oil must conduct a new assessment of the availability of a valve or valve packing meeting Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology requirements.

102. **Calibration/Calibration Drift Assessment.**

a. Calibration. Beginning no later than the Date of Entry, Big West Oil or its contractor shall conduct all calibrations of LDAR monitoring equipment using methane as the calibration gas, in accordance with 40 C.F.R. Part 60, App. A, EPA Reference Test Method 21. Big West Oil shall maintain records of the instrument calibrations required by this Paragraph for the duration of the Consent Decree.

b. Calibration Drift Assessment. Beginning no later than the Date of Entry, Big West Oil or its contractor shall conduct calibration drift assessments of LDAR monitoring equipment at the end of each monitoring shift, at a minimum. The calibration drift assessment shall be conducted using, at a minimum, a 500 ppm calibration gas. If any calibration drift assessment after the initial calibration shows a negative drift of more than 10% from the previous calibration, Big West Oil shall re-monitor all valves that

were monitored since the last calibration that had a reading greater than 100 ppm and shall re-monitor all pumps that were monitored since the last calibration that had a reading greater than 500 ppm.

103. **Delay of Repair.** Beginning no later than ninety (90) days after the Date of Entry and for any equipment for which Big West Oil is allowed, under 40 CFR § 60.482-9(a), to place on the “delay of repair” list for repair, Big West Oil shall:

a. For all equipment, Big West Oil shall:

(1) Require sign-off by the unit supervisor that the piece of equipment is technically infeasible to repair without a process unit shutdown, before the component is eligible for inclusion on the “delay of repair” list; and

(2) Include equipment that is placed on the “delay of repair” list in the regular LDAR monitoring program. For leaks above the internal leak definition rate and below the regulatory rate, Big West Oil shall have thirty (30) days to put the equipment on the delay of repair list.

b. For valves:

(1) For valves, other than control valves, leaking at a rate of 10,000 ppm or greater and which cannot be repaired using traditional techniques, Big West Oil shall use the “drill and tap” or similarly effective repair method for fixing such leaking valves, rather than placing the valve on the “delay of repair” list, unless Big West Oil can demonstrate that there is a safety, mechanical, or major environmental concern posed by repairing the leak in that manner. Big West Oil shall perform a first, and if necessary a second, “drill and tap” (or

equivalent) repair method within thirty (30) days after detecting a leak of 10,000 ppm or greater;

(2) After two unsuccessful attempts to repair a leaking valve through the “drill and tap” or similarly effective repair method, Big West Oil may place the leaking valve on its “delay of repair” list. Big West Oil shall advise EPA prior to implementing repair methods equivalent to “drill and tap” if such method develops for repairing valves.

104. **Chronic Leakers.** Beginning on the Date of Entry, Big West Oil shall replace or repack all non-control valves that are “chronic leakers” during the next process unit turnaround. A chronic leaker shall be defined as any component which leaks above 10,000 ppm in any two quarters between refinery turnarounds during the life of the Consent Decree.

105. **Record Keeping and Reporting Requirements for this Part V.L.** Consistent with the requirements of Part IX (Reporting and Record Keeping), Big West Oil shall include the following information, at the following times, in their semi-annual progress reports:

a. **First Semi-Annual Progress Report Due under the Consent Decree.** At the later of: (i) the first semi-annual progress report due under the Consent Decree; or (ii) the first semi-annual progress report in which the requirement becomes due, Big West Oil shall include the following:

(1) A copy of the Written Refinery-Wide LDAR Program required pursuant to Paragraph 90.

(2) Notification of the completion/implementation of the Internal Leak Definition for Valves and Pumps requirements pursuant to Paragraph 94.

(3) Notification of the completion/implementation of the Initial Attempt at Repairs on Valves requirements pursuant to Paragraph 96.

(4) Notification of the completion/implementation of the LDAR Monitoring Frequency requirements pursuant to Paragraph 97.

(5) Notification of the completion/implementation of the Electronic Monitoring, Storing, and Reporting of LDAR Data requirements pursuant to Paragraph 98.

(6) Notification of the completion/implementation of the QA/QC of LDAR Data requirements pursuant to Paragraph 99.

(7) Notification of the completion/implementation of the LDAR Personnel requirements pursuant to Paragraph 100.

(8) Notification of the completion/implementation of the Calibration/Calibration Drift Assessment requirements pursuant to Paragraph 102.

(9) Notification of the completion/implementation of the Delay of Repair requirements pursuant to Paragraph 103.

(10) Notification of the completion/implementation of the Chronic Leakers requirements pursuant to Paragraph 104.

(11) Identification of the refinery's LDAR Coordinator.

b. First Semi-Annual Progress Report for the Calendar Year. In the semi-annual progress report that Big West Oil submits pursuant to Part IX for the first semi-annual period of each year, Big West Oil shall include an identification of each audit that was conducted pursuant to the requirements of Paragraph 92 in the previous calendar

year including an identification of the auditors, a summary of the audit results, and a summary of the actions that Big West Oil took or intends to take to correct all deficiencies identified in the audits, pursuant to Paragraph 93.

c. MACT Subpart CC Reporting. In each report due under 40 C.F.R. § 63.655, Big West Oil shall include:

(1) Training. Information identifying the measures that Big West Oil took to comply with the provisions of Paragraph 91; and

(2) Monitoring. The following information on LDAR monitoring:

(a) a list of the process units monitored during the reporting period;

(b) the number of valves and pumps monitored in each process unit;

(c) the number of valves and pumps present in each process unit;

(d) the number of valves and pumps found leaking;

(e) the number of “difficult to monitor” pieces of equipment monitored;

(f) the projected month and year of the next monitoring event for that unit;

(g) a list of all equipment currently on the “delay of repair” list, the date each component was placed on the list; the date each component was determined to be leaking at a rate greater than 10,000 ppm, the date of

each drill and tap or equivalent of repair, its associated monitoring results and whether such activities were completed in a timely manner;

(h) the number of repair attempts not completed within five (5) day and thirty (30) days or placed on the delay of repair list according to Paragraph 95 (repairing under internal leak definition);

(i) the number, date and results of each initial repair attempt, including a list of all initial attempts/re-monitoring that did not occur in a timely manner under Paragraph 96 (Initial Attempt at Repairs);

(j) the number of repairs not completed within the required time frames under Paragraph 103 (Delay of Repair); and

(k) the number of repairs not completed at the next process unit turnaround as required by Paragraph 104.

106. **Agencies to Receive Reports, Plans and Certifications Required in this Part; Number of Copies.** Big West Oil shall submit all reports, plans and certifications required to be submitted under this Part to EPA and UDEQ.

M. INCORPORATION OF CONSENT DECREE REQUIREMENTS INTO FEDERALLY ENFORCEABLE PERMITS.

107. By no later than one-hundred eighty (180) days after the Date of Entry, Big West Oil shall submit applications to UDEQ to incorporate emission limits and standards required by the Consent Decree that are effective as of the Date of Lodging and/or the Date of Entry of the Consent Decree into minor or major new source review permits or other permits (other than Title V permits) which are federally enforceable. Following submission of the permit application, Big West Oil shall cooperate with the UDEQ by promptly submitting to UDEQ all information that

UDEQ seeks following its receipt of the permit application. Upon issuance of such permits, Big West Oil shall file any applications necessary to incorporate the requirements of those permits into the Title V permit for the Refinery. Big West Oil does not waive its right to appeal more stringent emission limits or standards than those required by this Consent Decree.

108. **At Variable Times.** As soon as practicable, but in no event later than one-hundred twenty (120) days after the effective date or establishment of any emission limits or standards under Part V (Affirmative Relief) or Subparagraphs 219.b or c of this Consent Decree, Big West Oil shall submit applications to UDEQ to incorporate those emission limitations and standards into minor or major new source review permits or other permits (other than Title V permits) which are federally enforceable. Following submission of the permit application, Big West Oil shall cooperate with UDEQ by promptly submitting to UDEQ all information that UDEQ seeks following its receipt of the permit application. Upon issuance of such permit, Big West Oil shall file any applications necessary to incorporate the requirements of that permit into the Title V permit for the Refinery. Big West Oil does not waive its right to appeal more stringent emission limits or standards than those required by this Consent Decree.

109. **Mechanism for Title V Incorporation.** The Parties agree that the incorporation of any emission limits or other standards into the Title V permits for the Refinery as required by Paragraphs 107 and 108 shall be in accordance with UDEQ Title V rules. The Parties agree that incorporation of the requirement of this Decree may be by “amendment” under 40 C.F.R. § 70.7(d) and analogous UDEQ Title V rules, where allowed by state law.

110. **Construction Permits.** Big West Oil agrees to use best efforts to obtain all required, federally enforceable permits for the construction of the pollution control technology

and/or the installation of equipment necessary to implement the affirmative relief and environmental projects set forth in this Part V (Affirmative Relief). To the extent that Big West Oil must submit permit applications for this construction or installation to UDEQ, Big West Oil shall cooperate with UDEQ by promptly providing it with all information that it may seek following its receipt of the permit application.

111. **Obligations that Shall Survive Consent Decree Termination.** The requirements imposed by the following provisions of this Consent Decree shall survive termination of the Consent Decree under Section XVIII:

a. **Emission Limits and Standards.** The following Consent Decree requirements shall constitute emission limits and standards that shall survive termination of the Consent Decree by virtue of being incorporated into federally-enforceable permits:

- (1) Paragraphs 12 and 14 in Part V.A (*FCCU NO_x limits*);
- (2) Paragraphs 23 and 25 in Part V.B (*FCCU SO₂ limits*);
- (3) Paragraphs 32 and 34 (if applicable as of the date of termination) in Part V.C (*FCCU PM limits*);
- (4) Paragraphs 39, 40 (if applicable as of the date of termination), and 42 in Parts V.D and V.E (*FCCU CO limits*);
- (5) Paragraph 43 in Part V.F (*FCCU Regenerator limits*);
- (6) Paragraphs 44, 45, and 46 in Part V.G (*Heater and Boiler limits*);
- (7) Paragraphs 48 and 49 in Part V.H (*NSPS for Heaters and Boilers and SO₂ controls*);
- (8) Paragraphs 51, 51.a (*NSPS for SRPS*) and Paragraph 52 in Part V.I

(NSPS for sulfur pit); and

(9) Paragraphs 59 in Part V.J (*NSPS for flaring devices*).

b. Certain Other Requirements.

(1) Paragraph 55 (as specified therein) in Part V.I (PMO Plans);

(2) All of Part V.M (*Incorporation of CD Requirements into permits*);

and

(3) All of Section VI (*Emission Credit Generation*).

VI. EMISSION CREDIT GENERATION

112. The intent of this Part generally is to prohibit Big West Oil from using the emissions reductions that will result from the installation and operation of the controls required by this Consent Decree (“CD Emissions Reductions”) for the purpose of emissions netting or emissions offsets, while still allowing Big West Oil to use a fraction of the CD Emissions Reductions under certain conditions.

113. **General Prohibition.** Big West Oil shall not generate or use any NO_x, SO₂, CO, or PM emissions reductions that result from any projects conducted or controls required pursuant to this Consent Decree (“CD Emission Reductions”) as netting reductions or emissions offsets in any PSD, major non-attainment and/or minor New Source Review (“NSR”) permit or permit proceeding.

114. **Outside the Scope of the General Prohibition.** Nothing in this Part VI is intended to prohibit Big West Oil from seeking to:

a. utilize or generate emissions credits or reductions from refinery units that are covered by this Consent Decree to the extent that the proposed credits or reductions

represent the difference between the emissions limitations set forth in this Consent Decree for these refinery units and the more stringent emissions limitations that Big West Oil may elect to accept for these refinery units in a permitting process; or

b. utilize or generate emissions credits or reductions on refinery units that are not subject to an emission limitation pursuant to this Consent Decree.

VII. MODIFICATIONS

115. This Consent Decree contains the entire agreement of the Parties and will not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of the Consent Decree will not be used in any action involving the interpretation or enforcement of the Consent Decree. Non-material modifications to this Consent Decree will be effective when signed in writing by the Parties. The United States will file non-material modifications with the Court on a periodic basis. For purposes of this Paragraph, non-material modifications include but are not limited to modifications to the frequency of reporting obligations and modifications to schedules that do not extend the date for compliance with emissions limitations following the installation of control equipment, provided that such changes are agreed upon in writing by the Parties, after an opportunity for consultation with UDEQ. Material modifications to this Consent Decree will be in writing, signed by the Parties and will be effective upon approval by the Court.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

116. In accordance with the requirements set forth in this Part VIII, Big West Oil shall implement the Supplemental Environmental Project (“SEP”) described in Appendix E. Big West Oil may carry out its responsibilities for the SEP described in Appendix E directly or through contractors it selects.

117. Big West Oil shall implement and complete the SEP required under this Consent Decree in accordance with the provisions and schedules set forth in Appendix E.

118. By signing this Consent Decree, Big West Oil certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Big West Oil in good faith estimates that the cost to implement the Hydrofluoric Acid Alkylation Unit Leak Detection System SEP is \$253,000; and

b. that, as of the date of executing this Consent Decree, it is not required, and has no liability under any federal, state, regional or local law or regulation or pursuant to any agreements or orders of any court, to perform or develop the project identified in Appendix E and that it has not applied for or received, and will not in the future apply for or receive:

(1) credit as a Supplemental Environmental Project or other penalty offset in any other enforcement action for the project set forth in Appendix E;

(2) credit for any emissions reductions resulting from the project set forth in Appendix E in any federal, state, regional or local emissions trading or early reduction program; or

(3) a deduction from any federal, state, regional, or local tax based on its participation in, performance of, or incurrence of costs related to the project set forth in Appendix E.

119. Big West Oil shall include in each report required by Part IX a progress report for

the project being performed under and pursuant to this Part VIII. In the report covering the period when the project is completed, Big West Oil shall include:

- a. A detailed description of the project as implemented;
- b. A brief description of any significant operating problems encountered, including any that had an impact on the environment, and the solutions for each problem;
- c. Certification that the project has been fully implemented pursuant to the provisions of this Consent Decree; and
- d. A description of the environmental and public health benefits resulting from implementation of the project (including quantification of the benefits and pollutant reductions, if feasible).

120. SEP Completion Report. Within 30 days after the expiration of the time period specified in Appendix E for completion of the SEP, Big West Oil shall submit, in accordance with Paragraph 241 (Notice), a SEP Completion Report to EPA and UDEQ for the SEP. The SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all SEP costs expended;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant

reductions, if feasible).

121. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraphs, in order to evaluate the SEP Completion Report.

122. After receiving the SEP Completion Report, EPA will notify Big West Oil whether or not Big West Oil has satisfactorily completed the SEP. If Big West Oil has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section XI (Stipulated Penalties).

123. Disputes concerning the satisfactory performance of the SEP may be resolved under Section XV (Dispute Resolution / Retention of Jurisdiction). No other disputes arising under this Section shall be subject to Dispute Resolution.

124. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 128.

125. Any public statement, oral or written, in print, film, or other media, made by Big West Oil making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States and State of Utah v. Big West Oil, LLC, taken on behalf of the U.S. Environmental Protection Agency and the State of Utah under the Clean Air Act."

126. For federal income tax purposes, Big West Oil agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

IX. REPORTING AND RECORD KEEPING

127. Within thirty (30) days after the end of the first semi-annual period after the Date of Entry, and semi-annually on or before each January 31 and July 31 thereafter until termination

of this Consent Decree, Big West Oil shall submit to EPA and UDEQ a progress report containing the following information:

a. General. Each report shall contain:

(1) a progress report on the implementation of the requirements of Part V (Affirmative Relief/Environmental Projects);

(2) a summary of the emissions data that is specifically required by the reporting requirements of Part V of this Consent Decree for the period covered by the report;

(3) a description of any problems anticipated with respect to meeting the requirements of Part V of this Consent Decree;

(4) a description of the status of the SEP being conducted at the Refinery under Part VIII; and

(5) any such additional matters as Big West Oil believes should be brought to the attention of EPA and UDEQ.

b. Emissions Data. In each semi-annual report required to be submitted on July 31 of each year, Big West Oil shall provide a summary of annual emissions data at the Refinery for the prior calendar year. The summary shall include estimates and/or calculations of:

(1) NO_x emissions in tons per year for each heater and boiler greater than 40 mmBTU/hr maximum fired duty;

(2) NO_x emissions in tons per year as a sum for all heaters and boilers less than 40 mmBTU/hr maximum fired duty;

(3) SO₂, CO and PM emissions in tons per year as a sum for all heaters and boilers;

(4) SO₂ emissions from all Sulfur Recovery Plants in tons per year;

(5) SO₂ emissions from all Acid Gas Flaring and Tail Gas Incidents by flare in tons per year;

(6) NO_x, SO₂, PM and CO emissions in tons per year as a sum for all other emissions units for which emissions information is required to be included in the facility's annual emissions summaries and that are not identified above;

(7) SO₂, NO_x, CO and PM emissions in tons per year for the FCCU, and

(8) for each of the estimates or calculations in Subparagraphs 127.b.(1). through 127.b.(7) above, the basis for the emissions estimate or calculation (i.e. stack tests, CEMS, emission factor, etc.).

To the extent that the required emissions summary data are available in other reports generated by Big West Oil, such other reports can be attached or the appropriate information can be extracted from such other reports and attached to the semi-annual report to satisfy the requirement. At any time prior to termination of this Consent Decree, Big West Oil may submit a request to EPA to terminate the requirements of this Subparagraph 127.b, and upon EPA approval of such request, at EPA's unreviewable discretion, Big West Oil will no longer be required to provide the additional information referenced above.

c. Exceedances of Emission Limits. In each semi-annual report, Big West Oil shall identify each exceedance of an emission limit required or established by this

Consent Decree that occurred during the previous semi-annual period and, for any emission unit subject to a limit required or established by this Consent Decree that is monitored by a CEMS or PEMS, any periods of CEMS or PEMS downtime that occurred during the prior semi-annual period. For each exceedance and/or each period of CEMS or PEMS downtime, Big West Oil shall include the following information:

(1) For emissions units monitored with CEMS or PEMS:

(a) the duration of the exceedance(s) and/or CEMS or PEMS downtime expressed as a percentage of operating time in a Calendar quarter; and

(b) where the operating unit has exceeded the emissions limit more than 1% of the total time of the Calendar quarter, identification of each applicable rolling average period in which Big West Oil exceeded the limit by time and date, the actual emissions of the averaging period (in the units of the limit), and any identifiable cause of the exceedance (including startup, shutdown, maintenance or malfunction) and, if it was a malfunction an explanation and any corrective actions taken;

(c) total downtime of the CEMS, if applicable, expressed as a percentage of operating time for the Calendar quarter;

(d) where the CEMS downtime is greater than 5% of the total time in a Calendar quarter for a unit, identify the periods of downtime by time and date, and any identified cause of the downtime (including maintenance or Malfunction), and, if it was a Malfunction, an explanation

and any corrective action taken; and

(e) If a report filed pursuant to another applicable legal requirement contains all of the information required by this Paragraph 127.c.(1) in a similar or same format, the requirements of this Paragraph may be satisfied by attaching a copy of such report.

(2) For emissions units monitored through stack testing:

(a) a summary of the results of stack test in which the exceedance occurred;

(b) a copy of the full stack test report in which the exceedance occurred; and

(c) to the extent that Big West Oil has already submitted the stack test results to the EPA and UDEQ, the refinery need not resubmit them, but may instead reference the submission in the report (e.g., date, addressee, reason for submission).

128. Certification. Each report shall be certified by either the person responsible for environmental management at the Refinery or by a person responsible for overseeing implementation of this Decree as follows:

I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

X. CIVIL PENALTY

129. In satisfaction of the civil claims asserted by the United States and the State of Utah in the complaint filed in this matter, by no later than thirty (30) days after the Date of Entry of this Consent Decree, Big West Oil shall pay a civil penalty of \$175,000.

130. Payment of \$157,500 shall be made to the United States by Electronic Funds Transfer (“EFT”) to the United States Department of Justice, in accordance with current EFT procedures, referencing DOJ Case Number 90-5-2-1-07689, and the civil action case name and case number of this action in the District of Utah. The costs of such EFT shall be the responsibility of Big West Oil. Payment shall be made in accordance with instructions provided to Big West Oil by the Financial Litigation Unit of the United States Attorney's Office for the District of Utah. Any funds received after 11:00 a.m. (Eastern Time) shall be credited on the next business day. Big West Oil shall provide notice of payment, referencing DOJ Case Number 90-5-2-1-07689, and the civil action case name and case number to the Department of Justice and to EPA, as provided in Paragraph 241 (Notice).

131. Payment of \$17,500 shall be made to the State of Utah by certified or corporate check made payable to the Utah Division of Air Quality and sent to the following address:

Utah Division of Air Quality
Office of the Director
Multi Agency State Office Building
195 North 1950 West, Fourth Floor
Salt Lake City, Utah 84116

132. On the Date of Entry of this Consent Decree, this Consent Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Federal Rule of Civil Procedure 69, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308,

and other applicable federal authority. The United States and Utah shall be deemed judgment creditors for purposes of collecting any unpaid amounts of the civil and stipulated penalties and interest.

XI. STIPULATED PENALTIES

A. GENERAL

133. Big West Oil shall pay stipulated penalties to the United States and the State of Utah for each failure by Big West Oil to comply with the terms of this Consent Decree as provided herein. Stipulated penalties shall be calculated in the amounts specified in Paragraphs 134 through 194. For those provisions where a stipulated penalty of either a fixed amount or 1.2 times the economic benefit of delayed compliance is available, the decision of which alternative to seek shall rest exclusively within the discretion of the EPA and UDEQ. Where a single event triggers more than one stipulated penalty provision in this Consent Decree, only the provision containing the higher stipulated penalty will apply.

134. For failure to retain records, prepare and/or submit written reports and other deliverables, including but not limited to those required by Paragraphs 35 and 69, Parts V.K and V.L and/or Part IX, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$300
31 st through 60 th day after deadline	\$750
Beyond 60 th day after deadline	\$1,500 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

135. For failure to install, certify, calibrate, maintain, and/or operate NO_x and O₂ CEMS as required by Paragraph 14, per day, per CEMS:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$200
31 st through 60 th day after deadline	\$500
Beyond 60 th day after deadline	\$2,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

136. For failure to install, certify, calibrate, maintain, and/or operate all CEMS and COMS, including but not limited to those required by Paragraphs 25, 37, 42 and 45, but excluding those required by Paragraph 14, per day, per CEMS or COMS:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
31 st through 60 th day after deadline	\$1,000
Beyond 60 th day after deadline	\$2,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

B. REQUIREMENTS FOR NO_x EMISSION REDUCTIONS FROM FCCUS

137. For failure to meet the NO_x emission limits set forth in Paragraph 12 per day, per unit: \$750 for each calendar day in a Calendar quarter in which the short-term rolling average exceeds the applicable limit; and \$2,500 for each calendar day in a Calendar quarter on which the specified 365-day rolling average exceeds the applicable limit.

C. REQUIREMENTS FOR SO₂ EMISSION REDUCTIONS FROM FCCUS

138. For each failure to meet the SO₂ emission limits set forth in Paragraph 23 per day, per unit: \$750 for each calendar day in a Calendar quarter on which the specified 7-day rolling average exceeds the applicable limit; \$2,500 for each calendar day in a Calendar quarter on which the specified 365-day rolling average exceeds the applicable limit.

D. REQUIREMENTS FOR PM EMISSIONS REDUCTIONS FROM FCCU

139. For each failure to meet the applicable PM emission limit, as set forth in Paragraph 33: \$750 for each calendar day in a Calendar quarter on which the emission limit is exceeded.

140. For failure to timely commence, complete or substantially comply with the requirements regarding PM stack testing for FCCU, as set forth in Paragraph 35, per unit, per day, \$500 per day per test.

141. For failure to install and operate the filter system and related infrastructure by the deadline specified in Paragraph 32: \$300,000.

E. REQUIREMENTS FOR CO EMISSIONS REDUCTIONS FROM FCCU

142. For each failure to meet the applicable CO emission limits, as set forth in Paragraphs 39 - 40: \$500 for each calendar day in a Calendar quarter on which the specified 1-hour average exceeds the applicable limit; and \$2,500 for each calendar day in a Calendar quarter on which the specified 365-day rolling average exceeds the applicable limit.

F. REQUIREMENTS RELATED TO NSPS APPLICABILITY TO FCCU REGENERATORS.

143. For failure to comply with NSPS Subparts A and J limits for SO₂ or CO at Big West Oil's FCCU regenerator, as required by Paragraph 43, per pollutant, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30th day	\$1,000
31 st through 60 th day	\$2,000
Over 60 days	\$3,000, or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

G. REQUIREMENTS FOR NO_x EMISSION REDUCTIONS FROM HEATERS AND BOILERS

144. For failure to install Next Generation Ultra-Low NO_x Burners on heaters and boilers by the dates specified in, and/or to incorporate the specified emission limits into federally-enforceable permit conditions in accordance with, Paragraph 44, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$2,500
31 st through 60 th day after deadline	\$5,000
Beyond 60 th day after deadline	\$7,500, or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

145. For failure to comply with the applicable monitoring requirements as set forth in Paragraph 45, per unit, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
31 st through 60 th day after deadline	\$1,000
Beyond 60 th day after deadline	\$2,000, or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

H. REQUIREMENTS FOR SO₂ EMISSION REDUCTIONS FROM HEATERS AND BOILERS

146. For burning in any heater or boiler any refinery fuel gas in violation of the applicable requirements of NSPS Subparts A and J (or Ja, if applicable) after the Date of Entry, per event, per day in a Calendar quarter:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day	\$2,500
Beyond 31 st day	\$3,750 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

147. For burning Fuel Oil in a manner inconsistent with the requirements of Paragraph 49, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day	\$1,750
Beyond 31 st day	\$5,000

I. NSPS APPLICABILITY OF AND COMPLIANCE FOR SULFUR RECOVERY PLANT

148. For failure to route all sulfur pit emissions in accordance with the requirements of Paragraph 52, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day	\$2,000
31 st through 60 th day	\$3,500
Beyond 60 th day	\$5,000 or an amount equal to 1.2 times the amount of delayed compliance whichever is greater.

149. For failure to install and operate the equipment required to be installed pursuant to Paragraph 51 at the BWO Refinery by the deadline specified in Paragraph 51: \$300,000.

150. For failure to comply with the Sulfur Recovery Plant emissions compliance, including recovery efficiency requirements, as specified in Paragraph 53, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day	\$1,000
31 st through 60 th day	\$2,000
Over 60 days	\$3,000 or an amount equal to 1.2 times the amount of delayed compliance, whichever is greater.

151. For failure to develop and comply with the Preventive Maintenance and Operation Plan as specified in Paragraph 55, per unit, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
Beyond 31 st day after deadline	\$1,500
Beyond 60 th day after deadline	\$2,000

152. For failure to timely commence and complete the optimization study, required by Paragraph 57, per day, per requirement:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
Beyond 31 st day after deadline	\$1,500
Beyond 60 th day after deadline	\$2,000

J. REQUIREMENTS FOR NSPS APPLICABILITY OF FLARING DEVICES

153. For failure to comply with NSPS Subpart A and, beginning six-hundred eight (608) days after the Date of Entry, the H₂S concentration requirements of Subpart Ja at a Flaring Device, and, beginning six-hundred eight (608) days after Date of Entry for the South Flare and beginning two (2) years after the Date of Entry for the North Flare, the H₂S monitoring requirements of Subpart Ja at a Flaring Device, per day, per requirement:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
Beyond 31 st day after deadline	\$1,500
Beyond 60 th day after deadline	\$2,000

154. For failure to comply with each requirement of NSPS Subpart Ja, including emission limits, at a Flaring Device, other than those requirements subject to stipulated penalties pursuant to Paragraphs 153 and 159, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
Beyond 31 st day after deadline	\$1,500
Beyond 60 th day after deadline	\$2,000

155. For failure to timely submit any report required by Part V.J, or for submitting any report that does not substantially conform to its requirements:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
Days 1-30	\$200
Days 31-60	\$500
Over 60 days	\$1,000

156. For AG Flaring Incidents and/or Tail Gas Incidents for which Big West Oil is liable under Part V.J, as follows:

Tons Emitted in Flaring Incident or Tail Gas Incident	Length of Time from Commencement of Flaring to Termination of Flaring is 3 Hours or Less	Length of Time from Commencement of Flaring to Termination of Flaring is Greater Than 3 Hours Less Than 24 Hours	Length of Time from Commencement of Flaring to Termination of Flaring is Greater Than 24 Hours
5 Tons or Less	\$500 per ton	\$750 per ton	\$1000 per ton
Greater Than 5 Tons But Less Than or equal to 15 Tons	\$1,200 per ton	\$1,800 per ton	\$2,300 per ton, up to, but not exceeding \$27,500 in any calendar day
Greater Than 15 Tons	\$1,800 per ton, up to, but not exceeding \$27,500 in any calendar day	\$2,300 per ton, up to, but not exceeding \$27,500 in any calendar day	\$27,500 per calendar day for each calendar day over which the Flaring Incident lasts

For purposes of calculating stipulated penalties pursuant to this Paragraph, only one cell within the matrix shall apply. Thus, for example, for a Flaring Incident in which the Flaring starts at 1:00 p.m. and ends at 3:00 p.m., and for which 14.5 tons of sulfur dioxide are emitted, the penalty would be \$17,400 (14.5 x \$1,200); the penalty would not be \$13,900 [(5 x \$500) + (9.5 x

\$1200)]. For purposes of determining which column in the table set forth in this Paragraph applies under circumstances in which Flaring occurs intermittently during a Flaring Incident, the Flaring shall be deemed to commence at the time that the Flaring that triggers the initiation of a Flaring Incident commences, and shall be deemed to terminate at the time of the termination of the last episode of Flaring within the Flaring Incident. Thus, for example, for Flaring within a Flaring Incident that (i) starts at 1:00 p.m. on Day 1 and ends at 1:30 p.m. on Day 1; (ii) recommences at 4:00 p.m. on Day 1 and ends at 4:30 p.m. on Day 1; (iii) recommences at 1:00 a.m. on Day 2 and ends at 1:30 a.m. on Day 2; and (iv) for which no further Flaring occurs within the Flaring Incident, the Flaring within the Flaring Incident shall be deemed to last 12.5 hours -- not 1.5 hours -- and the column for Flaring of “greater than 3 hours but less than or equal to 24 hours” shall apply.

157. For those corrective action(s) which Big West Oil: (i) agrees to undertake following receipt of an objection by EPA pursuant to Paragraph 65; or (ii) is required to undertake following dispute resolution, then, from the date of EPA’s receipt of Big West Oil’s report under Paragraph 64 of this Consent Decree until the date that either: (i) a final agreement is reached between EPA and Big West Oil regarding the corrective action; or (ii) a court order regarding the corrective action is entered, Big West Oil shall be liable for stipulated penalties as follows:

a. <u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
Days 1-120	\$50
Days 121-180	\$100
Days 181 - 365	\$300
Over 365 Days	\$3,000

or,

- b. an amount equal to 1.2 times the economic benefit resulting from Big West Oil’s failure to implement the corrective action(s).

158. For failure to complete any corrective action under Paragraph 65 of this Decree in accordance with the schedule for such corrective action agreed to by Big West Oil or imposed on Big West Oil pursuant to the dispute resolution provisions of this Decree (with any such extensions thereto as to which EPA and Big West Oil may agree in writing):

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
Days 1-30	\$1,000
Days 31-60	\$2,000
Over 60	\$5,000

159. Beginning six-hundred eight (608) days after Date of Entry, for each failure to comply with any provision of Subpart Ja regarding the investigation of the cause of flaring incidents subject to investigation and corrective action under Subpart Ja, steps to take to correct the conditions that have caused or contributed to such flaring incidents, and steps to take to minimize such flaring incidents:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
Days 1-30	\$1,000
Days 31-60	\$2,000
Over 60	\$5,000

K. REQUIREMENTS FOR CONTROL OF HYDROCARBON FLARING INCIDENTS

160. For each failure to perform a Root Cause analysis or submit a written report, for submitting a report that does not substantially conform to the requirements for an HC Flaring Incident report, or to perform corrective actions for a Hydrocarbon Flaring Incident, as required by Paragraph 70:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day per Incident</u>
1st through 30th day	\$500
31st through 60th day	\$1,500
Beyond 60th day	\$3,000

L. REQUIREMENTS FOR BENZENE WASTE NESHAP PROGRAM ENHANCEMENTS

161. For each violation in which a frequency is specified in Part V.K, the amounts identified below shall apply on the first day of violation, shall be calculated for each incremental period of violation (or portion thereof), and shall be doubled beginning on the fourth consecutive, continuing period of violation. For requirements where no frequency is specified, penalties will not be doubled.

162. For failure to complete the BWON Compliance Review and Verification Reports, or as amended, as required by Paragraph 74: \$5,000 per month.

163. For failure to submit a plan that provides for actions necessary to correct non-compliance as required by Subparagraphs 75.b or c, or for failure to implement the actions necessary to correct non-compliance and to certify compliance as required by Subparagraph 75.d:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$1,250
31 st through 60 th day after deadline	\$3,000
Beyond 60 th day	\$5,000, or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

164. For failure to implement the training requirements of Paragraph 78: \$10,000 per quarter.

165. For failure to establish an annual review program to identify new benzene waste

streams as required by Paragraph 76: \$2,500 per month.

166. For failure to perform laboratory audits as required by Paragraph 86: \$5,000 per month, per audit.

167. For failure to submit or maintain any plans or other deliverables required by Paragraph 79 (Waste/Slop/Off Spec Oil Management): \$2,000 per deliverable.

168. For failure to install controls on waste management units handling organic wastes as required by Subparagraph 79.b: \$10,000 per month per waste management unit.

169. For failure to conduct sampling in accordance with the sampling plans required by Paragraph 80 and 81: \$250 per week, per stream, or \$15,000 per quarter, per stream, whichever is greater, but not to exceed \$75,000 per quarter.

170. For failure to submit the plans or retain the third-party contractor required by Subparagraph 80.e or 81.f: \$10,000 per month.

171. For failure to conduct monthly visual inspections of all Subpart FF water traps as required by Subparagraph 82.a: \$500 per drain not inspected;

172. For failure to monitor Subpart FF conservation vents as required by Subparagraph 82.b: \$500 per vent not monitored;

173. For failure to conduct monitoring of oil-water separators as required by Subparagraph 82.c: \$1,000 per month, per unit.

174. For failure to monitor, measure, or replace carbon canisters as required by Subparagraph 82.d, \$1,000 per incident of non-compliance, per day;

175. If it is determined through a federal, state, or local investigation that any Refinery has failed to include all benzene-containing waste streams in its TAB calculation submitted

pursuant to Paragraph 74, Big West Oil shall pay the following, per waste stream:

<u>Waste Stream</u>	<u>Penalty</u>
for waste streams < 0.03 Mg/yr	\$250
for waste streams between 0.03 and 0.1 Mg/yr	\$1,000
for waste streams between 0.1 and 0.5 Mg/yr	\$5,000
for waste streams > 0.5 Mg/yr	\$10,000

M. REQUIREMENTS FOR LEAK DETECTION AND REPAIR PROGRAM ENHANCEMENTS

176. For each violation in which a frequency is specified in Part V.L, the amounts identified below shall apply on the first day of violation, shall be calculated for each incremental period of violation (or portion thereof), and shall be doubled beginning on the fourth consecutive, continuing period of violation. For requirements where no frequency is specified, penalties will not be doubled.

177. For failure to develop an LDAR Program as required by Paragraph 90: \$3,500 per week.

178. For failure to implement the training programs specified in Paragraph 91: \$10,000 per month, per program.

179. For failure to conduct any of the audits described in Paragraph 92: \$5,000 per month, per audit.

180. For failure to implement any actions necessary to correct non-compliance as required in Paragraph 93:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$1,250
31 st through 60 th day after deadline	\$3,000
Beyond 60 th day	\$5,000, or an amount equal to 1.2 times the

economic benefit of delayed compliance,
whichever is greater

181. For failure to perform monitoring utilizing the lower internal leak rate definitions as specified in Paragraph 94: \$100 per component, but not greater than \$10,000 per month, per process unit.

182. For failure to make first repair attempts within 5 days and/or take other actions required by Paragraph 95: \$100 per component but not greater than \$10,000 per month (except that Paragraph 183 shall apply in lieu of this Paragraph 182 where both paragraphs are potentially applicable).

183. For failure to implement the “initial attempt” repair program set forth in Paragraph 96: \$100 per component, but not to exceed \$10,000 per month, per process unit.

184. For failure to implement the QA/QC procedures described in Paragraph 99: \$10,000 per month.

185. For failure to implement and comply with the LDAR monitoring program as required by Paragraph 97: \$100 per component, but not greater than \$10,000 per month, per process unit.

186. For failure to designate an individual as accountable for LDAR performance as required by Paragraph 100, or for failure to implement the maintenance tracking program required by Subparagraph 90.g: \$3,500 per week.

187. For failure to use dataloggers or maintain electronic data as required by Paragraph 98: \$5,000 per month.

188. For failure to conduct and record the calibrations and the calibration drift assessments or re-monitor valves and pumps based on calibration drift assessments in Paragraph

102: \$100 per missed event.

189. For failure to comply with the requirements for delay of repair set forth at Paragraph 103: \$5,000 per valve or pump, per incident of non-compliance.

190. For each valve or pump that Big West Oil failed to include in its LDAR program within ninety (90) days of the date of completion of the initial audit under Paragraph 92, Big West Oil shall pay \$175. If it is determined through a federal, state, or local investigation that Big West Oil has failed to include all valves or pumps in its LDAR program, Big West Oil shall pay \$175 per component that it failed to include.

191. For failure to comply with the requirements for chronic leakers set forth at Paragraph 104: \$5,000 per valve.

N. REQUIREMENTS TO INCORPORATE CONSENT DECREE REQUIREMENTS INTO FEDERALLY-ENFORCEABLE PERMITS

192. For each failure to submit an application as required by Paragraphs 107 and 108:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
Days 1-30	\$500
Days 31-60	\$1,500
Over 60 Days	\$3,000

O. REQUIREMENTS FOR PAYMENT OF CIVIL PENALTIES AND SUPPLEMENTAL ENVIRONMENTAL PROJECT

193. For Big West Oil's failure to pay the civil penalties as specified in Part X (Civil Penalties) of this Consent Decree, Big West Oil shall be liable for \$15,000 per day plus interest on the amount overdue at the rate specified in 28 U.S.C § 1961(a).

194. For failure to implement the SEP identified in Appendix E in the manner specified therein and in accordance with the schedule set forth therein, and for failure to submit

the SEP completion report required by Paragraph 120, per requirement, per day:

<u>Period of Delay</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
31 st through 60 th day after deadline	\$1,500
Beyond 60 th day	\$3,000

195. For failure to implement the Hydrofluoric Acid Alkylation Unit Leak Detection System SEP, or for halting or abandoning work on the SEP, Big West Oil shall pay a stipulated penalty of \$278,300. The penalty under this Paragraph shall accrue 90 days after the deadline for completing the SEP in Appendix E or the date performance ceases, whichever is earlier.

P. REQUIREMENT TO ESCROW STIPULATED PENALTIES

196. For failure to escrow stipulated penalties as required by Paragraph 198 (Stipulated Penalties Dispute) of this Consent Decree, Big West Oil shall be liable for \$2,500 per day, per penalty, plus interest on the amount overdue at the rate specified in 28 U.S.C. § 1961(a).

Q. PAYMENT OF STIPULATED PENALTIES

197. Big West Oil shall pay stipulated penalties upon written demand by the United States or the State of Utah, no later than sixty (60) days after Big West Oil receives such action. Demand from either the United States or Utah shall be deemed a demand from both, but the United States and Utah shall consult with each other prior to taking such action. Stipulated penalties owed by Big West Oil shall be paid 50% to the United States and 50% to Utah. Stipulated penalties shall be paid to the United States and Utah in the manner set forth in Part X (Civil Penalty). A demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount the United States or Utah is demanding for each violation (as can be best estimated), the calculation method

underlying the demand and the grounds upon which the demand is based. After consultation with each other, the United States and Utah may, in their unreviewable discretion, waive payment of any portion of stipulated penalties that may accrue under this Consent Decree. Payment of stipulated penalties shall relieve Big West Oil from liability to EPA and UDEQ for civil penalties under its permit for the same violation.

198. **Stipulated Penalties Dispute.** Stipulated penalties shall begin to accrue on the day after performance is due or the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. However, in the event of a dispute over stipulated penalties, stipulated penalties will not accrue commencing upon the date that Big West Oil files a petition with the Court under Paragraph 213 if Big West Oil has placed the disputed amount demanded in a commercial escrow account with interest. If the dispute thereafter is resolved in Big West Oil's favor, the escrowed amount plus accrued interest will be returned to Big West Oil; otherwise, the United States and Utah shall be entitled to the amount that was determined to be due by the Court, plus the interest that has accrued in the escrow account on such amount. The United States and Utah reserve the right to pursue any other non-monetary remedies to which they are legally entitled, including but not limited to, injunctive relief for Big West Oil's violations of this Consent Decree.

XII. INTEREST

199. Big West Oil shall be liable for interest on the unpaid balance of the civil penalty specified in Part X (Civil Penalty), and for interest on any unpaid balance of stipulated penalties to be paid in accordance with Part XI (Stipulated Penalties). All such interest shall accrue at the rate established pursuant to 28 U.S.C. § 1961(a) -- i.e., a rate equal to the coupon issue yield

equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the Date of Lodging of the Consent Decree. Interest shall be computed daily and compounded annually. Interest shall be calculated from the date payment is due under the Consent Decree through the date of actual payment. For purposes of this Paragraph, interest pursuant to this Paragraph will cease to accrue on the amount of any stipulated penalty payment made into an interest bearing escrow account as contemplated by Paragraph 198 (Stipulated Penalties Dispute) of the Consent Decree. Monies timely paid into escrow shall not be considered to be an unpaid balance under this Part.

XIII. RIGHT OF ENTRY

200. Any authorized representative of EPA or UDEQ, including independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of the Refinery at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment and inspecting and copying all records maintained by Big West Oil required by this Consent Decree. Big West Oil shall retain such records for the period of the Consent Decree. Nothing in this Consent Decree shall limit the authority of EPA or UDEQ to conduct tests, inspections, or other activities under any statutory or regulatory provision.

XIV. FORCE MAJEURE

201. For purposes of this Consent Decree, a “*Force Majeure* Event” shall mean an event that has been or will be caused by circumstances beyond the reasonable control of Big West Oil, its contractors, or any entity controlled by Big West Oil that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this

Consent Decree despite Big West Oil's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay or violation is minimized. "*Force Majeure*" does not include Big West Oil's financial inability to perform any obligation under this Consent Decree.

202. Notice of Force Majeure Events. If any event occurs or fails to occur that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which Big West Oil intends to assert a claim of *Force Majeure*, Big West Oil shall notify the United States and UDEQ in writing as soon as practicable, but in no event later than ten (10) business days following the date Big West Oil first knew, or by the exercise of due diligence should have known, that the event caused or may cause such delay or violation. In this notice, Big West Oil shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by Big West Oil to prevent or minimize the delay or violation, the schedule by which Big West Oil proposes to implement those measures, and Big West Oil's rationale for attributing a delay or violation to a *Force Majeure* Event. Big West Oil shall adopt all reasonable measures to avoid or minimize such delays or violations. Big West Oil shall be deemed to know of any circumstance which Big West Oil or any entity controlled by Big West Oil knew or should have known.

203. Failure to Give Notice. If Big West Oil materially fails to comply with the notice requirements of this Part, the United States may void Big West Oil's claim for *Force Majeure* as to the specific event for which Big West Oil has failed to comply with such notice requirement.

204. Plaintiffs' Response. The United States, after an opportunity to consult with the State of Utah, shall notify Big West Oil in writing regarding its claim of *Force Majeure* as soon as reasonably practicable. If the United States agrees that the delay in performance has been or will be caused by a *Force Majeure* Event, the United States and Big West Oil shall stipulate to an extension of the deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event, or to the extent to which Big West Oil may be relieved of stipulated penalties or other remedies provided under the terms of this Consent Decree. Such agreement shall be reduced to writing, and signed by the Parties. If the agreement results in a material change to the terms of this Consent Decree, an appropriate modification shall be made pursuant to Paragraph 115 (Modifications). If such change is not material, no modification of this Consent Decree shall be required.

205. Disagreement. If the United States does not accept Big West Oil's claim of *Force Majeure*, or if the Parties cannot agree on the length of the delay actually caused by the *Force Majeure* Event, or the extent of relief required to address the delay actually caused by the *Force Majeure* Event, the matter shall be resolved in accordance with Part XV (Dispute Resolution) of this Consent Decree.

206. Burden of Proof. In any dispute regarding *Force Majeure*, Big West Oil shall bear the burden of proving that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a *Force Majeure* Event. Big West Oil shall also bear the burden of proving that it gave the notice required by this Part and the burden of proving the anticipated duration and extent of any delay(s) attributable to a *Force Majeure* Event. An extension of one compliance date based on a particular event may,

but will not necessarily, result in an extension of a subsequent compliance date.

207. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of Big West Oil's obligations under this Consent Decree shall not constitute a *Force Majeure* Event.

208. As part of the resolution of any matter submitted to this Court under Part XV (Dispute Resolution) of this Consent Decree regarding a claim of *Force Majeure*, the Parties (by agreement), or the Court (by order), may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay agreed to by the Parties or approved by the Court. Big West Oil shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule (provided that Big West Oil shall not be precluded from making a further claim of Force Majeure with regard to meeting any such extended or modified schedule).

XV. DISPUTE RESOLUTION / RETENTION OF JURISDICTION

209. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of the Consent Decree and for the purpose of adjudicating all disputes (including, but not limited to, determinations under Part V (Affirmative Relief) of the Consent Decree between the United States and Utah and Big West Oil that may arise under the provisions of the Consent Decree, until the Consent Decree terminates in accordance with Part XVIII (Termination) of this Consent Decree.

210. The dispute resolution procedure set forth in this Part XV (Dispute Resolution) shall be available to resolve any and all disputes arising under this Consent Decree, except only

as otherwise provided in Part XIV (Force Majeure), provided that the Party making such application has made a good faith attempt to resolve the matter with the other Party.

211. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by Big West Oil to the United States and Utah, or by the United States or Utah to Big West Oil (with a copy to the other Plaintiff), advising the Party(ies) of a dispute pursuant to this Part XV (Dispute Resolution). The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute.

212. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond sixty (60) days from the date of the notice provided under Paragraph 211 unless it is agreed that this period should be modified.

213. In the event that the Parties are unable to reach agreement during such informal negotiation period, the United States or Utah, as applicable, shall provide Big West Oil with a written summary of its position regarding the dispute. The position advanced by the United States or Utah, as applicable, shall be considered binding unless, within forty-five (45) days of Big West Oil's receipt of the written summary of the United States' or Utah's position, Big West Oil files with the Court a petition which describes the nature of the dispute. The United States or Utah shall respond to the petition within forty-five (45) days of filing. In resolving the dispute between the parties, the position of the United States and/or Utah shall be upheld if supported by substantial evidence in the administrative record.

214. In the event that the United States and Utah make differing determinations or take differing actions that affect Big West Oil's rights or obligations under this Consent Decree, the

final decisions of the United States shall take precedence.

215. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set forth in this Part XV (Dispute Resolution) may be shortened upon motion of one of the Parties to the dispute.

216. The Parties do not intend that the invocation of this Part XV by a Party cause the Court to draw any inferences nor establish any presumptions adverse to any Party as a result of invocation of this Part.

217. As part of the resolution of any dispute submitted to dispute resolution, the Parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. Big West Oil shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule.

XVI. EFFECT OF SETTLEMENT

218. **Definitions.** For purposes of Part XVI (Effect of Settlement), the following definitions apply:

a. “Applicable NSR/PSD Requirements” shall mean: PSD requirements at Part C of Subchapter I of the Act, 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21; “Plan Requirements for Non-Attainment Areas” at Part D of Subchapter I of the Act, 42 U.S.C. §§ 7502-7503, and the regulations promulgated thereunder at 40 C.F.R. §§ 51.165 (a) and (b); Title 40, Part 51, Appendix S; and 40 C.F.R. § 52.24; and any state, regional, or local statutes, ordinances or regulations that

implement, adopt, or incorporate the specific federal regulatory requirements identified above.

b. “Applicable NSPS Subparts A and J Requirements” shall mean the standards, monitoring, testing, reporting and record keeping requirements found at 40 C.F.R. §§ 60.100 through 60.109 (Subpart J), relating to a particular pollutant and a particular affected facility, and the corollary general requirements found at 40 C.F.R. § 60.1 through 60.19 (Subpart A) that are applicable to any affected facility covered by Subpart J.

c. “Applicable NSPS Subparts A and Ja Requirements” shall mean the standards, monitoring, testing, reporting and record keeping requirements found at 40 C.F.R. §§ 60.100a through 60.109a (Subpart Ja), relating to a particular pollutant and a particular affected facility, and the corollary general requirements found at 40 C.F.R. § 60.1 through 60.19 (Subpart A) that are applicable to any affected facility covered by Subpart Ja.

d. “Post-Lodging Compliance Dates” shall mean any dates in this Part XVI after the Date of Lodging. Post-Lodging Compliance Dates include dates certain (e.g., “December 31, 2010”), dates after Lodging represented in terms of “months after Lodging” (e.g., “Twelve Months after the Date of Lodging”), and dates after Lodging represented by actions taken (e.g., “Date of Certification”). The Post-Lodging Compliance Dates represent the dates by which work is required to be completed or an emission limit is required to be met under the applicable provisions of this Consent Decree.

219. **Liability Resolution Regarding the Applicable NSR/PSD Requirements.**

a. With respect to emissions of the following pollutants from the following units, entry of this Consent Decree shall resolve all civil liability of Big West Oil to the United States and Utah for violations of the Applicable NSR/PSD Requirements resulting from pre-Lodging construction or modification from the date of the pre-Lodging construction or modification up to the following dates:

<u>Refinery/Unit</u>	<u>Pollutant</u>	<u>Date</u>
FCCU	NO _x	Date of Entry
	SO ₂	Date of Entry
All Heaters and Boilers (other than BLR1)	NO _x	Date of Entry
Boiler BLR1	NO _x	December 31, 2013
All Heaters and Boilers	SO ₂	Date of Entry

b. With respect to emissions of PM, when Big West Oil demonstrates compliance with the emission limit of 0.5 pound PM per 1000 pounds of coke burned on a 3-hour average basis set forth in Paragraph 33 by conducting a 3-hour performance test representative of normal operating conditions for PM emissions at the FCCU, then all civil liability of Big West Oil to the United States and Utah will be resolved for violations of the Applicable NSR/PSD Requirements relating to PM emissions at the FCCU resulting from construction or modification of the FCCU that occurred prior to the Date of Lodging of the Consent Decree that either ceased prior to the Date of Lodging of the Consent Decree or continued up to the date on which Big West Oil demonstrates compliance with such PM emission limit.

c. With respect to emissions of CO, if and when Big West Oil accepts an emission limit of 100 ppmvd of CO at 0% oxygen on a 365-day rolling average basis and demonstrates compliance using CEMS at the FCCU, then all civil liability of Big West Oil to the United States and Utah will be resolved for violations of the Applicable NSR/PSD Requirements relating to CO emissions at the FCCU resulting from construction or modification of the FCCU that occurred prior to the Date of Lodging of the Consent Decree and that either ceased prior to the Date of Lodging or continued up to the date on which Big West Oil demonstrates compliance with such CO emission limit.

220. **Reservation of Rights regarding Applicable NSR/PSD Requirements:**

Release for Violations Continuing After the Date of Lodging Can Be Rendered Void.

Notwithstanding the resolution of liability in Paragraph 219 (Liability Resolution Regarding the Applicable NSR/PSD Requirements), the release of liability by the United States and Utah to Big West Oil for violations of the Applicable NSR/PSD Requirements during the period between the Date of Lodging of the Consent Decree and the Post-Lodging Compliance Dates shall be rendered void if Big West Oil materially fails to comply with the obligations and requirements of Paragraphs 11 - 43 (all FCCU affirmative relief) and 44 - 49 (all heater and boiler affirmative relief); provided however, that the release in Paragraph 219 shall not be rendered void if Big West Oil remedies such material failure and pays any stipulated penalties due as a result of such material failure.

221. **Exclusions from Release Coverage regarding Applicable NSR/PSD**

Requirements: Notwithstanding the resolution of liability in Paragraph 219, nothing in this Consent Decree precludes the United States and/or Utah from seeking from Big West Oil

injunctive relief, penalties, or other appropriate relief for violations by Big West Oil of the Applicable NSR/PSD Requirements resulting from construction or modification that:

(1) commenced prior to or after the Date of Lodging of the Consent Decree for pollutants or units not covered by the Consent Decree; or (2) commences after the Date of Lodging of the Consent Decree for pollutants or units covered by this Consent Decree.

222. Increases in emissions from units covered by this Consent Decree, where the increases result from the Post-Lodging construction or modification of any units at the Refinery, are beyond the scope of the release in Paragraph 219 and Big West Oil must evaluate any such increases in accordance with the Applicable PSD/NSR Requirements.

223. **Resolution of Liability Regarding Applicable NSPS Subparts A and J Requirements.** With respect to emissions of the following pollutants from the following units, entry of this Consent Decree shall resolve all civil liability of Big West Oil to the United States and Utah for violations of the Applicable NSPS Subparts A and J Requirements from the date that the claim(s) of the United States and Utah accrued up to the following dates:

<u>Unit</u>	<u>Pollutant</u>	<u>Date</u>
FCCU	SO ₂ and CO	Date of Entry
FCCU	PM	The earlier of the date the FCCU shuts down for the next turnaround or November 30, 2015
All heaters and boilers	SO ₂	Date of Entry
Flares	SO ₂	Date of Entry

224. **Resolution of Liability Regarding Applicable NSPS Subparts A and Ja Requirements.** With respect to emissions of the following pollutants from the following units, entry of this Consent Decree shall resolve all civil liability of Big West Oil to the United States and Utah for violations of the Applicable NSPS Subparts A and Ja Requirements from the date that the claim(s) of the United States and Utah accrued up to the following dates:

<u>Unit</u>	<u>Pollutant</u>	<u>Date</u>
Flares	SO ₂	From Date of Entry until six-hundred eight (608) days after Date of Entry, and, with respect to H ₂ S monitoring at the North Flare, from Date of Entry until two (2) years after Date of Entry

225. **Reservation of Rights regarding Applicable NSPS Subparts A, J and Ja Requirements: Release for Violations Occurring After the Date of Lodging Can be Rendered Void.** Notwithstanding the resolution of liability in Paragraph 223 (Resolution of Liability Regarding Applicable NSPS Subparts A and J Requirements) and Paragraph 224 (Resolution of Liability Regarding Applicable NSPS Subparts A and Ja Requirements), the release of liability by the United States and Utah to Big West Oil for violations of any Applicable NSPS Subparts A and J Requirements and Applicable NSPS Subparts A and Ja Requirements that occurred between the Date of Lodging and the Post-Lodging Compliance Dates shall be rendered void if Big West Oil materially fails to comply with the obligations and requirements of Paragraphs 43 (NSPS Applicability of FCCU Regenerator) and 47 - 70 (SO₂ emission reductions from heaters and boilers, all sulfur recovery plant conditions, flaring

devices, tail gas incidents, hydrocarbon incidents); provided however, that the release in Paragraphs 223 and 224 shall not be rendered void if Big West Oil remedies such material failure and pays any stipulated penalties due as a result of such material failure.

226. **Prior NSPS Applicability Determinations.** Nothing in this Consent Decree shall affect the status of any FCCU, fuel gas combustion device, or sulfur recovery plant currently subject to NSPS as previously determined by any federal, state, or local authority or any applicable permit.

227. **Resolution of Liability Regarding Benzene Waste NESHAP Requirements.** With respect to the National Emission Standard for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF (“Benzene Waste NESHAP”), and any applicable state, regional, or local regulations that implement, adopt or incorporate the Benzene Waste NESHAP, entry of this Consent Decree shall resolve all civil liability of Big West Oil to the United States and Utah for violations that: (1) commenced and ceased prior to the Date of Entry of the Consent Decree; and/or (2) are based on events identified in the BWON Compliance Review and Verification Report required under Paragraph 74 (One time Review and Verification of Refinery’s TAB) and are corrected pursuant to the requirements of Paragraph 75 (Implementation of Actions Necessary to Correct Non-Compliance).

228. **Resolution of Liability Regarding LDAR Requirements.** With respect to the Leak Detection and Repair requirements relating to equipment in light liquid service and gas and/or vapor service set forth at 40 C.F.R. Part 60, Subparts VV and GGG; 40 C.F.R. Part 61, Subparts J and V; and 40 C.F.R. Part 63, Subparts F, H, and CC (collectively “LDAR Requirements”), and any applicable state, regional, or local regulations that implement, adopt or

incorporate the LDAR Requirements, entry of this Consent Decree shall resolve the civil liability of Big West Oil to the United States and Utah for violations that: (1) commenced and ceased prior to the Date of Entry of the Consent Decree; and/or (2) are based on events identified in the first third-party audit required under Subparagraph 92.b (LDAR Audits, Third Party Audits) and are corrected pursuant to the requirements of Paragraph 93 (Implementation of Actions Necessary to Correct Non-Compliance).

229. **Reservation of Rights Regarding the Benzene Waste NESHAP and LDAR Requirements.** Notwithstanding the resolution of liability in Paragraphs 227 and 228 (Resolution of Liability for BWON and LDAR), nothing in this Consent Decree precludes the United States and/or Utah from seeking from Big West Oil civil penalties and/or injunctive relief and/or other equitable relief for violations by Big West Oil of Benzene Waste NESHAP and/or LDAR requirements that: (1) commenced prior to the Date of Entry of this Consent Decree and continued after the Date of Entry if Big West Oil fails to identify such violations in its Paragraph 74 (One time Review and Verification of Refinery's TAB) report or its first third-party audit under Subparagraph 92.b (LDAR Audits, Third Party Audits) and/or fails to correct such violations pursuant to Paragraphs 75 or 93 (Implementation of Actions to Correct Non-Compliance), as applicable; or (2) commenced after the Date of Entry of the Consent Decree but are not identified in Big West Oil's Paragraph 74 report or its first third-party audit under Subparagraph 92.b, as applicable, and/or are not corrected pursuant to Paragraphs 75 or 93, as applicable.

230. **Audit Policy.** Nothing in this Consent Decree is intended to limit or disqualify Big West Oil, on the grounds that information was not discovered and supplied voluntarily, from

seeking to apply EPA's Audit Policy or any state audit policy to any violations or non-compliance that Big West Oil discovers during the course of any investigation, audit, or enhanced monitoring that Big West Oil is required to undertake pursuant to this Consent Decree.

231. **Claim/Issue Preclusion.** In any subsequent administrative or judicial proceeding initiated by the United States or Utah for injunctive relief, penalties, or other appropriate relief relating to Big West Oil for violations of the PSD/NSR, NSPS, NESHAP, and/or LDAR requirements, not identified in Part XVI (Effect of Settlement) of the Consent Decree and/or the Complaint:

a. Big West Oil shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting. Nor may Big West Oil assert, or maintain, any other defenses based upon any contention that the claims raised by the United States or the State of Utah in the subsequent proceeding were or should have been brought in the instant case. Nothing in the preceding sentences is intended to affect the ability of Big West Oil to assert that the claims are deemed resolved by virtue of this Part XVI.

b. The United States and Utah may not assert or maintain that this Consent Decree constitutes a waiver or determination of, or otherwise obviates, any claim or defense whatsoever, or that this Consent Decree constitutes acceptance by Big West Oil of any interpretation or guidance issued by EPA related to the matters addressed in this Consent Decree.

232. **Other Reservations.**

a. Nothing in this Consent Decree shall be construed to limit the authority of

the United States and Utah to undertake any action against any person, including Big West Oil, to abate or correct conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

b. Utah reserves all rights under the Utah Air Conservation Rules and common law, to take additional action(s) if Utah determines that such action(s) are necessary to protect public health, safety, welfare and the environment. Nothing in this Consent Decree shall constitute a waiver of any statutory or common law right of Utah to require such additional action(s) should Utah determine that such action(s) are necessary.

233. The United States and UDEQ reserve the right to pursue any other non-monetary remedies to which they are legally entitled, including but not limited to, injunctive relief, for violations of this Consent Decree. Where a violation of this Consent Decree is also a violation of the Clean Air Act, its regulations, or a federally-enforceable state law, regulation or permit, the United States will not seek civil penalties where it already has demanded and secured stipulated penalties for the same violations, nor will the United States demand stipulated penalties for a Consent Decree violation if it has commenced litigation under the Clean Air Act for the same violations. Where a violation of this Consent Decree is also a violation of state law, regulation or a permit, UDEQ will not seek civil penalties where it already has demanded and secured stipulated penalties for the same violations, nor will UDEQ demand stipulated penalties for a Consent Decree violation if it has commenced litigation for the same violations.

XVII. GENERAL PROVISIONS

234. **Other Laws.** Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Big West Oil of its obligations to comply with all applicable

federal, state, regional, and local laws and regulations. Subject to Part XVI, nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States or the State of Utah to seek or obtain other remedies or sanctions available under other federal, state, regional, or local statutes or regulations, by virtue of Big West Oil's violation of the Consent Decree or of the statutes and regulations upon which the Consent Decree is based, or for Big West Oil's violations of any applicable provision of law, other than the specific matters resolved herein. This shall include the right of the United States or the State of Utah to invoke the authority of the Court to order Big West Oil's compliance with this Consent Decree in a subsequent contempt action.

235. **Failure of Compliance.** The United States and Utah do not, by their consent to the entry of Consent Decree, warrant or aver in any manner that Big West Oil's complete compliance with the Consent Decree will result in compliance with the provisions of the CAA or the Utah Air Conservation Rules. Notwithstanding the review or approval by EPA or UDEQ of any plans, reports, policies or procedures formulated pursuant to the Consent Decree, Big West Oil shall remain solely responsible for compliance with the terms of the Consent Decree, all applicable permits, and all applicable federal, state, regional, and local laws and regulations.

236. **Service of Process.** Big West Oil hereby agrees to accept service of process by mail and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons, with respect to all matters arising under or relating to the Consent Decree. The persons identified by Big West Oil at Paragraph 241 (Notice) are authorized to accept service of process with respect to all matters arising under or relating to the Consent Decree.

237. **Post-Lodging/Pre-Entry Obligations.** Obligations of Big West Oil under this Consent Decree to perform duties scheduled to occur after the Date of Lodging of the Consent Decree, but prior to the Date of Entry of the Consent Decree, shall be legally enforceable on and after the Date of Entry of the Consent Decree. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by the United States or Utah as provided in this Consent Decree, provided that stipulated penalties that may have accrued between the Date of Lodging of the Consent Decree and the Date of Entry of the Consent Decree may not be collected unless and until this Consent Decree is entered by the Court.

238. **Costs.** Each Party to this action shall bear its own costs and attorneys' fees.

239. **Public Documents.** All information and documents submitted by Big West Oil to EPA and UDEQ pursuant to this Consent Decree shall be subject to public inspection in accordance with the respective statutes and regulations that are applicable to EPA and UDEQ, unless subject to legal privileges or protection or identified and supported as business confidential in accordance with the respective state or federal statutes or regulations.

240. **Public Notice and Comment.** The Parties agree to the Consent Decree and agree that the Consent Decree may be entered upon compliance with the public notice procedures set forth at 28 C.F.R. § 50.7, and upon motion to this Court from the United States Department of Justice requesting entry of the Consent Decree. The United States and Utah reserve the right to withdraw or withhold its consent to the Consent Decree if public comments disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate.

241. **Notice.** Unless otherwise provided herein, notifications to or communications

between the Parties shall be deemed submitted on the date they are postmarked and sent by U.S. Mail, postage pre-paid, or sent by private professional delivery service (e.g., FedEx), except for notices under Part XIV (Force Majeure) and Part XV (Dispute Resolution/Retention of Jurisdiction) which shall be sent by overnight mail, overnight private professional delivery, or by certified or registered mail, return receipt requested. Each report, study, notification or other communication of Big West Oil shall be submitted as specified in this Consent Decree, with copies to EPA Region 8 and UDEQ. If the date for submission of a report, study, notification or other communication falls on a Saturday, Sunday or legal holiday, the report, study, notification or other communication will be deemed timely if it is submitted the next business day. Except as otherwise provided herein, all reports, notifications, certifications, or other communications required or allowed under this Consent Decree to be submitted or delivered to the United States, EPA, Utah, and Big West Oil shall be addressed as follows:

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
Reference Case No. [*insert case number*]

As to EPA:

Director, Air Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
Mail Code 2241-A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

with a hard copy to:

Director, Air Enforcement Division
Office of Civil Enforcement
c/o Matrix Environmental & Geotechnical Services
215 Ridgedale Avenue
Florham Park, NJ 07932

with an electronic copy to:

neichlin@matrixengineering.com

EPA Region 8:

Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice
1595 Wynkoop Street
Denver, CO 80202-1129

with an electronic copy to:

Whitmore.Scott@epa.gov

State of Utah:

Utah Division of Air Quality
Multi Agency State Office Building
195 North 1950 West, Fourth Floor
Salt Lake City, Utah 84116

As to Big West Oil:

Mark Keim
Refinery Manager
Big West Oil, LLC
North Salt Lake Refinery
333 West Center Street
North Salt Lake, UT 84054

With an electronic copy to:

mark.keim@bigwestoil.com

R. Stuart Smith
Environmental Manager
Big West Oil, LLC
North Salt Lake Refinery
333 West Center Street
North Salt Lake, UT 84054

With an electronic copy to:
stuart.smith@bigwestoil.com

Any party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address. In addition, the nature and frequency of reports required by the Consent Decree may be modified by mutual consent of the Parties. The consent of the United States to such modification must be in the form of a written notification from the Department of Justice, but need not be filed with the Court to be effective.

242. **Approvals**. All EPA approvals or comments under this Consent Decree shall be made in writing.

XVIII. TERMINATION

243. This Consent Decree shall be subject to termination upon motion by the United States, after an opportunity for consultation with Utah; or Big West Oil under the procedure identified in Paragraph 245 (Motion for Termination). Prior to either party seeking termination, Big West Oil must have completed and satisfied all of the following requirements of this Consent Decree:

- a. Installation of control technology systems as specified in this Consent Decree;
- b. Compliance with all provisions contained in this Consent Decree, which

compliance may be established for specific parts of the Consent Decree in accordance with Paragraph 244 (Certificate of Completion), below;

c. Payment of all penalties and other monetary obligations due under the terms of the Consent Decree; no penalties or other monetary obligations due hereunder can be outstanding or owed to the United States or Utah;

d. Completion of the “Supplemental Environmental Project” set forth in Part VIII;

e. Application for and receipt of permits incorporating the emission limits and standards required under Part V (Affirmative Relief); and

f. Operation for at least one (1) year of each unit in compliance with the emission limits established herein, and certification of such compliance for each unit within the first six (6) month period progress report following the conclusion of the compliance period.

244. **Certification of Completion**

a. Prior to moving for termination, Big West Oil may certify completion of one or more of the following parts of the Consent Decree, provided that all of the related requirements have been satisfied:

(1) Paragraphs 11 - 43: Fluid Catalytic Cracking Unit (including operation of the unit for one (1) year after compliance with the final emission limit set pursuant to the Consent Decree);

(2) Paragraphs 44 - 49: Heaters and Boilers (including operation of the relevant units for one (1) year after compliance with the final emission limit set

pursuant to the Consent Decree);

- (3) Paragraphs 50 - 70: Sulfur Recovery Plant and Flares (including flaring)
- (4) Paragraphs 71 - 106: Benzene Waste and LDAR
- (5) Part VIII - Supplemental Environmental Project.

b. Within ninety (90) days after Big West Oil concludes that any of the parts of the Consent Decree identified in Subparagraph 244.a have been completed, Big West Oil may submit a written report to the Parties listed in Paragraph 241 (Notice) describing the activities undertaken and certifying that the applicable Paragraphs have been completed in full satisfaction of the requirements of this Consent Decree, and that Big West Oil is in substantial and material compliance with all of the other requirements of the Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of Big West Oil:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

c. Upon receipt of Big West Oil's certification, EPA, after an opportunity for consultations with UDEQ, shall notify Big West Oil whether the requirements set forth in the applicable Paragraphs have been completed in accordance with this Consent Decree. The Parties recognize that ongoing obligations under such Paragraphs remain and necessarily continue (e.g. reporting, record keeping, training, auditing requirements), and that Big West Oil's certification is that it is in current compliance with all such

obligations.

(1) If EPA concludes that the requirements have not been fully complied with, EPA shall notify Big West Oil as to the activities that must be undertaken to complete the applicable Paragraphs of the Consent Decree. Big West Oil shall perform all activities described in the notice, subject to its right to invoke the dispute resolution procedures set forth in Part XV (Dispute Resolution).

(2) If EPA concludes that the requirements of the applicable Paragraphs have been completed in accordance with this Consent Decree, EPA will so certify in writing to Big West Oil. This certification shall constitute the certification of completion of the applicable Paragraphs for purposes of this Consent Decree.

d. Nothing in this Paragraph 244 shall preclude the United States or Utah from seeking stipulated penalties for a violation of any of the requirements of the Consent Decree regardless of whether a Certification of Completion has been issued. In addition, nothing in this Paragraph shall permit Big West Oil to fail to implement any ongoing obligations under the Consent Decree regardless of whether a Certification of Completion has been issued.

245. **Motion for Termination.** At such time as Big West Oil believes that it has satisfied the requirements for termination set forth in Paragraph 243, Big West Oil shall certify such compliance and completion to the United States and Utah in writing as provided in Paragraph 241 (Notice). Unless, within one-hundred twenty (120) days of receipt of Big West

Oil's certification under this Paragraph, either the United States or Utah objects in writing with specific reasons, Big West Oil may move this Court for an order that this Consent Decree be terminated. If either the United States or Utah objects to the certification by Big West Oil under this Paragraph then the matter shall be submitted to the Court for resolution under Part XV (Dispute Resolution/ Retention of Jurisdiction). In such case, Big West Oil shall bear the burden of proving that this Consent Decree should be terminated.

XIX. SIGNATORIES

246. Each of the undersigned representatives certifies that they are fully authorized to enter into the Consent Decree on behalf of such Parties, and to execute and to bind such Parties to the Consent Decree.

Dated and entered this _____ day of _____, 2013.

BROOKE C. WELLS
UNITED STATES MAGISTRATE JUDGE

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Big West Oil, LLC, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date: 8/22/13



ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: 8/22/13

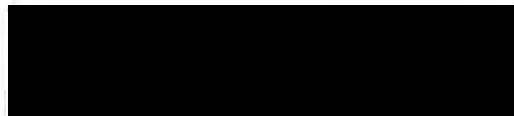


SHELDON H. MULLER
Special DOJ Attorney
United States Environmental Protection Agency,
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6916
Fax: (303) 312-6953
Email: muller.sheldon@epa.gov

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Big West Oil, LLC, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 8/6/13



CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

Date: 7/31/13



SUSAN SHINKMAN
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

Date: 7/16/2013



MELANIE SHEPHERDSON
Attorney, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Telephone: (202) 564-8386
Fax: (202) 564-0068
Email: shepherdson.melanie@epa.gov

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Big West Oil, LLC, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR CO-PLAINTIFF, STATE OF UTAH

Date: 8/12/2013



BRYCE BIRD
Director
Utah Division of Air Quality
Executive Secretary
Utah Air Quality Board
195 North 1950 West
P.O Box 144820
Salt Lake City, UT
84114-4820

Date: 8/12/13

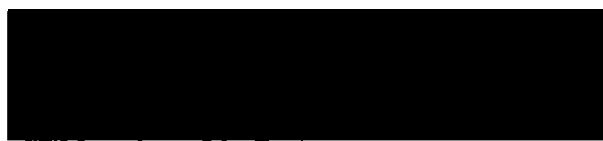


CHRISTIAN C. STEPHENS
Assistant Attorney General
Environment Division
Utah Attorney General's Office
150 North 1950 West
P.O. Box 144820
Salt Lake City, UT 84114-4820

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Big West Oil, LLC, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR DEFENDANT BIG WEST OIL, LLC

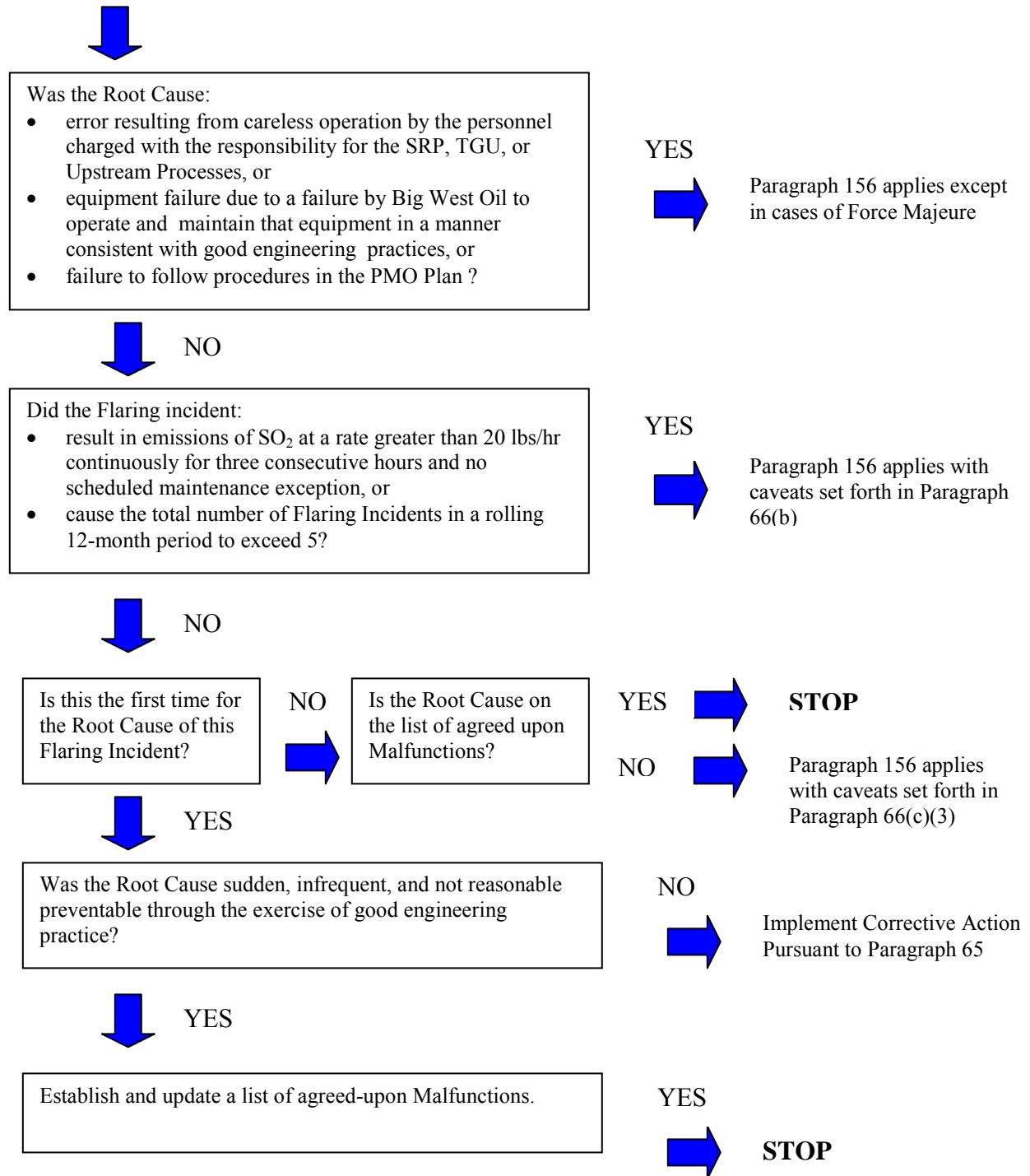
Date: 8-7-2013



FRED GREENER
President, Big West Oil, LLC
1104 Country Hills Dr.
Ogden, UT 84403

APPENDIX A - LOGIC DIAGRAM FOR PARAGRAPH 66

All Flaring Incidents



**APPENDIX B - PROCESS AND FACTORS FOR “COMMERCIAL
UNAVAILABILITY” OF CERTIFIED LOW-LEAKING
VALVE OR PACKING TECHNOLOGY**

This Appendix outlines a process to be followed and factors to be taken into consideration to establish the “Commercial Unavailability” of a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology pursuant to Paragraph 101 of the Consent Decree. Factors and procedures other than those identified in this Appendix may also be utilized to establish the “Commercial Unavailability” of a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology.

I. Factors: The following factors shall be taken into account for determining the availability of safe and suitable Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technologies:

- (1) Valve type;
- (2) Valve service and operating conditions;
- (3) Type of refinery process equipment in which the valve is used;
- (4) Seal performance;
- (5) Service life;
- (6) Packing friction;
- (7) Temperature and pressure limitations; and
- (8) Retrofit applications (*e.g.*, re-piping or space limitations).

The following factors may also be relevant for consideration, depending on the process unit or equipment in use at the refinery:

- (9) Valve or valve packing specifications identified by the licensor of the process unit or equipment in use at the refinery (including components that are part of a design package by a specialty-equipment provider as part of a larger process unit); or
- (10) Valve or valve packing vendor or manufacturer recommendations for the relevant refinery unit and/or process unit components.

II. Process: The following procedure shall be followed for determining the availability of a Certified Low-Leaking Valve or Certified Valve Packing Technology:

- (1) Big West Oil must contact a reasonable number of vendors of valves and valve packing technologies, taking into account the relevant factors identified above, prior to asserting a claim that a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is commercially unavailable.
 - a. For purposes of this Consent Decree, a reasonable number of vendors shall mean at least three vendors of valves and three vendors of valve packing technologies;
 - b. If fewer than three vendors of valve or valve packing technologies are contacted, the determination of whether such fewer number is reasonable for purposes of this

Consent Decree shall be based on Factors (9) and/or (10) above, or on a demonstration that fewer than three vendors offer valves or valve packing technologies for the service and operating conditions of the valve to be replaced, in consideration of Factors (1) through (8) above, as applicable.

- (2) Big West Oil shall obtain a written representation from each vendor contacted or equivalent documentation that the valve or valve packing does not meet the specifications for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology.
- (3) Big West Oil shall prepare a written report fully explaining the basis for each claim that a valve or valve packing is commercially unavailable, to include all relevant documentation and other information supporting the claim. Such report shall also identify the commercially-available valve or packing technology that comes closest to meeting the requirements for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology that is selected and installed by Big West Oil pursuant to Paragraph 101 of the Consent Decree. Such report shall be included in the Semi-Annual Report required by Section IX of the Consent Decree, for the period in which the valve or valve packing is replaced.

III. EPA Review of Claim of Commercial Unavailability: Upon discretionary review by EPA of any claim of commercial unavailability, if EPA disagrees that a valve or valve-packing technology is commercially unavailable, EPA shall notify Big West Oil in writing, specifying the valve or valve packing EPA believes to be commercially available and the basis for its determination of availability for the service and operating conditions of the valve. Following receipt by Big West Oil of EPA's notice, the following shall apply:

- (1) Big West Oil is not required to retrofit the valve or valve packing for which the unavailability claim was asserted (unless otherwise required to do so pursuant to some other provision of this Consent Decree).
- (2) EPA's notification shall serve as notice to Big West Oil of EPA's intent that a future claim of commercial unavailability will not be accepted for (a) the valve or valve packing that was the subject of the unavailability claim, or (b) for a valve or valve packing in the same or similar service, taking into account the factors identified in this Appendix. If Big West Oil disagrees with EPA's notification, Big West Oil and EPA may informally discuss the basis for the claim of commercial unavailability. EPA may thereafter revise its notification, if necessary.
- (3) If Big West Oil makes a subsequent commercial unavailability claim for the same valve or valve packing (or valve or valve packing in the same or similar service) that was the subject of a prior unavailability claim which was not accepted by EPA, and such subsequent claim is also denied by EPA on the same basis as provided in EPA's prior notification, Big West Oil shall retrofit the valve or valve packing with the commercially available valve or valve packing technology at the next unit turnaround.
- (4) Any disputes concerning EPA's notification to Big West Oil of the commercial availability of a valve or valve packing technology in a particular application pursuant

to Paragraph (3) of Section III of this Appendix shall be addressed under the Dispute Resolution provisions in Section XV of this Consent Decree.

**APPENDIX C – PUMPS SUBJECT TO COMPLYING WITH INTERNAL LEAK
DEFINITION WITHIN ONE (1) YEAR AFTER DATE OF ENTRY**

DESIGNATION	PROCESS AREA	SERVICE DESCRIPTION
P-303A	ALKYLATION UNIT	South Depropanizer Feed Pump
P-303B	ALKYLATION UNIT	North Depropanizer Feed Pump
P-304A	ALKYLATION UNIT	South Depropanizer Reflux Pump
P-304B	ALKYLATION UNIT	North Depropanizer Reflux Pump
P-305A	ALKYLATION UNIT	South IC4 Recycle Pump
P-305B	ALKYLATION UNIT	North IC4 Recycle Pump
P-306A	ALKYLATION UNIT	South DIB Reboiler Charge Pump
P-306B	ALKYLATION UNIT	North DIB Reboiler Charge Pump
P-421A	SATS GAS PLANT	West Depropanizer Reflux Pump
P-421B	SATS GAS PLANT	East Depropanizer Reflux Pump
P-423A	SATS GAS PLANT	West DIB Reflux Pump
P-423B	SATS GAS PLANT	East DIB Reflux Pump

**APPENDIX D – PUMPS SUBJECT TO COMPLYING WITH INTERNAL LEAK
DEFINITION WITHIN FIVE-HUNDRED FORTY-FIVE (545) DAYS AFTER DATE OF
ENTRY**

DESIGNATION	PROCESS AREA	SERVICE DESCRIPTION
P-601	REFORMER UNIT	Unifiner Charge Pump
P-603	REFORMER UNIT	Common Spare Charge Pump
P-604	REFORMER UNIT	Platformer Charge Pump
P-607	REFORMER UNIT	Common Spare Reflux Pump
P-608	REFORMER UNIT	Stabilizer Reflux Pump
P-621A	REFORMER UNIT	South Stripper Preheat Pump
P-621B	REFORMER UNIT	North Stripper Preheat Pump
P-624A	REFORMER UNIT	Stabilizer to Gas Plant Pump

APPENDIX E – SUPPLEMENTAL ENVIRONMENTAL PROJECT

HYDROFLUORIC ACID ALKYLATION UNIT LEAK DETECTION SYSTEM

A. PROJECT DESCRIPTION

1. Big West Oil shall install a laser detection system around the perimeter of the Hydrofluoric Acid (“HF”) Alkylation Unit that will provide earlier detection of much lower levels of HF. Currently, HF leak detection is the result of visual observation – either directly or via camera. BWO Refinery operating personnel make unit rounds every two hours, and video cameras are monitored by other refinery personnel. The video cameras do not provide for complete visual observation, but are located such that much of the HF Alkylation Unit is visible. The new system would provide constant monitoring of the entire perimeter of the unit.

2. The laser detection system will be integrated into the refinery’s control room, and an audible alarm will go off if the system detects a leak. This will allow for more timely efforts to address much smaller releases than could be detected in the past, with the goal of avoiding more significant releases, or in the worst case scenario providing earlier warnings of a more significant release. More timely efforts will result in less emissions, fewer significant releases, and enhanced safety for the refinery workers and the nearby communities. The laser detection system will be incorporated into the refinery’s Emergency Response and Contingency Plan, as well as the HF Vapor Release Mitigation Plan. These plans provide information and procedures for responding to releases of HF, including the following: (1) responding to detections of HF; (2) contacting emergency responders and the local refinery Mutual Aid Group; and (3) operations of four elevated water cannons that are used to contain HF releases and reduce exposures.

B. LASER DETECTION SYSTEM PROJECT COMPONENT DEADLINES

3. Big West Oil shall complete the Laser Detection System SEP by no later than one-hundred eighty (180) days after Date of Entry. Big West Oil shall complete each project component of the SEP by the following deadlines:

a. By no later than sixty (60) days after Date of Entry, Big West Oil shall complete the engineering and design of the laser detection system that will better detect HF in the vicinity of the HF Alkylation Unit, as well as at the perimeter of the BWO Refinery.

b. By no later than ninety (90) days after Date of Entry, Big West Oil shall purchase an HF laser detection system that will meet the engineering and design requirements.

c. By no later than one-hundred eighty (180) days after Date of Entry, Big West Oil shall install and operate an HF laser detection system for the HF Alkylation Unit and incorporate the HF laser detection system into the refinery's Emergency Response and Contingency Plan, the HF Vapor Release Mitigation Plan, and the Standard Operating Procedures (SOP's) for the Alkylation Unit and the refinery (to include warnings provided from the system).