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WHEREAS, Plaintiff the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently with this Consent Decree;

WHEREAS, Aux Sable Liquid Products LP (“Aux Sable”) owns and operates a natural gas processing plant located at 6155 East U.S. Route 6, Morris, Illinois (the “Facility”);

WHEREAS, the Complaint alleges that Aux Sable violated the Clean Air Act (“CAA”) and its implementing regulations at Aux Sable’s Morris, Illinois, Facility. Specifically, the Complaint alleges that Aux Sable violated: (1) the Nonattainment New Source Review (“NSR”) provisions of Part D of Title I of the CAA, 42 U.S.C. §§ 7501–7515, and the implementing regulations of 35 Ill. Adm. Code Part 203 under the Illinois State Implementation Plan (“SIP”); (2) conditions of its construction permit (No. 98080090 issued by the Illinois Environmental Protection Agency (“Illinois EPA”) on February 8, 1999) for volatile organic compound (“VOC”) fugitive emissions established according to 35 Ill. Adm. Code § 201.156 of the Illinois SIP; (3) conditions of its Clean Air Act Permit Program (“CAAPP”) permit (also known as a “Title V permit”) (No. 01120007 issued August 28, 2002, revised May 16, 2006) for VOC fugitive emissions; (4) New Source Performance Standards (“NSPS”) for VOC Emissions from Synthetic Organic Chemical Manufacturing Industry (“SOCMI”) Distillation Operations at 40 C.F.R. Part 60, Subpart NNN; (5) NSPS for VOC Emissions from SOCMI Reactor Processes at 40 C.F.R. Part 60, Subpart RRR; (6) requirements to monitor the presence of a flare pilot flame under the CAAPP permit and NSPS Subparts Kb, KKK, NNN, and RRR; (7) requirements of Illinois’s Emission Reduction Market System (“ERMS”) under the Illinois SIP at 35 Ill. Adm. Code Part 205; (8) requirements of the Illinois Air Emission Report program under the Illinois SIP at 35 Ill. Adm. Code Part 254; (9) Sections 111 and 502(a) of the CAA, 42 U.S.C. §§ 7411 and 7661a; Title V of the CAA, 42 U.S.C. § 7661–7661(f), and its implementing regulations at 40 C.F.R. Part 60, Subpart KKK (National Emission Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants); and, by reference, certain provisions of 40 C.F.R. Part 60, Subpart VV, and 40 C.F.R. Part 60, Appendix A-7, Method 21; and (10) conditions of the Fractionation Expansion Project Construction Permit No. 14120019 for oxides of nitrogen (“NOx”) emissions and fuel usage operational limits established according to 35 Ill. Adm. Code § 201.156 of the Illinois SIP;

WHEREAS, at Aux Sable’s Facility, EPA identified alleged violations of the Clean Air Act and its implementing regulations and of the federally enforceable Illinois SIP in three violation notices: (1) a September 4, 2014, Notice of Violation; (2) an April 14, 2015, Notice of Violation; and (3) an August 23, 2016, Notice of Violation. The three violation notices are referred to collectively herein as the “EPA Violation Notices;”

WHEREAS, Aux Sable remains subject to a 10.2 tons per year limit for VOM fugitive emissions applicable to certain parts of the Facility established under Construction Permit no. 98080090. This emissions limit was intended to aid in establishing the Facility as a non-major stationary source under 35 Ill. Admin. Code 203. The Complaint alleges that Aux Sable has exceeded this emissions limit. Aux Sable has or will submit an application to Illinois EPA,

whether as a new permit or modification to an existing permit, pursuant to Section VIII of this Consent Decree, to modify or remove the 10.2 tons per year VOC emission limit.

WHEREAS, on January 4, 2017, Aux Sable conducted a performance test of the Merox Off-Gas Incinerator (IN601) at the Facility, and on January 5, 2017, Aux Sable conducted a performance test of the Merox Off-Gas Incinerator (IN602) at the Facility. During the tests, Aux Sable demonstrated compliance with the emission standard set forth in Paragraph 13.c at a three-hour rolling average operating temperature of 1,345 degrees Fahrenheit for IN601, and 1,424 degrees Fahrenheit for IN602. Based upon the performance tests, on July 14, 2017, Aux Sable submitted a notice of compliance to Illinois EPA as part of its semi-annual reporting;

WHEREAS, in conjunction with the negotiation of this Consent Decree and to comply with 40 C.F.R. Part 60, Subpart NNN and RRR, Aux Sable has, on October 19, 2016, installed and commenced operation of thermocouples on each of the Facility's HP and LP flares in accordance with 40 C.F.R. 60.18(f)(2);

WHEREAS, in conjunction with the negotiation of this Consent Decree, on March 10, 2017, Aux Sable applied to the Illinois EPA to purchase Allotment Trading Units ("ATUs") under the Illinois Emission Reduction Market System ("ERMS") program, 35 Ill. Adm. Code Part 205, in order to address the alleged failure to purchase sufficient ATUs for past ozone seasons 2001 through 2015;

WHEREAS, Aux Sable does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint or the EPA Violation Notices;

WHEREAS, the United States and Aux Sable recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because Aux Sable resides and is located in this judicial district, and certain violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Aux Sable consents to the Court's jurisdiction over this Consent Decree and over Aux Sable and also consents to venue in this judicial district.

2. For purposes of this Consent Decree, Aux Sable agrees that the United States' Complaint states claims upon which relief may be granted pursuant to Clean Air Act Section 113, 42 U.S.C. § 7413.

3. Notice of the commencement of this action shall be given to the State of Illinois as required by Clean Air Act Section 113(b), 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Aux Sable and any successors, assigns, or other entities or persons otherwise bound by law.

5. Aux Sable may transfer its interest in the Facility without relieving Aux Sable of its Consent Decree obligations, without consent, and without modification of the Consent Decree, so long as: (i) the transferee agrees in writing to comply with the obligations of the Consent Decree, and (ii) written notice of the transfer, together with a copy of the transferee's assumption of Consent Decree obligations, is provided to U.S. EPA Region 5, the United States Attorney for the Northern District of Illinois, and the United States Department of Justice, in accordance with Section XVII (Notices). Aux Sable may be relieved of its Consent Decree obligations only upon Court approval of a modification to the Consent Decree, substituting the transferee for the transferor, and providing that the transferee will implement the terms of the Consent Decree; provided, however, that the United States may refuse to approve such a modification to the Consent Decree if it determines that the proposed transferee does not possess the requisite technical abilities and/or financial means to implement the Consent Decree. If the United States opposes the substitution, the issue shall first be subject to dispute resolution pursuant to Section XIII (Dispute Resolution). If the United States agrees to the substitution, or upon approval of the substitution following dispute resolution, the parties will file a joint motion with the Court seeking such substitution.

6. Aux Sable shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Aux Sable shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Aux Sable shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. The terms used in this Consent Decree that are defined in the CAA or in federal and state regulations promulgated pursuant to the CAA shall have the meaning assigned to them in the CAA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Allotment Trading Unit” or “ATU” shall mean a tradable unit of volatile organic material (“VOM”) emissions under the Illinois Emission Reduction Management System, 35 Ill. Admin. Code § 205.130.
- b. “Annual” or “annually” shall mean a calendar year, except as otherwise provided in applicable Leak Detection and Repair (“LDAR”) regulations as set forth in 40 C.F.R. Part 60, Subparts KKK, VV, VVa, and OOOO.
- c. “Annual Emission Reports” shall mean the reports required pursuant to 35 Ill. Admin. Code Part 254.
- d. “Average” shall mean the arithmetic mean.
- e. “CAP” shall mean the Corrective Action Plan described in Paragraph 52 of this Consent Decree.
- f. “CEMS” or “Continuous Monitoring System” shall mean, consistent with the definition of Continuous Monitoring System in 40 C.F.R. § 60.2, the total equipment, required under this Consent Decree or an applicable regulation or permit, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.
- g. “Complaint” shall mean the Complaint filed by the United States in this action.
- h. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto, but in the event of any conflict between the text of this Consent Decree and any Appendix, the text of this Consent Decree shall control.
- i. “Covered Equipment” shall mean all Covered Types of Equipment in all Covered Process Units.
- j. “Covered Process Units” shall mean any Process Unit at the Facility that is, at the Date of Lodging, subject to, or, under the terms of this Consent Decree, becomes subject to 40 C.F.R. Part 60, Subpart OOOO, pursuant to Paragraph 12, including Areas 100 (Inlet Separation & Dehydration), 200 (Extraction), 300 (Ethane Recovery), 500 (Utilities & Flare), 600 (Fractionation Unit, including Butamer Isomerization Process & Merox Treatment Process), 700 (Product Storage, Distribution & Railcar Loading), and 900 (Inlet & Metering), except that the following Process Units shall not be considered Covered Process Units: (a) the fractionation unit constructed under Construction Permit No. 14120019 and known as Unit 600A, and (b) any Process Units installed at the Facility after the Date of Lodging.

- k. “Covered Types of Equipment” shall mean all valves in light liquid or gas/vapor service (but excluding pressure relief devices), all connectors in light liquid or gas/vapor service, and all pumps in light liquid or gas/vapor service, which are located in a Covered Process Unit and that are regulated under any “equipment leak” provision of 40 C.F.R. Part 60, Subparts KKK, VV, VVa, and OOOO.
- l. “Date of Lodging of this Consent Decree” or “Date of Lodging” shall mean the date that the United States files a “Notice of Lodging” of this Consent Decree with the Clerk of this Court for the purpose of providing notice and comment to the public.
- m. “Day” or “Days,” for purposes of requirements uniquely imposed by the LDAR Program in Section VI, and not by any applicable LDAR regulation, shall mean a calendar day. For all other purposes related to LDAR, such as complying with any related applicable and enforceable LDAR regulation, “day” shall have the meaning provided in such LDAR regulation. “Working Day” shall mean a day other than a Saturday, Sunday, or federal or Illinois state holiday. In computing any period of time under this Consent Decree for submittal of reports, where the last day would fall on a Saturday, Sunday, or federal or Illinois state holiday, the period shall run until the close of business on the next Working Day. When a compliance date is specified in this Consent Decree, compliance must be achieved on or before that date. For all other purposes, “Day” or “Days” shall mean a calendar day or days.
- n. “Defendant” shall mean Aux Sable Liquid Products LP.
- o. “DOR” shall mean Delay of Repair.
- p. “Effective Date” shall have the meaning given in Section XVIII (Effective Date).
- q. “Environmental Mitigation Projects” shall mean the requirements in Section VII and Appendix B to mitigate the alleged environmental harm caused by the alleged noncompliance at Aux Sable’s Facility.
- r. “EPA” or “U.S. EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- s. “Facility” shall mean Aux Sable’s natural gas processing plant located at 6155 East U.S. Route 6, Morris, Illinois.
- t. “EPA Violation Notices” shall mean the three Finding and/or Notice of Violations issued by EPA Region 5 to Aux Sable dated September 4, 2014, April 14, 2015, and August 23, 2016.

- u. “LDAR Program” or “LP” shall mean the Leak Detection and Repair Program provisions specified in Section VI of this Decree required to come into compliance with the requirements of 40 C.F.R. Part 60, Subparts KKK, VV, OOOO, and VVa, as well as any applicable state or local equipment leak requirements, and that additionally mitigate the alleged environmental harm allegedly caused by noncompliance at the Covered Process Units and Covered Types of Equipment (including “drill and tap” requirements in Paragraphs 29–31 and the “valve replacement and improvement” requirements in Paragraphs 33–42).
- v. “LDAR” or “Leak Detection and Repair” shall mean the leak detection and repair activities required by any applicable “equipment leak” regulations set forth in 40 C.F.R. Part 60, Subparts KKK, VV, VVa, and OOOO. LDAR also shall mean any state or local equipment leak regulations that require (i) the use of Method 21 to monitor for equipment leaks and also (ii) the repair of leaks discovered through such monitoring.
- w. “LDAR Audit Commencement Date” or “Commencement of an LDAR Audit” shall mean the first day of the on-site inspection that accompanies an LDAR audit.
- x. “LDAR Audit Completion Date” or “Completion of an LDAR Audit” shall mean 120 days after the LDAR Audit Commencement Date.
- y. “LDAR Personnel” shall mean all Aux Sable’s contractors and employees who perform any of the following activities at the Facility: LDAR monitoring, LDAR data input, maintenance of LDAR monitoring devices, leak repairs on equipment subject to LDAR, and/or any other field duties generated by LDAR regulations or the LP.
- z. “Low-Emissions Packing” or “Low-E Packing” shall mean either of the following:
 - (i) A valve packing product, independent of any specific valve, for which the manufacturer has issued a written warranty that the packing will not emit fugitives at greater than 100 ppm, and that, if it does so emit at greater than 100 ppm at any time in the first five years after installation, the manufacturer will replace the product; provided, however, that no packing product shall qualify as “Low-E” by reason of written warranty unless the packing first was tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions and the results of the testing reasonably support the warranty; or
 - (ii) A valve packing product, independent of any specific valve, that has been tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing

fugitive emissions, and that, during the test, at no time leaked at greater than 500 ppm, and on average, during the test, leaked at less than 100 ppm.

- aa. “Low-Emissions Valve” or “Low-E Valve” shall mean either of the following:
- (i) A valve (including its specific packing assembly or stem sealing component) for which the manufacturer has issued a written warranty that it will not emit fugitives at greater than 100 ppm, and that, if it does so emit at greater than 100 ppm at any time in the first five years after installation, the manufacturer will replace the valve; provided, however, that no valve shall qualify as “Low-E” by reason of written warranty unless the valve (including its specific packing assembly or stem sealing component) either:
 - (a) first was tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions; or
 - (b) is an “extension of another valve” that qualified as “Low-E” under Subparagraph (i)(a) above; or
 - (ii) A valve (including its specific packing assembly) that:
 - (a) has been tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions and that, during the test, at no time leaked at greater than 500 ppm, and on average, during the test, leaked at less than 100 ppm; or
 - (b) is an “extension of another valve” that qualified as “Low-E” under Subparagraph (ii)(a) above.
 - (iii) For purposes of Subparagraphs (i)(b) and (ii)(b) above, being an “extension of another valve” shall mean: (i) the tested and untested valve were produced by the same manufacturer to the same or essentially equivalent quality requirements; (ii) the characteristics of the valve that affect sealing performance (e.g. type of valve, stem motion, tolerances, surface finishes, loading arrangement, and stem and body seal material, design, and construction) are the same or essentially equivalent as between the tested and the untested valve; and (iii) the temperature and pressure ratings of the tested valve are at least as high as the temperature and pressure ratings of the untested valve.
- bb. “Malfunction” shall mean, consistent with the definition of “Malfunction” in 40 C.F.R. § 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.

- cc. “Method 21” shall mean the test method found at 40 C.F.R. Part 60, Appendix A-7, Method 21. To the extent that the Covered Equipment is subject to regulations that modify Method 21, those modifications shall be applicable.
- dd. “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral.
- ee. “Parties” shall mean the United States and Aux Sable Liquid Products LP.
- ff. “Process Unit,” for purposes of this Consent Decree only, shall mean, consistent with the definition of “Process Unit” in 40 C.F.R. § 60.5430, components assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products, including but not limited to butane isomerization. A Process Unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.
- gg. “Process Unit Shutdown” shall mean, consistent with the definition of “Process Unit Shutdown” in 40 C.F.R. § 60.481a, a work practice or operational procedure that stops production from a Process Unit or part of a Process Unit during which it is technically feasible to clear process material from a Process Unit or part of a Process Unit consistent with safety constraints and during which repairs can be accomplished. The following are not considered Process Unit Shutdowns:
 - (i) An unscheduled work practice or operational procedure that stops production from a Process Unit or part of a Process Unit for less than 24 hours.
 - (ii) An unscheduled work practice or operational procedure that would stop production from a Process Unit or part of a Process Unit for a shorter period of time than would be required to clear the Process Unit or part of the Process Unit of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled Process Unit Shutdown.
 - (iii) The use of spare equipment and technically feasible bypassing of equipment without stopping production.
- hh. “Project Dollars” shall mean Aux Sable’s expenditures incurred or made in implementing the Environmental Mitigation Projects identified in

Section VII Subsection B (Locomotive Projects) and Appendix B to the extent that such expenditures or payments both: (i) comply with the requirements set forth in that Section VII Subsection B (Locomotive Projects) and Appendix B; and (ii) constitute Aux Sable's direct payments for such projects or Aux Sable's external costs for contractors, vendors, and equipment. Aux Sable shall not include as Project Dollars its own personnel costs in overseeing the implementation of the Projects.

- ii. "Quarter" or "quarterly" shall mean a calendar quarter (January through March, April through June, July through September, October through December) except as otherwise provided in applicable LDAR regulations.
- jj. "Repair Verification Monitoring" shall mean the utilization of monitoring (or other method that indicates the relative size of the leak) to be completed by no later than the next Working Day after each attempt at repair of a leaking piece of Covered Equipment in order to determine whether the leak has been eliminated or is below the applicable leak definition in the LP in Section VI (LDAR Program) of this Consent Decree.
- kk. "Screening Value" shall mean the highest concentration that is recorded at each piece of equipment as it is monitored in compliance with Method 21.
- ll. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- mm. "Subsection" shall mean a portion of a Section of this Consent Decree identified by a capital letter.
- nn. "United States" shall mean the United States of America, acting on behalf of EPA.
- oo. "Ultra-Low NOx Burners" or "ULNBs" shall mean those burners that are designed to achieve a NOx emission rate of less than or equal to 0.019 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 0.019 lb/mmBTU HHV.
- pp. "Week" or "weekly" shall mean the standard calendar period, except as otherwise provided in applicable LDAR regulations.
- qq. "VOC" shall mean volatile organic compounds as that term is used under 40 C.F.R. § 60.2.
- rr. "VOM" shall mean volatile organic material as that term is used under 35 Ill. Admin. Code Part 205.

IV. CIVIL PENALTY

9. Within 30 days after the Effective Date of this Consent Decree, Aux Sable shall pay the sum of \$2,700,000 as a civil penalty, together with interest accruing from the date the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

10. Aux Sable shall pay the civil penalty due to the U.S. Department of Justice account by FedWire Electronic Funds Transfer (“EFT”), in accordance with instructions provided to Aux Sable after the Effective Date by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Northern District of Illinois. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Aux Sable shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Katie Shepley, Controller
Aux Sable
6155 E. US Route 6
Morris, IL 60450
Katie.Shepley@auxsable.com

on behalf of Aux Sable. Aux Sable may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVII (Notices).

At the time of payment, Aux Sable shall send notice that payment has been made to: (i) EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section XVII (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Aux Sable Liquid Products LP, and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-11203.

11. Aux Sable shall not deduct any penalties paid under this Decree pursuant to this Section or Section XI (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

A. INJUNCTIVE RELIEF: NSPS and Other

12. Applicability of 40 C.F.R. Part 60, Subpart OOOO.

- a. By no later than 60 Days after the Effective Date, Aux Sable shall accept the applicability of 40 C.F.R. Part 60, Subpart OOOO, (“Subpart OOOO”) to all Covered Process Units. At such time Aux Sable accepts applicability of Subpart OOOO to a Covered Process Unit, then the requirements of 40 C.F.R Part 60, Subpart KKK, shall no longer apply to that Covered Process Unit. In accordance with the requirements of Section VIII (Permits), Aux Sable shall apply for a permit or permit

modification that will subject all Covered Process Units to Subpart OOOO, including any part of the Facility that was previously subject to Subpart KKK.

- b. Notwithstanding the applicability date for Subpart OOOO set forth in Paragraph 12.a, by no later than 365 Days after the Effective Date, Aux Sable shall complete initial Method 21 monitoring of connectors in all Covered Process Units at the Facility in accordance with 40 C.F.R. § 60.482-11a.

13. Merox Off-Gas Incinerators (IN601 and IN602).

- a. As of the Effective Date, Aux Sable shall operate each of the Merox Off-Gas Incinerators (IN601 and IN602) at all times process gas is vented to them, such that Total Organic Compounds (“TOC”) (as defined at 40 C.F.R. § 60.701) (less methane and ethane) are reduced by 99 weight percent, or to a TOC (less methane and ethane) concentration of 10ppmv, on a dry basis corrected to 3 percent oxygen, whichever is less stringent.
- b. By no later than 60 Days after the Effective Date, Aux Sable shall measure and record, in accordance with 40 C.F.R. §§ 60.703(a)(1)(i) and 60.705(b)(1)(i), the 15-minute average fire box temperature (as measured in the stack, downstream of the firebox, in a position before any substantial heat exchange is encountered) of each of the Merox Off-Gas Incinerators (IN601 and IN602). These 15-minute averages shall then be used to calculate a three-hour rolling average, rolled every 15 minutes. The requirement of this Paragraph 13.b shall apply at all times during operation of either Merox Off-Gas Incinerator except during monitoring device breakdowns, repairs, periodic accuracy evaluations, calibration checks, and zero span adjustments.
- c. By no later than 60 Days after the Effective Date, at all times process gas is vented to either of the Merox Off-Gas Incinerators (IN601 or IN602), Aux Sable shall maintain a minimum operating temperature of 1,345 degrees Fahrenheit for IN601 and 1,424 degrees Fahrenheit for IN602 on a three-hour rolling average, rolled every 15 minutes, to demonstrate compliance with the 99 weight percent requirement or 10 ppmv TOC concentration set forth in Paragraph 13.a. Aux Sable may conduct additional performance test(s) to set a new minimum operating temperature for each Merox Off-Gas Incinerator, but only if such additional performance test(s) is conducted in accordance with the requirements of Paragraph 13.a of this Consent Decree, and the results of such performance test(s), including supporting documentation, are submitted to EPA for review and approval, in accordance with Section X (Reporting Requirements). Following incorporation of the requirements in this Paragraph 13 into a federally-enforceable non-Title V permit in accordance with Paragraph 73 of this Consent Decree, Aux Sable shall

submit for review and approval to Illinois EPA the results of any performance test conducted to set a new minimum operating temperature.

14. NSPS Subparts NNN and RRR. By no later than 90 days after the Effective Date, Aux Sable shall comply with the following:

- a. NSPS Subpart NNN. For the (i) deethanizer distillation unit and recovery system, (ii) depropanizer distillation unit and recovery system, (iii) debutanizer distillation unit and recovery system, (iv) butane splitter distillation unit and recovery system, (v) V645 Stabilizer distillation unit, and (vi) V650 Deisobutanizer distillation unit and recovery system, Aux Sable shall:
 - (i) Install, calibrate, maintain, and operate the applicable parametric monitoring and equipment in accordance with 40 C.F.R. § 60.663(b), with the exception that, in accordance with EPA's approval of an alternative monitoring request (ADI Determination Control No. 1500084), in lieu of complying with the flow indicator requirements of 40 C.F.R. § 663(b), Aux Sable shall (i) use a lock and seal configuration and (ii) comply with the monitoring requirements of 40 C.F.R. §§ 60.703(b)(2), 60.703(b)(2)(i), and 60.703(b)(2)(ii), and (iii) comply with the monitoring and recordkeeping requirements of 40 C.F.R. §§ 60.705(d)(2) and (s);
 - (ii) Comply with the applicable emission standards set forth in 40 C.F.R. § 60.662(b) and with the applicable test methods and procedures set forth in 40 C.F.R. § 60.664(d); and
 - (iii) Comply with the applicable notification and recordkeeping requirements of 40 C.F.R. §§ 60.665(a)–(b), including 40 C.F.R. §§ 60.665(b)(3) and (f).
- b. NSPS Subpart RRR. For the (i) COS reactor; (ii) propane extractor and Merox system, mixed butanes extractor and Merox system, pentane extractor and Merox system, and common recovery system; and (iii) V643/V644 catalytic reactors, Aux Sable shall:
 - (i) Install, calibrate, maintain, and operate the applicable parametric monitoring and equipment in accordance with 40 C.F.R. §§ 60.703(a) and (b);
 - (ii) Comply with the applicable emission standards set forth in 40 C.F.R. §§ 60.702(a) and (b) and the applicable test methods and procedures under 40 C.F.R. § 60.704; and
 - (iii) Comply with the applicable notification and recordkeeping requirements of 40 C.F.R. § 60.705, including in particular 40 C.F.R. §§ 60.705(b), (c), (d), (e), and (s).

c. Flares.

- (i) By no later than 30 Days after the Effective Date, Aux Sable shall comply with 40 C.F.R. §§ 60.18(b)–(f) at the Low Pressure Flare (IN 507) and the High Pressure Flare (IN 501).
- (ii) By no later than 90 Days after the Effective Date, Aux Sable shall perform a performance test on the IN 507 and IN 501 flares in accordance with 40 C.F.R. § 60.8.
- (iii) By no later than 60 Days after the flare performance test in Paragraph 14.c(ii), above, Aux Sable shall submit to EPA a report that contains the results of the performance test (all test runs), with all appendices, including but not limited to, the process and operating parameters, production/processing rates at the time of the performance test, and all calculations.

B. Other

15. Emission Reduction Marketing System. Beginning no later than the Date of Lodging, Aux Sable shall comply with the Illinois ERMS program as set forth in 35 Ill. Adm. Code Part 205. Until termination of this Consent Decree pursuant to Section XXI (Termination), Aux Sable shall demonstrate compliance with the Illinois ERMS program by providing EPA, pursuant to Section X (Reporting Requirements), a copy of each year's ERMS Seasonal Emissions Report, including emissions calculations and information demonstrating that Aux Sable possesses sufficient ATUs to satisfy seasonal emissions.

16. Annual Emission Reports. Beginning no later than the Date of Lodging, Aux Sable shall comply with the Illinois Annual Emission Reports, in accordance with 35 Ill. Admin. Code Part 254, by submitting to Illinois EPA Annual Emission Reports that take into account Aux Sable's corrected VOM emissions at the Facility. Until termination of this Consent Decree pursuant to Section XXI (Termination), Aux Sable shall demonstrate compliance with this Paragraph by providing EPA, as part of its Annual Compliance Report under Section X (Reporting Requirements), a copy of each year's Annual Emission Report submitted to Illinois EPA.

17. Environmental Management Program Audit. By no later than two years after the Effective Date, Aux Sable shall retain a third-party contractor with experience conducting Environmental Management Program ("EMP") audits to undertake an audit of the Facility's EMP as it relates to the Facility's compliance with the Clean Air Act and its implementing regulations. By no later than 90 days after commencing the audit, the third-party contractor will complete the audit and prepare an audit report. By no later than 60 days after receipt of the audit report, Aux Sable shall either accept the recommendations of the third-party contractor and incorporate the provisions into its EMP, or explain why it rejected or modified any recommendation. Aux Sable shall submit all findings, reports, and recommendations made by the contractor(s) and a summary of any corrective actions by Aux Sable to EPA in its annual compliance reports pursuant to Section X (Reporting Requirements).

VI. INJUNCTIVE RELIEF: LDAR PROGRAM

18. Aux Sable shall implement and comply with the requirements of the LP as set forth in this Consent Decree. The requirements of the LP are in addition to, not in lieu of, the requirements of any other LDAR regulation that may be applicable to each piece of Covered Equipment at the Facility.

A. Applicability of the LDAR Program (Subsection A)

19. The requirements of this LP shall apply to all Covered Equipment and all Covered Process Units at the Facility. The requirements of this LP are in addition to, and not in lieu of, the requirements of any other LDAR regulation that may be applicable to a piece of Covered Equipment. If there is a conflict between an applicable LDAR regulation and this LP, Aux Sable shall follow the more stringent of the requirements.

B. Facility-wide LDAR Document (Subsection B)

20. By no later than 90 Days after the Effective Date of this Consent Decree, Aux Sable shall develop a Facility-wide document that describes: (i) the Facility's LDAR program (*e.g.*, applicability of regulations to process units and/or specific equipment; leak definitions; monitoring frequencies); (ii) a tracking program (*e.g.*, Management of Change as provided in Paragraph 43) that ensures that any new piece of equipment added to the Facility for any reason is integrated into the Facility's LDAR program and that any pieces of equipment that are taken out of service are removed from the Facility's LDAR program; (iii) the roles and responsibilities of all LDAR Personnel; (iv) how the number of LDAR Personnel is sufficient to satisfy the requirements of the Facility's LDAR program; and (v) how Aux Sable plans to implement the LP in accordance with the requirement of this Consent Decree. Once developed, Aux Sable shall review the Facility's LDAR program document annually and update it as needed by no later than December 31 of each year.

C. Monitoring Frequency and Equipment (Subsection C)

21. Beginning no later than 90 days after the Effective Date, for all Covered Equipment, Aux Sable shall comply with the following periodic monitoring frequencies, unless: (i) more frequent monitoring is required by federal, state, or local laws or regulations; or (ii) the relevant Covered Process Unit has been permanently shut down:

- a. Valves: quarterly;
- b. Connectors: annually; and
- c. Pumps: monthly.

Compliance with the monitoring frequencies in this Paragraph 21 is not required when one or more specific, applicable LDAR provisions (including 40 C.F.R. §§ 60.482-11a (pertaining to connectors) and 60.482-2a (pertaining to pumps)) excludes or exempts, fully or partially, monitoring at a periodic frequency for equipment that is designated as unsafe to monitor or difficult to monitor or for pumps that have no externally actuated shaft or for inaccessible,

ceramic, or ceramic-lined connectors, provided that Aux Sable satisfies all applicable conditions and requirements for the exclusion or exemption as set forth in the regulation.

22. Alternative Monitoring Frequencies for Valves after Two Years. At any time after two consecutive years of monitoring valves at the frequency specified in Paragraph 21.a, Aux Sable may elect to comply with the monitoring requirements set forth in this Paragraph 22 by notifying EPA no later than three months prior to changing to the monitoring frequency specified under this Paragraph. Aux Sable may elect to comply with the monitoring requirements of this Paragraph 22 at the Covered Process Units but may not make this election for anything less than all pieces of Covered Equipment in one entire Covered Process Unit. If Aux Sable elects to comply with the monitoring requirements of this Paragraph 22, below, it must comply with the following:

- a. For Valves that Have Not Leaked at Any Time for at Least Two Consecutive Years of Monitoring. For valves that have not leaked at any time for at least the two years prior to electing this alternative, Aux Sable shall monitor valves one time per year. If any leaks are detected during this alternative monitoring schedule or during an LDAR audit or a federal, state, or local audit or inspection, Aux Sable immediately shall start monitoring the leaking valve (or valves) pursuant to the requirements of Subparagraph 22.b.
- b. For Valves that Have Leaked at Any Time in the Prior Two Years of Monitoring. For valves that have leaked at any time in the prior two years of monitoring, Aux Sable shall monitor each such valve monthly from the date of the last leak until it shows no leaks for six consecutive months, at which time Aux Sable may commence monitoring at the frequency set forth in Subparagraph 22.a. The alternative monitoring schedule in Subparagraph 22.a shall continue to apply to non-leaking valves in the Covered Process Unit.

23. Beginning no later than 180 Days after the Effective Date, for all Covered Equipment, Aux Sable shall comply with Method 21 in performing LDAR monitoring, using an instrument attached to a data logger (or an equivalent instrument) that directly records electronically the Screening Value detected at each piece of Covered Equipment, the date and time that each Screening Value is taken, and the identification numbers of the monitoring instrument and the technician. Aux Sable shall transfer all of this monitoring data to an electronic database on at least a weekly basis for recordkeeping purposes.

24. If, during monitoring in the field, a piece of Covered Equipment is discovered that is not listed in the data logger, Aux Sable is permitted to monitor the piece of Covered Equipment and record, by any means available, the Screening Value, the date and time of the Screening Value, and the identification numbers of the monitoring instrument and technician. In such an instance, the failure to initially record the information electronically, in the data logger, does not constitute a violation of the requirement in Paragraph 23 to record the required information electronically, provided that Aux Sable thereafter promptly adds the piece of Covered Equipment and the information regarding the monitoring event to the LDAR database.

D. Leak Detection and Repair Action Levels (Subsection D)

25. Action Levels

- a. Beginning no later than 60 days after the Effective Date of this Consent Decree and continuing until termination, for all leaks from Covered Equipment detected at or above the leak definitions listed in Table 1, below, for each of the specific Covered Types of Equipment, Aux Sable shall perform repairs in accordance with Paragraphs 26–31.

Table 1: Leak Definitions for Covered Types of Equipment

Covered Type of Equipment	Lower Leak Definition (ppm)
Valves	500
Connectors	500
Pumps	2,000

- b. For purposes of these lower leak definitions, Aux Sable may elect to adjust the monitoring instrument readings to account for background concentrations in accordance with applicable LDAR regulations that address background adjustment.
- c. Beginning no later than 180 Days after the Effective Date of this Consent Decree, for all Covered Equipment, and all valves, connectors, and pumps in heavy liquid service, if, at any time, including outside of periodic monitoring, evidence of a potential leak is detected through audio, visual, or olfactory sensing, Aux Sable shall comply with all applicable regulations and, if repair is required, with Paragraphs 26–31.

E. Repairs (Subsection E)

26. Except as provided in Subparagraph 37.d(i), by no later than five days after detecting a leak at a piece of Covered Equipment, Aux Sable shall perform a first attempt at repair. By no later than 15 days after detection, Aux Sable shall perform a final attempt at repair of the leaking piece of Covered Equipment or may place the piece of Covered Equipment on the Delay of Repair (“DOR”) list provided that Aux Sable has complied with all applicable regulations and with the requirements of Paragraphs 27–31 and 33 (valve replacement and improvement).

27. Except as provided in Subparagraph 37.d(i), beginning no later than 180 Days after the Effective Date of this Consent Decree and continuing until termination, Aux Sable shall perform Repair Verification Monitoring following any repair attempt as required under this Consent Decree.

28. Repair Attempt for Valves (other than Control Valves) with Screening Values greater than or equal to 250 ppm and less than 500 ppm. For any valve, excluding control valves, that has a Screening Value greater than or equal to 250 ppm and less than 500 ppm, Aux Sable shall make an initial attempt to repair the valve and eliminate the leak by no later than five days after detecting the leak. Repair Verification Monitoring shall be performed to determine if the initial repair has been successful. If, upon Repair Verification Monitoring, the Screening Value is less than 500 ppm, no further repairs under the Repairs Section of this Consent Decree shall be required for that monitoring event for that valve. If, upon Repair Verification Monitoring, the Screening Value is greater than or equal to 500 ppm, Aux Sable shall undertake the requirements for repair required by this Consent Decree (and all deadlines for such requirements shall be based on the date of the failed Repair Verification Monitoring).

29. Drill and Tap for Valves (other than Control Valves and Needle Valves).

- a. Except as provided in Subparagraph 29.b, for leaking valves (other than control valves and needle valves), when other repair attempts have failed to reduce emissions below the applicable leak definition and Aux Sable is not able to remove the leaking valve from service, Aux Sable shall attempt at least one drill-and-tap repair (with a second injection of an appropriate sealing material if the first injection is unsuccessful at repairing the leak) before placing the valve (other than provisionally, as set forth in Subparagraph 29.c) on the DOR list.
- b. Drill-and-tap is not required when:
 - (i) Subparagraph 37.d(i) applies; or
 - (ii) when there is a major safety, mechanical, product quality, or environmental issue with repairing the valve using the drill-and-tap method, in which case, Aux Sable shall document the reason(s) why any drill-and-tap attempt was not performed prior to placing any valve on the DOR list.
- c. If a drill-and-tap attempt can reasonably be completed within the 15-day repair period, Aux Sable shall complete the drill-and-tap attempt in that time period. If a drill-and-tap attempt cannot reasonably occur within the 15-day repair period (*e.g.*, if Aux Sable's drill-and-tap contractor is not local and must mobilize to the Facility), Aux Sable provisionally may place the valve on the DOR list pending attempting the drill-and-tap repair as expeditiously as practical. In no event may Aux Sable take more than 30 days from the initial monitoring to attempt a drill-and-tap repair. If upon Repair Verification Monitoring, drill-and-tap is deemed successful by reference to a Screening Value of less than 500 ppm, the valve shall be removed from the provisional DOR list and considered repaired.

30. Except as provided in Subparagraph 37.d(i), for each leak, Aux Sable shall record the following information: the date of all repair attempts; the repair methods used during each

repair attempt; the date, time, and Screening Values for all re-monitoring events; and, if applicable, documentation of compliance with Paragraphs 29 and 32 for Covered Equipment placed on the DOR list.

31. Nothing in Paragraphs 26–30 is intended to prevent Aux Sable from taking a leaking piece of Covered Equipment out of service; provided, however, that prior to placing the leaking piece of Covered Equipment back in service, Aux Sable must repair the leak or must comply with the requirements of Subsection F (Delay of Repair) to place the piece of Covered Equipment on the DOR list.

F. Delay of Repair (Subsection F)

32. Beginning no later than the Effective Date of this Consent Decree for the requirements in Subparagraphs 32.b and 32.c(i), and beginning no later than 90 Days after the Effective Date of this Consent Decree for the other requirements set forth below in this Paragraph, for all Covered Equipment placed on the DOR list, Aux Sable shall:

- a. Require sign-off from the relevant Process Unit supervisor or person of similar authority that the piece of Covered Equipment is technically infeasible to repair without a Process Unit Shutdown;
- b. Undertake periodic monitoring of the Covered Equipment placed on the DOR list at the frequency specified in Paragraph 21 required for other pieces of Covered Equipment of that type in the Process Unit; and
- c. Either:
 - (i) Repair the piece of Covered Equipment within the time frame required by the applicable LDAR regulation; or
 - (ii) if applicable under Subsection G, replace, repack, or improve the piece of Covered Equipment in accordance with and by the timeframes set forth in Subsection G.

G. Valve Replacement and Improvement Program (Subsection G)

33. Commencing no later than 180 Days after the Effective Date of this Consent Decree, and continuing until termination, Aux Sable shall implement the program set forth in Paragraphs 34–42 to improve the emissions performance of the valves that are Covered Equipment in each Covered Process Unit. All references to “valves” in Paragraphs 34–42 exclude pressure relief valves.

34. List of All Existing Valves in the Covered Process Units. In the first compliance status report required under Section X (Reporting Requirements), Aux Sable shall include a list of the tag numbers of all valves subject to this LP, broken down by Covered Process Unit, that are in existence as of the Effective Date. The valves on this list shall be the “Existing Valves” for purposes of Paragraphs 35–37.

35. Proactive Initial Valve Tightening Work Practices Relating to Each New Valve that Is Installed and Each Existing Valve that Is Repacked. Aux Sable shall undertake the following work practices with respect to each new valve that is subject to LDAR that is installed (whether the new valve replaces an Existing Valve or is newly added to a Covered Process Unit) and each Existing Valve that is repacked: Upon installation (or re-installation in the case of repacking), Aux Sable shall tighten the valve's packing gland nuts or their equivalent (*e.g.*, pushers) to:

- a. the manufacturer's recommended gland nut or packing torque; or
- b. any appropriate tightness that will minimize the potential for fugitive emission leaks of any magnitude. This practice shall be implemented prior to the valve's exposure (or re-exposure, in the case of repacking) to process fluids.

36. Installing New Valves. Except as provided in Subparagraphs 36.a, 36.b, or Paragraph 39, Aux Sable shall ensure that each new valve (other than a valve that serves as the closure device on an open-ended line) that it installs and each Existing Valve that is replaced for any reason in a Covered Process Unit either is a Low-E Valve or is fitted with Low-E Packing.

- a. Paragraph 36 shall not apply in emergencies or exigent circumstances requiring immediate installation or replacement of a valve where a Low-E Valve or Low-E Packing is not available on a timely basis. Any such instance shall be reported in the next LP compliance status report.
- b. Paragraph 36 shall not apply to valves that are installed temporarily for a short-term purpose and then removed (*e.g.*, valves connecting a portion of the Covered Process Unit to a testing device).

37. Replacing or Repacking Existing Valves that Have Screening Values at or above 500 ppm with Low-E Valves or Low-E Packing.

- a. Existing Valves Required to Be Replaced or Repacked. Except as provided in Paragraph 39, for each Existing Valve that has a Screening Value at or above 500 ppm during any monitoring event, but no earlier than 60 Days after the Effective Date of this Consent Decree, Aux Sable shall either replace or repack the Existing Valve with a Low-E Valve or with Low-E Packing in accordance with this Paragraph.
- b. Timing: If Replacing or Repacking Does Not Require a Process Unit Shutdown. If replacing or repacking does not require Process Unit Shutdown, Aux Sable shall replace or repack the Existing Valve by no later than 30 days after the monitoring event that triggers the replacing or repacking requirement, unless Aux Sable complies with the following:
 - (i) Prior to the deadline, Aux Sable must take all actions necessary to obtain the required valve or valve packing, including all necessary associated materials, as expeditiously as practical, and

retain documentation of the actions taken and the date of each such action;

- (ii) If, despite Aux Sable's efforts to comply with Subparagraph 37.b(i), the required valve or valve packing, including all necessary associated materials, is not available in time to complete the installation within 30 days, Aux Sable must take all reasonable actions to minimize emissions from the valve pending completion of the required replacing or repacking. Examples include:
 - (a) Repair;
 - (b) More frequent monitoring, with additional repairs as needed; or
 - (c) Where practical, interim replacing or repacking of a valve with a valve that is not a Low-E Valve or with packing that is not Low-E Packing; and
- (iii) Aux Sable must promptly perform the required replacing or repacking after Aux Sable's receipt of the valve or valve packing, including all necessary associated materials.

c. Timing: If Replacing or Repacking Requires a Process Unit Shutdown. If replacing or repacking requires a Process Unit Shutdown, Aux Sable shall replace or repack the Existing Valve during the first Process Unit Shutdown that follows the monitoring event that triggers the requirement to replace or repack the valve, unless Aux Sable documents that insufficient time existed between the monitoring event and the Process Unit Shutdown to enable Aux Sable to purchase and install the required valve or valve packing technology. In that case, Aux Sable shall undertake the replacing or repacking at the next Process Unit Shutdown that occurs after Aux Sable's receipt of the valve or valve packing, including all necessary associated materials.

d. Actions Required Pending Replacings or Repackings Pursuant to Subparagraph 37.a–37.c.

- (i) Actions Required Pursuant to Subsection E: Aux Sable shall not be required to comply with Subsection E (Repairs), pending replacing or repacking pursuant to Subparagraphs 37.a–37.c if Aux Sable completes the replacing or repacking by the date that is no later than 30 days after detecting the leak. If Aux Sable does not complete the replacing or repacking within 30 days, or if at the time of the leak detection Aux Sable reasonably can anticipate that it might not be able to complete the replacing or repacking within 30 days, Aux Sable shall comply with all applicable requirements of Subsection E (Repairs).

- (ii) Actions Required Pursuant to Applicable Regulations: For each Existing Valve that has a Screening Value at or above 500 ppm, Aux Sable shall comply with all applicable regulatory requirements, including repair and DOR, pending replacing or repacking pursuant to Subparagraphs 37.a–37.c.

38. Provisions Related to Low-E Valves and Low-E Packing.

- a. Low-E Status Not Affected by Subsequent Leaks. If, during monitoring or after installation, a Low-E Valve or a valve using Low-E Packing has a Screening Value at or above 500 ppm, the leak is not a violation of this Decree, does not invalidate the “Low-E” status or use of that type of valve or packing technology, and does not require replacing other, non-leaking valves or packing technology of the same type.
- b. Repairing Low-E Valves. If, during monitoring after installation, a Low-E Valve or a valve using Low-E Packing has a Screening Value at or above 500 ppm, Paragraphs 26, 27, 29, 30, 31, and 32 shall apply.
- c. Replacing or Repacking Low-E Valves. On any occasion when a Low-E Valve or a valve that utilizes Low-E Packing has a Screening Value at or above 500 ppm, Aux Sable shall replace or repack such valve pursuant to the requirements of Paragraph 37.

39. Commercial Unavailability of a Low-E Valve or Low-E Packing. Aux Sable shall not be required to utilize a Low-E Valve or Low-E Packing to replace or repack a valve if a Low-E Valve or Low-E Packing is commercially unavailable. The factors relevant to the question of commercial unavailability and the procedures that Aux Sable must follow to assert that a Low-E Valve or Low-E Packing is commercially unavailable are set forth in Appendix A.

40. Records of Low-E Valves and Low-E Packing. Prior to installing any Low-E Valves or Low-E Packing, or if not possible before installation, then as soon as possible after installation, Aux Sable shall obtain from each manufacturer documentation that demonstrates that the proposed valve or packing technology meets the definition of “Low-E Valve” and/or “Low-E Packing.” Aux Sable shall make the documentation available upon request.

41. Nothing in Paragraphs 36–39 requires Aux Sable to utilize any valve or valve packing technology that is not appropriate for its intended use in a Covered Process Unit.

42. In each Compliance Status Report due under Section X (Reporting Requirements) of this Decree, Aux Sable shall include a separate section in the Report that: (i) describes the actions it took to comply with this Subsection G, including identifying each piece of equipment that triggered a requirement in Subsection G, the Screening Value for that piece of equipment, and the type of action taken (*i.e.*, replacement, repacking, or improvement, and the date when the action was taken); (ii) identifies any required actions that were not taken and explains why; and (iii) identifies the schedule for any known, future replacements, repackings, improvements, or eliminations.

H. Management of Change (Subsection H)

43. Management of Change. Beginning no later than 90 Days after the Effective Date of this Consent Decree, Aux Sable shall ensure that each valve, pump, and connector added to the Covered Process Units at the Facility for any reason is evaluated to determine if it is subject to LDAR regulations. Aux Sable also shall ensure that each valve, pump, and connector that was subject to the LDAR program is eliminated from the LDAR program if it is physically removed from a Covered Process Unit. This evaluation shall be a part of Aux Sable's Facility-wide Management of Change protocol.

I. Training (Subsection I)

44. By no later than 270 Days after the Effective Date of this Consent Decree, Aux Sable shall develop a training protocol (or, as applicable, require its contractor to develop a training protocol for the contractor's employees) and shall ensure that all LDAR Personnel have completed training on all aspects of LDAR, including this LP, that are relevant to the person's duties. Once per calendar year starting in the calendar year after completion of initial training, Aux Sable shall ensure that refresher training is performed with respect to each employee or contractor; provided, however, that refresher training is not required if an individual's employment at the Facility ceases prior to the end of the calendar year or no longer involves duties relevant to LDAR. Beginning no later than the Effective Date of this Consent Decree and continuing until termination of this Consent Decree, Aux Sable shall ensure (or as applicable, require its contractor to ensure for the contractor's employees) that new LDAR Personnel are sufficiently trained prior to any field involvement (other than supervised involvement for purposes of training) in the LDAR program.

J. Quality Assurance ("QA")/Quality Control ("QC") (Subsection J)

45. Daily Certification by Monitoring Technicians. Commencing by no later than 30 Days after the Effective Date of this Consent Decree, on each day that monitoring occurs, at the end of such monitoring, Aux Sable shall ensure that each monitoring technician certifies that the data collected accurately represents the monitoring performed for that day by requiring the monitoring technician to sign a form that includes the following certification:

On [insert date], I reviewed the monitoring data that I collected today and to the best of my knowledge and belief, the data accurately represents the monitoring that I performed today.

46. Commencing by no later than the first full calendar quarter after the Effective Date of this Consent Decree, at times that are not announced to the LDAR monitoring technicians, Aux Sable shall ensure that an LDAR Personnel who does not serve on a routine basis as an LDAR monitoring technician at the Facility, shall undertake the following at the Facility with respect to Covered Equipment and Covered Process Units at the Facility, no less than once per calendar quarter:

- a. Verify that equipment was monitored at the appropriate frequency;
- b. Verify that proper documentation and sign-offs have been recorded for all equipment placed on the DOR list;

- c. Ensure that repairs have been performed in the required periods;
- d. Review monitoring data and equipment counts (*e.g.*, number of pieces of equipment monitored per day) for feasibility and unusual trends;
- e. Verify that proper calibration records and monitoring instrument maintenance information are maintained;
- f. Verify that other LDAR program records are maintained as required; and
- g. Observe in the field each LDAR monitoring technician who is conducting leak detection monitoring to ensure that monitoring during the quarterly QA/QC is being conducted as required.

Aux Sable promptly shall correct any deficiencies detected or observed. Aux Sable shall maintain a log that: (i) records the date and time that the reviews, verifications, and observations required by this Paragraph are undertaken; and (ii) describes the nature and timing of any corrective actions taken.

K. LDAR Audits and Corrective Action (Subsection K)

47. LDAR Audit Schedule: Until termination of this Consent Decree, Aux Sable shall ensure that an LDAR audit of all Covered Process Units at the Facility (“LDAR Audit”) is conducted once every two years in accordance with the following schedule: for the first LDAR Audit, the LDAR Audit Commencement Date shall be no later than twelve months after the Effective Date of this Consent Decree; for each subsequent LDAR Audit, the LDAR Audit Completion Date shall occur within the same calendar quarter that the first LDAR Audit Completion Date occurred.

48. Requirements Related to Persons Conducting LDAR Audits. For the LDAR Audits to be conducted every two years under this Consent Decree, Aux Sable shall retain a third party with experience in conducting LDAR audits. Aux Sable shall select a different company than the Facility’s regular LDAR contractor to perform the LDAR Audit, and Aux Sable may not hire that company as the Facility’s regular LDAR contractor prior to termination of this Consent Decree.

49. For each Covered Process Unit, each LDAR Audit shall include: (i) reviewing Aux Sable’s compliance with all applicable LDAR regulations; (ii) reviewing and/or verifying the same items that are required to be reviewed and/or verified in Subparagraphs 46.a–46.f; (iii) reviewing whether any pieces of equipment that are required to be in the LDAR Program are not included; and (iv) “Comparative Monitoring” as described in Paragraph 50. LDAR Audits after the first audit also shall include reviewing the Facility’s compliance with the LP requirements of this Consent Decree.

50. Comparative Monitoring. Comparative Monitoring during LDAR Audits shall be undertaken as follows:

- a. Calculating a Comparative Monitoring Audit Leak Percentage. Covered Types of Equipment shall be monitored in order to calculate a leak

percentage for the Covered Process Units. For descriptive purposes under this Section, the monitoring that takes place during an LDAR Audit shall be called “Comparative Monitoring,” and the leak percentages derived from the Comparative Monitoring shall be called the “Comparative Monitoring Audit Leak Percentages.” Aux Sable shall undertake Comparative Monitoring of the Covered Types of Equipment in the Covered Process Units during each LDAR Audit. In undertaking Comparative Monitoring, Aux Sable shall not be required to monitor every component in each Covered Process Unit.

- b. Calculating the Historic, Average Leak Percentage from Prior Periodic Monitoring Events. For each Covered Process Unit, the historic, average Leak percentage from prior periodic monitoring events, broken down by Covered Type of Equipment, shall be calculated. Four complete monitoring periods immediately preceding the Comparative Monitoring shall be used for this purpose. The preceding monitoring periods may comprise a mix of the monitoring periods and frequencies specified in Paragraph 21 or 22.
- c. Calculating the Comparative Monitoring Leak Ratio. For each Covered Process Unit, the ratio of the Comparative Monitoring Audit Leak Percentage from Subparagraph 50.a to the historic, average leak percentage from Subparagraph 50.b shall be calculated. This ratio shall be called the “Comparative Monitoring Leak Ratio.” If the denominator in this calculation is “zero,” it shall be assumed (for purposes of this calculation but not for any other purpose under this Consent Decree or under any applicable laws or regulations) that one leaking piece of Covered Equipment was found in the process unit through routine monitoring during the 12-month period before the Comparative Monitoring.
- d. In only the first LDAR audit, Aux Sable shall not be required to undertake Comparative Monitoring on connectors or calculate a Comparative Monitoring Leak Ratio for connectors because of the unavailability of historic, average leak percentages for connectors.

51. When More Frequent Periodic Monitoring is Required. If a Comparative Monitoring Audit Leak Percentage calculated pursuant to Subparagraph 50.a triggers a more frequent monitoring schedule under any applicable federal, state, or local law or regulation than the frequencies listed in either Paragraph 21 or 22, as applicable for the Covered Type of Equipment in that Covered Process Unit, Aux Sable shall monitor the Covered Type of Equipment at the greater frequency unless and until less frequent monitoring is again allowed under the specific federal, state, or local law or regulation. At no time may Aux Sable monitor at intervals less frequently than those listed in the applicable Paragraph in Subsection C (Monitoring Frequency and Equipment) of this Section.

52. Corrective Action Plan (“CAP”).

- a. Requirements of a CAP. By no later than the date that is 30 days after each LDAR Audit Completion Date, Aux Sable shall develop a preliminary Corrective Action Plan if: (i) the results of an LDAR audit identify any deficiencies; or (ii) a Comparative Monitoring Leak Ratio calculated pursuant to Subparagraph 50.c is 3.0 or higher *and* the Comparative Monitoring Audit Leak Percentage calculated pursuant to Subparagraph 50.c is greater than or equal to 0.5 percent. The preliminary CAP shall describe the actions that Aux Sable has taken or shall take to address: (i) the deficiencies and/or (ii) the causes of a Comparative Monitoring Leak Ratio that is 3.0 or higher (but only if the Comparative Monitoring Audit Leak Percentage is at or above 0.5 percent). Aux Sable shall include a schedule by which actions that have not yet been completed shall be completed. Aux Sable promptly shall complete each corrective action item with the goal of completing each action within 90 days after the LDAR Audit Completion Date. If any action is not completed or not expected to be completed within 90 Days after the LDAR Audit Completion Date, Aux Sable shall explain the reason(s) and propose a schedule for prompt completion in the final CAP to be submitted under Subparagraph 52.b.
- b. Submission of the Final CAP to EPA. By no later than 120 days after the LDAR Audit Completion Date, Aux Sable shall submit the final CAP to EPA, together with a certification of the completion of each item of corrective action. If any action is not completed within 90 days after the LDAR Audit Completion Date, Aux Sable shall explain the reasons, together with a proposed schedule for prompt completion. Aux Sable shall submit a supplemental certification of completion by no later than 30 Days after completing all actions.
- c. EPA Comment on CAP. EPA may submit comments on the final CAP to Aux Sable. Aux Sable shall submit a reply to EPA by no later than 30 Days of receipt of any EPA comments. Disputes arising with respect to any aspect of a CAP shall be resolved in accordance with the dispute resolution provisions in Section XIII (Dispute Resolution) of this Decree.

L. Certification of Compliance (Subsection L)

53. Within 180 Days after the initial LDAR Audit Completion Date, Aux Sable shall certify to EPA that, to the signer’s best knowledge and belief formed after reasonable inquiry: (i) except as otherwise identified, the Facility is in compliance with all applicable LDAR regulations and the LP requirements of this Consent Decree; (ii) Aux Sable has completed all corrective actions, if applicable, or is in the process of completing all corrective actions pursuant to a CAP; and (iii) all equipment at the Facility that is regulated under LDAR has been identified and included in the Facility’s LDAR program. To the extent that Aux Sable cannot make the

certification in all respects, it shall specifically identify any deviations from Items (i)–(iii) in this Paragraph.

M. Recordkeeping (Subsection M)

54. Aux Sable shall keep all records required by this LP, including each LDAR Audit report, to document compliance with the requirements of this LP for at least two years after termination of this Consent Decree. Upon request by EPA, Aux Sable shall make all such documents available to EPA and shall provide, in electronic format if so requested, all LDAR monitoring data generated during the life of this Consent Decree.

VII. ENVIRONMENTAL MITIGATION PROJECTS

55. Aux Sable shall, in accordance with the terms of this Consent Decree, implement the three environmental mitigation projects included in this Section and Appendix B: (a) the installation of Ultra-Low NO_x Burners and (b) two locomotive projects: (1) the Diesel Engine Repowering Project (“Repowering Project”) and (2) the Switcher Locomotive Idle Reduction Project (“Switcher Project”).

A. Ultra-Low NO_x Burners for HTF Heaters (H-501A and H-501B) (“ULNB Project”)

56. Aux Sable shall install Ultra-Low NO_x Burners (“ULNBs”) on HTF Heaters H-501A and H-501B by no later than the following schedule: (i) by no later than 15 months from the Date of Lodging, for one heater and (ii) by no later than 18 months from the Date of Lodging, for the other heater. ULNBs are designed to minimize NO_x emissions, and installation of the ULNBs at the Facility will result in annual emissions reductions of NO_x, an ozone precursor.

57. From the Date of Lodging until 12 months following installation of each respective ULNBs as set forth in Paragraph 56, Aux Sable shall maintain and demonstrate compliance with its NO_x emission limit of 0.030 pounds per mmBtu for each HTF Heater, as set forth in its Title V permit. After the 12-month period following installation of each respective ULNBs, Aux Sable shall be required to meet the NO_x emission limit set forth in Paragraph 60.

58. By no later than the installation dates of the ULNBs on the two HTF Heaters set forth in Paragraph 56, Aux Sable shall certify, calibrate, maintain, and operate NO_x CEMS on each HTF Heater in accordance with the provisions of 40 C.F.R. § 60.13 that are applicable to CEMS (excluding those provisions applicable only to Continuous Opacity Monitoring Systems) and 40 C.F.R. Part 60, Appendices A and F, and Performance Specification 2 of 40 C.F.R. Part 60, Appendix B. However, unless a federal or state regulation or a permit condition otherwise requires compliance with 40 C.F.R. Part 60, Appendix F §§ 5.1.1, 5.1.3, and 5.1.4, for these CEMS, Aux Sable may conduct: (1) either a Relative Accuracy Audit (“RAA”) or a Relative Accuracy Test Audit (“RATA”) once every three years; and (2) a Cylinder Gas Audit (“CGA”) each calendar quarter in which a RAA or RATA is not performed.

59. By no later than the installation dates set forth in Paragraph 56, Aux Sable shall comply with the applicable emission monitoring, recordkeeping, and reporting requirements of 40 C.F.R. §§ 60.48b and 60.49b for each HTF Heater.

60. Beginning twelve months after the installation of each respective ULNBs as set forth in Paragraph 56, Aux Sable shall comply with a NO_x emission limit of 0.019 pounds of NO_x per mmBTU for each HTF Heater (H-501A and H-501B) on a 12-month rolling average, rolled monthly.

61. Beginning January 1, 2020, and annually thereafter on a calendar year basis, Aux Sable shall comply with the annual emission limit of 15.80 tons per year of NO_x per HTF heater.

62. Aux Sable shall retain all records required to support its reporting requirements under this Subsection of the Consent Decree until its termination pursuant to Section XXI (Termination). Aux Sable shall make such records and all CEMS data and test results available to EPA upon request.

63. Aux Sable shall certify, as part of its ULNB Project, as set forth in Paragraphs 56 to 62, above and, as part of its Locomotive Projects as set forth in this Section and Appendix B, that:

- a. Aux Sable is not required to perform the Project by any federal, state, or local law or regulation or by any agreement, grant, or as injunctive relief awarded in any other action in any forum;
- b. The Project is not a project that Aux Sable was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in the Consent Decree;
- c. Aux Sable has not received and will not receive credit for the Project in any other enforcement action; and
- d. Aux Sable will not receive any reimbursement for any portion of the Mitigation Project from any person. This reimbursement prohibition for the Mitigation Project shall not be construed to preclude cost-sharing under an existing, general long-term commercial sales and cost-sharing agreement between Aux Sable and a third party that became effective on December 31, 2005, for the sale of all natural gas liquids produced by Aux Sable.

B. Locomotive Projects: Diesel Engine Repowering Project (“Repowering Project”) and Switcher Locomotive Idle Reduction Project (“Switcher Project”)

64. Aux Sable shall implement the Environmental Mitigation Projects (“Projects”) described in Appendix B to this Consent Decree in compliance with the approved plans and schedules for such projects and other terms of this Consent Decree. In implementing the Projects, Aux Sable shall spend no less than \$2,000,000 in Project Dollars on the Repowering Project and no less than \$1,000,000 on the Switcher Project.

65. Aux Sable shall maintain, and present to EPA upon request, all documents to substantiate the Project Dollars expended to implement the Projects described in Appendix B, and shall provide these documents to EPA within 30 Days of a request for the documents.

66. All plans and reports prepared by Aux Sable pursuant to the requirements of this Subsection of the Consent Decree and required to be submitted to EPA shall be made publicly available by Aux Sable without charge.

67. Aux Sable shall use good faith efforts to secure as much environmental benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Consent Decree.

68. In connection with any communication to the public or to shareholders regarding Aux Sable's actions or expenditures relating in any way to the Environmental Mitigation Projects in this Consent Decree, Aux Sable shall include prominently in the communication the information that the actions and expenditures were required as part of a consent decree to resolve allegations that Aux Sable violated the Clean Air Act.

69. By no later than 60 Days following the completion of each Environmental Mitigation Project required under this Consent Decree (including any applicable periods of demonstration or testing), Aux Sable shall submit to EPA for approval a project completion report that documents the date that the Project was completed, the results achieved by implementing the Project, including the emission reductions and other environmental benefits, and the Project Dollars expended by Aux Sable in implementing the Project.

70. For the Repowering Project and the Switcher Project, Aux Sable shall comply with the reporting requirements described in Appendix B and the project completion report.

VIII. PERMITS

71. Permits Needed to Meet Compliance Obligations. Unless expressly stated otherwise in this Consent Decree, in any instance where any compliance obligation under this Consent Decree requires Aux Sable to obtain a federal, state, or local permit or approval, Aux Sable shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

72. When permits are required, Aux Sable shall complete and submit applications for such permits to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the permitting agency. Aux Sable may seek relief under the provisions of Section XII (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Aux Sable has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals. Any failure by Aux Sable to submit a timely permit application for the Facility shall bar any use by Aux Sable of Section XII (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

73. Federally-Enforceable Non-Title V Permits to Ensure Survival of Consent Decree Limits and Standards after Termination of Consent Decree. Aux Sable shall comply with the following in order to ensure that certain limits and standards set forth in this Consent Decree survive termination of the Consent Decree:

- a. Prior to termination of this Consent Decree, Aux Sable shall submit a construction permit application(s) to Illinois EPA to incorporate the specific requirements of Paragraph 73.b into federally enforceable non-Title V permits, whether as new permits or revisions to existing permits issued by Illinois EPA pursuant to 35 Ill. Adm. Code Part 201 under the Illinois SIP, in order to ensure that such requirements, including any emission limitation, become and remain an “applicable requirement” as that term is defined in 40 C.F.R. § 70.2, beyond the termination of this Consent Decree. Following submission of the appropriate application(s), Aux Sable shall cooperate with Illinois EPA by promptly submitting to Illinois EPA all information that it seeks in connection with the permit application following receipt of the application materials.
- b. Aux Sable shall incorporate all of the following requirements of this Consent Decree pursuant to this Paragraph 73:
 - (i) Paragraph 12.a (Applicability of 40 C.F.R. Part 60, Subpart OOOO);
 - (ii) Paragraph 13 (Merox Off-Gas Incinerators (IN601 and IN602)), including VOC destruction efficiency requirements or the TOC emission reduction requirements;
 - (iii) Paragraph 14 (NSPS Subparts NNN and RRR); Paragraphs 56–62 (Mitigation Projects: Ultra-Low NO_x Burners for HTF Heaters (H-501A and H-501B)), including NO_x emission limits for each HTF Heater; and
 - (iv) All of Section IX (Emission Credit Generation).

74. Title V Permit. Prior to termination, but by no later than 90 days after issuance of any federally enforceable, non-Title V permit as required under Paragraph 73, Aux Sable shall file an updated Title V Permit renewal application or an administrative amendment or minor modification to the Facility’s Title V permit, as appropriate, to incorporate the applicable requirements of such permit into the Title V Permit for the Facility.

75. When the requirements of this Consent Decree are incorporated into a non-Title V permit applicable to the Facility and then incorporated into the Facility’s Title V Permit, these requirements shall also become enforceable pursuant to such permits.

76. Pursuant to the procedures set forth in Section XVII (Notices), Aux Sable shall provide U.S. EPA with a copy of each application for a federally enforceable permit necessary to implement the requirements of this Consent Decree that is filed after the Effective Date of this Consent Decree, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any opportunity for public comment. If, as of the Effective Date of this Consent Decree, Aux Sable has received any permit necessary to implement the requirements of this Consent Decree, then no later than 45 Days after the Effective Date of this Consent Decree, Aux Sable shall submit copies of such permits to U.S. EPA using the procedures set forth in Section XVII (Notices). U.S. EPA may excuse in writing all or part of

the latter submission if copies of such permits have already been submitted to U.S. EPA prior to the Effective Date of this Consent Decree.

IX. EMISSION CREDIT GENERATION

77. Definition. “CD Emissions Reductions” shall mean any emissions reductions that result from any projects, controls, or any other actions utilized to comply with this Consent Decree.

78. Prohibitions. Aux Sable shall neither generate nor use any CD Emissions Reductions as (i) netting reductions; (ii) as emissions offsets; or (iii) to apply for, obtain, trade, or sell any emission reduction credits, including ATUs under ERMS. Actual emissions for each unit during any two-year period selected by Aux Sable shall be adjusted downward to exclude any portion of the baseline emissions that would have been eliminated as CD Emissions Reductions had Aux Sable been complying with this Consent Decree during that two-year period.

79. Outside the Scope of the Prohibition. Nothing in this Section IX (Emission Credit Generation) is intended to prohibit Aux Sable from seeking to:

- a. Use or generate emission reductions from emissions units that are covered by this Consent Decree to the extent that the proposed emission reductions represent the difference between CD Emissions Reductions and more stringent control requirements (*e.g.*, emission limits) that Aux Sable may elect to accept for those emissions units in a permitting process;
- b. Use or generate emission reductions from emissions units that are not subject to an emission limitation or control requirement pursuant to this Consent Decree; or
- c. Use CD Emissions Reductions for compliance with any rules or regulations designed to address the non-attainment status of any area (excluding Prevention of Significant Deterioration and non-attainment NSR rules, but including, for example, Reasonably Achievable Control Technology rules) that apply to the Facility; provided, however, that Aux Sable shall not be allowed to trade or sell any CD Emissions Reductions.

80. Exception to the Prohibition. Notwithstanding the general prohibition set forth in Paragraph 78 above, Aux Sable may use, in accordance with 35 Ill. Admin. Code Part 203 (and the terms as used and defined therein): (1) past actual emissions from the HTF Heater H-501A as pre-change actual emissions in determining the increase in actual emissions at that emissions unit resulting from a project consisting solely of installation of ULNBs and NO_x CEMS at the HTF Heater H-501A; and (2) past actual emissions from the HTF Heater H-501B as pre-change actual emissions in determining the increase in actual emissions at that emissions unit resulting from a project consisting solely of installation of ULNBs and NO_x CEMS at the HTF Heater H-501B. Utilization of this exception is subject to each of the following conditions:

- a. Use of past actual emissions under this Exception to the Prohibition does not extend to any use of past actual emissions in determining the creditable amount of an increase or decrease in actual emissions that are contemporaneous with the above-projects as part of a net emission determination pursuant to 35 Ill. Admin. Code 203.208; and
- b. Aux Sable shall still be subject to all federal and state regulations applicable to Prevention of Significant Deterioration, non-attainment NSR, and/or Minor NSR permitting process.

X. REPORTING REQUIREMENTS

81. Aux Sable shall submit to EPA the following reports:

- a. Initial Compliance Status Report (“Initial Compliance Report”). By no later than 365 Days after the Effective Date, Aux Sable shall submit to EPA a written, Initial Compliance Report that shall contain information on Consent Decree implementation since the Effective Date. With the exception of the reporting requirements in Paragraphs 52 and 53, Aux Sable shall include in the Initial Compliance Report information on all reporting obligations set forth in this Consent Decree and its appendices, including:
 - (i) Section V (Compliance Requirements). The status of compliance with Section V, including the information required by:
 - (a) Paragraph 12 (Applicability of Subpart OOOO and initial connector monitoring);
 - (b) Paragraph 13 (Merox Off-Gas Incinerators), including (i) any deviations in minimum operating temperature based on the three-hour rolling average as required by Paragraph 13.b; and (ii) any time periods that Aux Sable did not record every 15 minutes as required by Paragraph 13.b; and (iii) the results of any performance testing, as provided in Paragraph 13.c
 - (c) Paragraph 14 (NSPS Subparts NNN and RRR), including the following for flares: all visible emissions readings, heat content demonstrations, flow rate measurements, exit velocity determinations, records of all periods of operations during which the pilot flame is absent, and, in accordance with EPA’s approval of Aux Sable’s alternative monitoring request (ADI Determination Control No. 1500084), records required under 40 C.F.R. §§ 60.705(d)(2) and (s), but not records of continuous flare pilot flame monitoring unless requested by EPA;

- (d) Paragraph 15 (ERMS);
 - (e) Paragraph 16 (Annual Emission Reports); and
 - (f) Paragraph 17 (EMP Audit).
- (ii) Section VI (LDAR Program) and Appendix A Reporting Requirements. The status of LP requirements as set forth in Section VI (LDAR Program) and Appendix A, including:
- (a) The number of LDAR Personnel at the Facility (excluding Personnel whose functions involve the non-monitoring aspects of repairing leaks) and the approximate percentage of time each such person dedicated to performing his/her LDAR functions at the Facility;
 - (b) An identification and description of any noncompliance with the requirements of Section VI (LDAR Program);
 - (c) An identification of any problems encountered in complying with the requirements of Section VI (LDAR Program);
 - (d) The list of Existing Valves as required by Paragraph 34;
 - (e) The information required by Paragraph 42;
 - (f) The information required by Paragraph 46;
 - (g) A description of the trainings done in accordance with this Consent Decree;
 - (h) Any deviations identified in the QA/QC performed under Section VI (LDAR Program) Subsection J, as well as any corrective actions taken under that Subsection;
 - (i) A summary of LDAR audit results including specifically identifying all alleged deficiencies under Section VI (LDAR Program) Subsection K;
 - (j) The status of all actions under any CAP that was submitted during the reporting period, unless the CAP was submitted less than one month before the compliance status report; and
 - (k) Claims of commercial unavailability in accordance with Paragraph 39 and Appendix A.

(iii) Section VII (Environmental Mitigation Projects). The status of the mitigation projects in Section VII (Environmental Mitigation Projects) and Appendix B;

(iv) Other Reporting Requirements:

- (a) The status of completion of milestones, including a compliance table that lists each milestone set forth in this Consent Decree, each milestone's required completion date, and the date Aux Sable completes each milestone;
- (b) The status of permits and permit applications as set forth in Section VIII (Permits), including copies of any submitted permit applications, state-proposed permits, and issued permits;
- (c) A description of all periods of any claimed Malfunction(s), including the quantity of NO_x or VOC emitted, and the dates and duration of each claimed Malfunction, the cause of the Malfunction(s), and an explanation as to how the claimed Malfunction meets the definition of Malfunction under the requirements of this Consent Decree; and
- (d) A description of any problems encountered or anticipated, together with proposed solutions.

b. Subsequent Compliance Status Report ("Annual Compliance Report(s)"). By no later than 365 Days after submission of the Initial Compliance Report as set forth in Paragraph 81.a, and on the same date for every calendar year thereafter until termination of this Consent Decree pursuant to Section XXI (Termination), Aux Sable shall submit a written Annual Compliance Report that shall contain information on implementation of this Consent Decree for the preceding year. Aux Sable shall include in each Annual Compliance Report:

- (i) The reporting obligations set forth in Paragraph 81.a, except for those requirements in Paragraph 81.a(ii)(d); and
- (ii) The status of the mitigation projects in Section VII, Subsection A (Ultra-Low NO_x Burners), including (i) the date of installation of the Ultra-Low NO_x Burners for each heater as required by Paragraph 56, (ii) all periods of CEMs downtime for each HTF heater; (iii) all periods that each HTF heater did not meet the NO_x emission limit set forth in Paragraphs 60, and 61; and (iv) compliance demonstration of the annual NO_x emission limit for each HTF heater as required in Paragraphs 61 and 57.

82. Each report submitted by Aux Sable under this Section shall also include a description of any noncompliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Aux Sable violates, or expects that it will violate, any requirement of this Consent Decree, Aux Sable shall notify the United States of such violation and its likely duration, in writing, in a separate written report, within 14 Working Days of the Day Aux Sable first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Aux Sable shall so state in the report. Aux Sable shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the initial notification. Nothing in this Paragraph or the following Paragraph relieves Aux Sable of its obligation to provide the notice required by Section XII (Force Majeure).

83. All Reports under this Consent Decree shall be submitted to EPA in the manner designated in Section XVII (Notices) of this Consent Decree.

84. The reporting requirements of this Consent Decree do not relieve Aux Sable of any reporting obligations required by the CAA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. The reporting requirements of this Section are in addition to any other reports, plans, or submissions required by other Sections of this Consent Decree.

85. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Aux Sable's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Aux Sable shall notify EPA orally or by electronic transmission as soon as possible, but no later than 24 hours after Aux Sable first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

86. Each report submitted by Aux Sable under this Section shall be signed by an Aux Sable official (head of those responsible for environmental management and compliance) and include the following certification:

I certify under penalty of law that this document and all attachments were 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 inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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.

87. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

88. The reporting requirements of this Consent Decree do not relieve Aux Sable of any reporting obligations required by the Clean Air Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

89. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

90. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted and approved pursuant to this Consent Decree, EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

91. If the submission is approved pursuant to Paragraph 90, Aux Sable shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 90(b) or (c), Aux Sable shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Aux Sable's right to dispute only the specified conditions or the disapproved portions, under Section XIII (Dispute Resolution).

92. If the submission is disapproved in whole or in part pursuant to Paragraph 90(c) or (d), Aux Sable shall, within 45 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Aux Sable shall proceed in accordance with the preceding Paragraph.

93. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Aux Sable to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself/themselves correct any deficiencies, subject to Aux Sable's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

94. Any stipulated penalties applicable to the original submission, as provided in Section XI (Stipulated Penalties), shall accrue during the 45 day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Aux Sable's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

XI. STIPULATED PENALTIES

95. Late Payment of Civil Penalty. If Aux Sable fails to pay any portion of the civil penalty required to be paid under Section IV (Civil Penalty) when due, Aux Sable shall pay a stipulated penalty of \$2,500 per Day for each Day that the payment is late. Late payment of the civil penalty and any accrued stipulated penalties shall be made in accordance with Paragraph 9.

96. Failure to Meet All Other Consent Decree Obligations. Aux Sable shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in this Section unless excused under Section XII (Force Majeure) and subject to Section XIII (Dispute Resolution). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

A. Requirements for Applicability of 40 C.F.R. Part 60, Subpart OOOO

97. For failure to implement any applicable provision of NSPS Subpart OOOO for Covered Process Units, except for the provisions found in 40 C.F.R. § 60.5400, in violation of Paragraph 12:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$500
16th through 30th Day	\$1,000
31 Days or more	\$2,000

B. Requirements for Merox Off-Gas Incinerators (IN601 and IN602)

98. For failure to comply with the control efficiency standard for either of the Merox Off-Gas Incinerators as set forth in Paragraph 13.a, per incinerator, per Day:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$1,000
16th through 30th Day	\$2,000
31 Days or more	\$3,000

Provided, however, that stipulated penalties shall not be assessed for any exceedance of the control efficiency standard set forth in Paragraph 13.a to the extent that it is caused by a Malfunction. This provision on Malfunction applies only to the calculation of stipulated penalties and shall not be included in any permit.

99. For failure to measure or record the average fire box temperature for either of the Merox Off-Gas Incinerators in accordance with the requirements of Paragraph 13.b, per incinerator, per Day:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$500
16th through 30th Day	\$1,000
31 Days or more	\$2,000

100. For failure to operate either of the Merox Off-Gas Incinerators at the minimum operating temperature in accordance with the requirements of Paragraph 13.c, per incinerator, per Day:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$500
16th through 30th Day	\$1,000
31 days or more	\$2,000

Provided, however, that stipulated penalties shall not be assessed for any exceedance of the minimum operating temperature as required by Paragraph 13.c to the extent that such exceedance is caused by a Malfunction. This provision applies only to the calculation of stipulated penalties and shall not be included in any permit.

C. Requirements under NSPS Subparts NNN and RRR

101. For failure to install, maintain, or operate any unit or system in accordance with an applicable Subpart NNN or RRR monitoring or equipment requirement set forth in Paragraph 14.a(i) or 14.b(i):

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$500
16th through 30th Day	\$1,000
31 Days or more	\$2,000

102. For failure to comply with an applicable Subpart NNN or RRR emissions standard for any unit or system pursuant to Paragraph 14.a(ii) or 14.b(ii):

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$1,000
16th through 30th Day	\$2,000
31 Days or more	\$3,000

103. For failure to comply with an applicable Subpart NNN or RRR reporting or recordkeeping requirement set forth in Paragraph 14.a(iii) or 14.b(iii) for any unit or system:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$500
16th through 30th Day	\$1,000
31 Days or more	\$2,000

D. ERMS

104. For failure to timely submit or submit an accurate and complete ERMS seasonal emissions report to Illinois EPA in accordance with Paragraph 15: \$10,000 per year.

E. Annual Emission Reports

105. For failure to timely submit or submit an accurate and complete Annual Emission Report in accordance with Paragraph 16: \$10,000 per year.

F. EMP Audit

106. For the failure to retain a third party, have the third party prepare a report, or implement any recommendations made the by third party unless Aux Sable rejects or modifies such recommendations as provided for and in accordance with Paragraph 17:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$750
16th through 30th Day	\$1,000
31 Days or more	\$1,500

G. Requirements under the LDAR Program

107. Failure to Meet LP Consent Decree Obligations. Aux Sable shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in Table 2 unless excused under Section XII (Force Majeure) and subject to Section XIII (Dispute Resolution).

Table 2

Violation	Stipulated Penalty	
107.a. Failure to timely develop a Facility-wide LDAR document as required by Paragraph 20 or failure to timely update the document on an annual basis if needed pursuant to Paragraph 20.	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
	1st through 15th Day	\$300
	16th through 30th Day	\$400
	31 Days or more	\$500
107.b. Each failure to perform monitoring at the frequencies set forth in Paragraphs 12.b, 21 or, if applicable, Paragraph 22.	\$100 per component per missed monitoring event, not to exceed \$25,000 per month per Covered Process Unit	
107.c. Each failure to comply with Method 21 in performing LDAR monitoring, in violation of Paragraph 23.	<u>Monitoring frequency for the component</u>	<u>Penalty per monitoring event per process unit</u>
	Every 2 years	\$25,000
	Annual	\$20,000
	Semi-Annual	\$15,000
	Quarterly	\$10,000
	Monthly	\$5,000

Violation	Stipulated Penalty		
<p>107.d. For each failure to use a monitoring device that is attached to a data logger and for each failure, during each monitoring event, to directly electronically record the Screening Value, date, time, identification number of the monitoring instrument, and the identification of technician, in violation of these requirements of Paragraph 23.</p>	<p>\$100 per failure per piece of equipment monitored</p>		
<p>107.e. Each failure to transfer monitoring data to an electronic database on at least a weekly basis, in violation of this requirement in Paragraph 23.</p>	<p>\$150 per Day for each Day that the transfer is late</p>		
<p>107.f. Each failure to timely perform a first repair as required by Paragraph 26 or 28. For purposes of these stipulated penalties, the term “repair” includes the required remonitoring in Paragraph 28 after the repair attempt; the stipulated penalties in Subparagraph 107.h do not apply.</p>	<p>\$150 per Day for each late Day, not to exceed \$1,500 per leak</p>		
<p>107.g. Each failure to timely perform a final attempt at repair as required by Paragraph 26 unless not required to do so under Subparagraph 37.d. For purposes of these stipulated penalties, the term “repair” includes the required remonitoring in Paragraph 28 after the repair attempt; the stipulated penalties in Subparagraph 107.h do not apply.</p>	<p>Equipment <u>type</u></p>	<p>Penalty per component <u>per Day late</u></p>	<p>Not to <u>exceed</u></p>
	<p>Valves, connectors</p>	<p>\$300</p>	<p>\$37,500</p>
	<p>Pumps</p>	<p>\$1,200</p>	<p>\$150,000</p>

Violation	Stipulated Penalty		
<p>107.h. Each failure to timely perform Repair Verification Monitoring as required by Paragraph 27 in circumstances where the first attempt to adjust, or otherwise alter, the piece of Covered Equipment to eliminate the leak was made within five days of detecting a leak and the final attempt to adjust, or otherwise alter, the piece of equipment to eliminate the leak was made within 15 days of detecting a leak.</p>	<p>Equipment <u>type</u></p>	<p>Penalty per component <u>per Day late</u></p>	<p>Not to <u>exceed</u></p>
<p>107.i. Each failure to undertake the drill-and-tap method as required by Paragraph 29.</p>	<p>Period of <u>Noncompliance</u></p>		<p>Penalty per component per Day <u>late</u></p>
	<p>1st through 15th Day 16th through 30th Day 31 Days or more</p>		<p>\$200 \$350 \$500 per Day for each Day over 30, not to exceed \$37,500</p>
<p>107.j. Each failure to record the information required by Paragraph 30.</p>	<p>\$100 per component per item of missed information</p>		
<p>107.k. Each improper placement of a piece of Covered Equipment on the DOR list (e.g., placing a piece of Covered Equipment on the DOR list even though it is feasible to repair it without a Process Unit Shutdown) required by Paragraph 26.</p>	<p>Equipment <u>type</u></p>	<p>Penalty per component <u>per Day on list</u></p>	<p>Not to <u>exceed</u></p>
	<p>Valve, connectors Pumps</p>		<p>\$300 \$1,200 \$75,000 \$300,000</p>
<p>107.l. Each failure to comply with the requirement in Subparagraph 32.a that a relevant unit supervisor or person of similar authority sign off on placing a piece of Covered Equipment on the DOR list.</p>	<p>\$250 per piece of Covered Equipment</p>		
<p>107.m. Each failure to comply with the requirements of Subparagraph 32.c(i).</p>	<p>Refer to the applicable stipulated penalties in Subparagraphs 107.f and 107.g above</p>		

Violation	Stipulated Penalty
107.n. Each failure to comply with the requirements of Subparagraph 32.c(ii).	Refer to the applicable stipulated penalties in Subparagraphs 107.p–107.u below
107.o. Each failure to comply with the work practice standards in Paragraph 35.	\$50 per violation per valve per Day, not to exceed \$30,000 for all valves in a Covered Process Unit per quarter
107.p. Each failure to install a Low-E Valve or a valve fitted with Low-E Packing when required to do so pursuant to Paragraph 36 or 37, except as provided under Paragraphs 36.a, 36.b, or 39.	\$20,000 per failure, except as provided in Paragraph 108 below
107.q. Each failure, in violation of Subparagraph 37.b, to timely comply with the requirements relating to installing a Low-E Valve or Low-E Packing if a Process Unit Shutdown is not required, except as provided under Paragraph 39.	\$500 per Day per failure, not to exceed \$20,000, except as provided in Paragraph 108 below
107.r. Each failure, in violation of Subparagraph 37.c, to install a Low-E Valve or Low-E Packing when required to do so during a Process Unit Shutdown, except as provided under Paragraph 39.	\$20,000 per failure, except as provided in Paragraph 108 below
107.s. Each failure to add a piece of Covered Equipment to the LDAR program when required to do so pursuant to the evaluation required by Paragraph 43 (Management of Change).	\$300 per piece of Covered Equipment (plus an amount, if any, due under Paragraph 107.b above for any missed monitoring event related to a component that should have been added to the LDAR program but was not)
107.t. Each failure to remove a piece of Covered Equipment from the LDAR program when required to do so pursuant to Paragraph 43 (Management of Change).	\$150 per failure per piece of Covered Equipment
107.u. Each failure to timely develop a training protocol as required by Paragraph 44 (Training).	\$50 per Day late

Violation	Stipulated Penalty										
107.v. Each failure to perform initial, refresher, or new personnel training as required by Paragraph 44 (Training).	\$1,000 per person per month late										
107.w. Each failure of a monitoring technician to complete the certification required in Paragraph 45.	\$100 per failure per technician										
107.x. Each failure to perform any of the requirements relating to QA/QC in Paragraph 45.	\$1,000 per missed requirement per quarter										
107.y. Each failure to conduct an LDAR audit in accordance with the schedule set forth in Paragraph 47.	<table border="0"> <thead> <tr> <th data-bbox="816 762 1122 831"><u>Period of Delay or Noncompliance</u></th> <th data-bbox="1170 762 1406 831"><u>Penalty per Violation per Day</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="816 867 1122 905">1st through 15th Day</td> <td data-bbox="1170 867 1406 905">\$300</td> </tr> <tr> <td data-bbox="816 905 1122 942">16th through 30th Day</td> <td data-bbox="1170 905 1406 942">\$400</td> </tr> <tr> <td data-bbox="816 942 1122 980">31 Days or more</td> <td data-bbox="1170 942 1406 980">\$500</td> </tr> <tr> <td colspan="2" data-bbox="987 980 1406 1018" style="text-align: right;">Not to exceed \$100,000 per audit</td> </tr> </tbody> </table>	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>	1st through 15th Day	\$300	16th through 30th Day	\$400	31 Days or more	\$500	Not to exceed \$100,000 per audit	
<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>										
1st through 15th Day	\$300										
16th through 30th Day	\$400										
31 Days or more	\$500										
Not to exceed \$100,000 per audit											
107.z. Each failure to use a third party as an auditor; each use of a third-party auditor that is not experienced in LDAR audits; and each use of Aux Sable's regular LDAR contractor to conduct the third-party audit, in violation of the requirements of Paragraph 48.	\$25,000 per audit										
107.aa. Except for the requirement to undertake Comparative Monitoring, each failure to substantially comply with the LDAR audit requirements in Paragraph 49.	\$100,000 per audit										
107.bb. Each failure to substantially comply with the Comparative Monitoring requirements of Paragraph 50.	\$50,000 per audit										

Violation	Stipulated Penalty	
107.cc. Each failure to timely submit a Corrective Action Plan that substantially conforms to the requirements of Paragraph 52.	<u>Period of Delay or Noncompliance</u> 1st through 15th Day 16th through 30th Day 31 Days or more Not to exceed \$100,000 per audit	<u>Penalty per Violation per Day</u> \$100 \$250 \$500
107.dd. Each failure to implement a corrective action within 90 days after the LDAR Audit Completion Date or pursuant to the schedule that Aux Sable must propose pursuant to Subparagraph 52.b if the corrective action cannot be completed in 90 days.	<u>Period of Delay or Noncompliance</u> 1st through 15th day 16th through 30th day 31 Days or more Not to exceed \$200,000 per audit	<u>Penalty per Violation per Day</u> \$300 \$400 \$500
107.ee. Each failure to timely submit a Certification of Compliance that substantially conforms to the requirements of Paragraph 53.	<u>Period of Delay or Noncompliance</u> 1st through 15th day 16th through 30th day 31 Days or more Not to exceed \$75,000	<u>Penalty per Violation per Day</u> \$100 \$250 \$500
107.ff. Each failure to substantially comply with any recordkeeping or submission requirement in Paragraph 54 of Subsection M not specifically identified above in this Table 2.	<u>Period of Delay or Noncompliance</u> 1st through 15th Day 16th through 30th Day 31 Days or more	<u>Penalty per Violation per Day</u> \$100 \$250 \$500

108. Stipulated Penalties in Lieu of those in Subparagraphs 107.p, 107.q, 107.r.

- a. For purposes of this Paragraph, the term “Non-Compliant Valve” means a valve that is either: (i) not a Low-E Valve; or (ii) not fitted with Low-E Packing. The term “Compliant Valve” means a valve that is either: (i) a Low-E Valve; or (ii) fitted with Low-E Packing.
- b. The stipulated penalties in Subparagraph 108.c are to be used instead of those in Subparagraphs 107.p, 107.q, or 107.r when a Non-Compliant Valve is installed instead of a Compliant Valve and all of the following requirements are met:

- (i) Aux Sable, and not a government agency, discovers the failure involved;
 - (ii) Aux Sable promptly reports the failure to EPA;
 - (iii) In the report, Aux Sable sets forth a schedule for promptly replacing the Non-Compliant Valve with a Compliant Valve; provided, however, that Aux Sable shall not be required to undertake an unscheduled shutdown of the affected Covered Process Unit in proposing the schedule unless Aux Sable so chooses;
 - (iv) Aux Sable monitors the Non-Compliant Valve once a month from the time of its discovery until the valve is replaced with a Compliant Valve and no Screening Values above 100 ppm are recorded;
 - (v) Aux Sable replaces the Non-Compliant Valve with a Compliant Valve in accordance with the schedule set forth in 108.b(iii); and
 - (vi) Aux Sable demonstrates that in good faith it intended to install a Compliant Valve but inadvertently installed a Non-Compliant Valve.
- c. The following stipulated penalties shall apply under the circumstances in Paragraph 108:
- (i) In lieu of the penalty in Subparagraph 107.p, \$2,000 per failure.
 - (ii) In lieu of the penalty in Subparagraph 107.q, \$50 per day per failure, not to exceed \$2,000.
 - (iii) In lieu of the penalty in Subparagraph 107.r, \$2,000 per failure.

H. Requirements for Ultra-Low NOx Burners for HTF Heaters (H-501A and H-501B)

109. For failure to install required control technologies on each heater by the dates specified in Paragraph 56, per heater, per Day:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 30th Day	\$1,500
31st through 60th Day	\$2,000
61 Days or more	\$3,000

110. For failure to certify, calibrate, maintain, or operate a NOx CEMS as required by Paragraph 58, per unit, per Day:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 30th Day	\$500
31st through 60th Day	\$1,000
61 Days or more	\$2,000

111. For failure to comply with the NOx emission limit required by Paragraphs 60 and 57, per heater, per day:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$1,000
15th through 30th Day	\$2,000
31 Days or more	\$3,000

112. For failure to comply with an applicable emission monitoring, recordkeeping, or reporting requirement as set forth in Paragraph 59, provided, however, that a penalty assessed under this Paragraph 112 related to record-keeping shall not also constitute a penalty under Paragraph 114 of this Consent Decree:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 30th Day	\$500
31st through 60th Day	\$1,000
61 Days or more	\$2,000

113. For failure to comply with an annual emission limit as required by Paragraph 61: \$20,000 per heater, per year.

114. For failure to retain or make available records as required by Paragraph 62, provided, however, that a penalty assessed under this Paragraph 114 related to record-keeping shall not also constitute a penalty under Paragraph 112 of this Consent Decree:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 30th Day	\$500
31st through 60th Day	\$1,000
61 Days or more	\$2,000

I. Locomotive Projects

115. For failure to undertake or satisfactorily complete any Project in compliance with Section VII Subsection B (Locomotive Projects) and Appendix B of this Consent Decree: per Project, per Day:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$750
16th through 30th Day	\$1,000
31 Days or more	\$1,500

J. Permit requirements

116. For the failure to timely apply for any permit in accordance with the requirements of Section VIII (Permits) of this Consent Decree: \$1,000 per Day per violation.

K. Reporting Requirements

117. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of this Consent Decree, including Section X (Reporting Requirements) and Appendix A and B provided, however, that a stipulated penalty for failure to report has not already accrued under this Section XI:

<u>Period of Delay or Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 15th Day	\$100
16th through 30th Day	\$250
31 Days or more	\$500

L. General Requirements

118. Any other violation of this Consent Decree not otherwise specified in the stipulated penalties above: \$1,000 per violation per Day.

119. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

120. Aux Sable shall pay any stipulated penalty within 30 days of receiving the United States' written demand.

121. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

122. Stipulated penalties shall continue to accrue as provided in Paragraph 119 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Aux Sable shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Aux Sable shall pay all accrued penalties determined by the Court to be

owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Aux Sable shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

123. Aux Sable shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

124. The payment of penalties and interest, if any, shall not alter in any way Aux Sable's obligation to complete the performance of the requirements of this Consent Decree.

125. No amount of the stipulated penalties paid by Aux Sable shall be used to reduce its federal tax obligations.

126. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XV (Effect of Settlement/Reservation of Rights) of this Consent Decree, the United States expressly reserves the right to seek any other relief it deems appropriate for Aux Sable's violation of this Decree or applicable law, including but not limited to an action against Aux Sable for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree (or a violation of any Consent Decree requirement incorporated into a federally enforceable non-Title V or Title V permit) shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XII. FORCE MAJEURE

127. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Aux Sable, of any entity controlled by Aux Sable, or of Aux Sable's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Aux Sable's best efforts to fulfill the obligation. The requirement that Aux Sable exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event: (a) as it is occurring; and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force Majeure" does not include Aux Sable's financial inability to perform any obligation under this Consent Decree.

128. If any event occurs or has occurred that may delay or impede the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Aux Sable shall provide notice to EPA Region 5 Air Enforcement by electronic transmission, to R5AirEnforcement@epa.gov, or orally within seven days of when Aux Sable first knew that the event might cause a delay. Within seven days thereafter, Aux Sable shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the

delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Aux Sable's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Aux Sable, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Aux Sable shall include with any notice all available documentation supporting the claim that the delay was attributable to Force Majeure. In the written notice, Aux Sable shall specifically reference this Paragraph 128 of the Consent Decree. Failure to comply with the above requirements shall preclude Aux Sable from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Aux Sable shall be deemed to know of any circumstance of which Aux Sable, any entity controlled by Aux Sable, or Aux Sable's contractors knew or should have known.

129. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Aux Sable in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

130. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, or if the parties fail to agree on the length of the delay attributable to the Force Majeure event, EPA will notify Aux Sable in writing of its decision.

131. If Aux Sable elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than 30 Days after receipt of EPA's notice. In any such proceeding, Aux Sable shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Aux Sable complied with the requirements of Paragraphs 127 and 128. If Aux Sable carries this burden, the delay at issue shall be deemed not to be a violation by Aux Sable of the affected obligation of this Consent Decree identified to EPA and the Court.

XIII. DISPUTE RESOLUTION

132. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Aux Sable's failure to seek resolution of a dispute under this Section shall preclude Aux Sable from raising any such issue as a defense to an action by the United States to enforce any obligation of Aux Sable arising under this Decree.

133. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Aux Sable sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal

negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve the dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Aux Sable invokes formal dispute resolution procedures as set forth below.

134. Formal Dispute Resolution. Aux Sable shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Aux Sable's position and any supporting documentation relied upon by Aux Sable.

135. The United States shall serve its Statement of Position within 45 days of receipt of Aux Sable's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Aux Sable unless Aux Sable files a motion for judicial review of the dispute in accordance with the following Paragraph.

136. Aux Sable may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVII (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Aux Sable's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

137. The United States shall respond to Aux Sable's motion within the time period allowed by the Local Rules of this Court. Aux Sable may file a reply memorandum, to the extent permitted by the Local Rules.

138. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 133, Aux Sable shall have the burden of demonstrating that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

139. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Aux Sable under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 122. If Aux Sable does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XIV. INFORMATION COLLECTION AND RETENTION

140. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data; and
- d. assess Aux Sable's compliance with this Consent Decree.

141. Until two years after termination of this Consent Decree, Aux Sable shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Aux Sable's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Aux Sable shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

142. At the conclusion of the information-retention period provided in the preceding Paragraph, Aux Sable shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Aux Sable shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Aux Sable asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Aux Sable. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

143. Aux Sable may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Aux Sable seeks to protect as CBI, Aux Sable shall follow the procedures set forth in 40 C.F.R. Part 2.

144. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Aux Sable to maintain

documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

145. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action and the EPA Violation Notices from the date those claims accrued through the Date of Lodging.

146. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Aux Sable's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

147. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility or Aux Sable's violations, Aux Sable shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 145 of this Section.

148. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Aux Sable is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Aux Sable's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Aux Sable's compliance with any aspect of this Consent Decree will result in compliance with provision of the CAA or with any other provisions of federal, state, or local laws, regulations, or permits.

149. This Consent Decree does not limit or affect the rights of Aux Sable or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against Aux Sable, except as otherwise provided by law.

150. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party that is not a Party to this Consent Decree.

XVI. COSTS

151. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees)

incurred in any action necessary to enforce this Consent Decree or to collect any portion of the civil penalty or any stipulated penalties due but not paid by Aux Sable.

XVII. NOTICES

152. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11203

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-11203

As to EPA by mail: Air and Radiation Division
EPA Region 5
77 W. Jackson Blvd. (AE-17J)
Chicago, IL 60604
Attn: Compliance Tracker

and

Office of Regional Counsel
EPA Region 5
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Chicago, IL 60604

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As to Aux Sable: Dean Hudson
Aux Sable
6155 E. US Route 6
Morris, IL 60450
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and

Jeff White
Aux Sable
6155 E. US Route 6
Morris, IL 60450
Jeff.White@auxsable.com

153. Any Party may, by written notice to the other Parties, change its designated notice recipient(s) or notice address(es) provided above.

154. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVIII. EFFECTIVE DATE

155. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIX. RETENTION OF JURISDICTION

156. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purposes of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XIII (Dispute Resolution) and XX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XX. MODIFICATION

157. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

158. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII (Dispute Resolution), provided, however, that instead of the burden of proof provided by Paragraph 138, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXI. TERMINATION

159. After Aux Sable has completed the requirements of Section V (Compliance Requirements), Section VI (LDAR Program), and Section VII (Environmental Mitigation Projects); has complied with all other requirements of this Consent Decree, including those relating to the Environmental Mitigation Projects in Appendix B; has completed the third LDAR audit required pursuant to Section VI Subpart K (LDAR Audits and Corrective Action); has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree; and has incorporated all requirements herein into the applicable permitting for the Facility in accordance

with Section VIII (Permits), Aux Sable may serve upon the United States a Request for Termination of this Consent Decree with respect to its Facility. In the Request for Termination, Aux Sable must demonstrate that it has maintained satisfactory compliance with this Consent Decree for the one-year period immediately preceding the Request for Termination. Any Request for Termination shall include all necessary supporting documentation.

160. Following receipt by the United States of Aux Sable's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Aux Sable has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

161. If the United States does not agree that the Decree may be terminated, Aux Sable may invoke dispute resolution under Section XIII (Dispute Resolution) of this Decree. However, Aux Sable shall not seek Dispute Resolution for any dispute regarding termination until 45 days after service of its Request for Termination.

XXII. PUBLIC PARTICIPATION

162. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Aux Sable consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Aux Sable in writing that it no longer supports entry of the Decree.

XXIII. SIGNATORIES/SERVICE

163. Each undersigned representative of Aux Sable and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice (or his or her designee) certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

164. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Aux Sable agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIV. INTEGRATION

165. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree and supersedes all prior agreements and understandings, whether oral or written,

concerning the settlement embodied herein. Other than the deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXV. FINAL JUDGMENT

166. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court in this action as to the United States and Aux Sable.

XXVI. APPENDICES

167. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is the “Factors to Be Considered and Procedures to Be Followed to Claim Commercial Unavailability.”

“Appendix B” is “Environmental Mitigation Projects.”


The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

DATED and entered this _____ day of _____, 2018.


UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FOR THE UNITED STATES OF AMERICA

Date 10/23/18


Jeffrey H. Wood
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date 10/24/18


Ashleigh G. Morris
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division

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John R. Lausch, Jr.
United States Attorney
Northern District of Illinois

LINDA A. WAWZENSKI
Assistant United States Attorney
Northern District of Illinois
Eastern Division
219 S. Dearborn Street, Fifth Floor
Chicago, IL 60604

We hereby consent to the entry of the Consent Decree in the matter of United States v. Aux Sable Energy Company LP, subject to public notice and comment.

FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY

Date 9/19/2018

[Redacted Signature]

T. Leverett Nelson
Regional Counsel
U.S. Environmental Protection Agency
Region 5
Chicago, IL

Date 9/19/18

[Redacted Signature]

Erik H. Olson
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
Chicago, IL

We hereby consent to the entry of the Consent Decree in the matter of United States v. Aux Sable Energy Company LP, subject to public notice and comment.

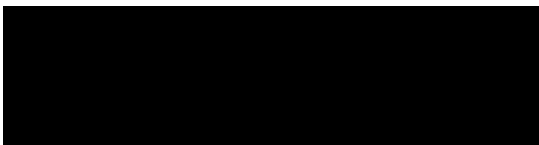
FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY

Date 10/16/18



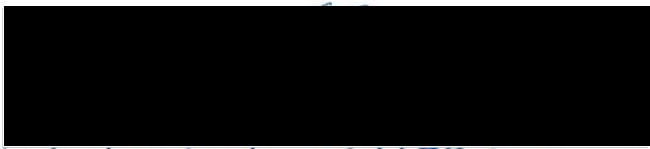
Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date 10/12/18



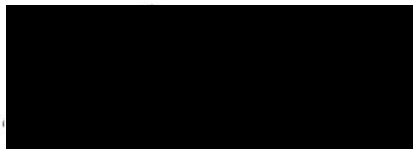
Rosemarie A. Kelley
Director, Office of Civil Enforcement
U.S. Environmental Protection Agency

Date 10/15/18



Phillip A. Brooks
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date 9/10/18



Mark J. Palermo
Attorney-Advisor, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

We hereby consent to the entry of the Consent Decree in the matter of United States v. Aux Sable Liquid Products LP:

Date July 30, 2018

FOR AUX SABLE LIQUID PRODUCTS LP

A black rectangular redaction box covers the signature of Paul Eastman.

Paul Eastman
Managing Director
Aux Sable Liquid Products LP

APPENDIX A

APPENDIX A

Factors to Be Considered and Procedures to Be Followed to Claim Commercial Unavailability

This Appendix provides the factors to be taken into consideration and the procedures to be followed for Aux Sable to assert that a Low-E Valve or Low-E Packing is “commercially unavailable” pursuant to Paragraph 39 of the Consent Decree.

I. FACTORS

A. Nothing in this Consent Decree or this Appendix requires Aux Sable to utilize any valve or packing that is not suitable for its intended use in a Covered Process Unit.

B. The following factors are relevant in determining whether a Low-E Valve or Low-E Packing is commercially available to replace or repack an existing valve:

1. Valve type (*e.g.*, ball, gate, butterfly, needle) (Section VI (LDAR Program) of the Consent Decree does not require consideration of a different type of valve than the type that is being replaced);
2. Nominal valve size (*e.g.*, 2 inches, 4 inches);
3. Compatibility of materials of construction with process chemistry and product quality requirements;
4. Valve operating conditions (*e.g.*, temperature, pressure);
5. Service life;
6. Packing friction (*e.g.*, impact on operability of valve);
7. Whether the valve is part of a packaged system or not;
8. Retrofit requirements (*e.g.*, re-piping or space limitations); or
9. Other relevant considerations.

C. The following factors may also be relevant, depending upon the process unit or equipment where the valve is located:

10. In cases where the valve is a component of equipment that Aux Sable is licensing or leasing from a third party, valve or valve packing specifications identified by the lessor or licensor of the equipment of which the valve is a component; and
11. Valve or valve packing vendor or manufacturer recommendations for the relevant process unit components.

II. PROCEDURES THAT AUX SABLE SHALL FOLLOW TO ASSERT COMMERCIAL UNAVAILABILITY

A. Aux Sable shall comply with the following procedures if it seeks to assert commercial unavailability under Paragraph 39 of the Consent Decree:

1. Aux Sable must contact a reasonable number of vendors of valves or valve packing that Aux Sable, in good faith, believes may have valves or valve packing suitable for the intended use taking into account the relevant factors listed in Section I (Factors) of this Appendix.

- a. For purposes of this Consent Decree, a reasonable number of vendors presumptively shall mean no less than three.
- b. If fewer than three vendors are contacted, the determination of whether such fewer number is reasonable shall be based on Factors (10) and (11) or on a demonstration that fewer than three vendors offer valves or valve packing considering Factors (1)–(9).

2. Aux Sable shall obtain a written representation from each vendor, or equivalent documentation, that a particular valve or valve packing is not available as “Low-Emissions” from that vendor for the intended conditions or use.

- a. “Equivalent documentation” may include e-mail or other correspondence or data showing that a valve or valve packing suitable for the intended use does not meet the definition of “Low-E Valve” or “Low-E Packing” in the Consent Decree or that the valve or packing is not suitable for the intended use.
- b. If the vendor does not respond or refuses to provide documentation, “equivalent documentation” may consist of records of Aux Sable’s attempts to obtain a response from the vendor.

3. Each compliance status report required by Section VI (LDARProgram) and Section X (Reporting Requirements) of the Consent Decree shall identify each valve that Aux Sable otherwise was required to replace or repack, but for which, during the time period covered by the Report, Aux Sable determined that a Low-E Valve and/or Low-E Packing was not commercially-available. Aux Sable shall provide a complete, written explanation of the basis for its claim of commercial unavailability, including, as an attachment to the compliance status report, all relevant documentation. This report shall be valid for a period of twelve months from the date of the report for the specific valve involved and all other similar valves, taking into account the factors listed in Section I (Factors) of this Appendix.

III. OPTIONAL EPA REVIEW OF AUX SABLE'S ASSERTION OF COMMERCIAL UNAVAILABILITY

A. At its option, EPA may review an assertion by Aux Sable of commercial unavailability. If EPA disagrees with Aux Sable's assertion, EPA shall notify Aux Sable in writing, specifying the Low-E Valve or Low-E Packing that EPA believes to be commercially available and the basis for its view that such valve or packing is appropriate taking into consideration the Factors described in Section I (Factors) of this Appendix. After Aux Sable receives EPA's notice, the following shall apply:

1. Aux Sable shall not be required to retrofit the valve or valve packing for which it asserted commercial unavailability (unless Aux Sable is otherwise required to do so pursuant to another provision of the Consent Decree).

2. Aux Sable shall be on notice that EPA will not accept a future assertion of commercial unavailability for: (i) the valve or packing that was the subject of the unavailability assertion; and/or (ii) a valve or packing that is similar to the subject assertion, taking into account the Factors described in Section I (Factors) of this Appendix.

3. If Aux Sable disagrees with EPA's notification, Aux Sable and EPA shall informally discuss the basis for the claim of commercial unavailability. EPA may thereafter revise its determination, if necessary.

4. If Aux Sable makes a subsequent commercial unavailability claim for the same or similar valve or packing that EPA previously rejected, and the subsequent claim also is rejected by EPA, Aux Sable shall retrofit the valve or packing with the commercially available valve or packing unless Aux Sable is successful under Subsection III.B below.

B. Any disputes under this Appendix first shall be subject to informal discussions between Aux Sable and EPA for a period not to exceed 30 Days before Aux Sable shall be required to invoke the Dispute Resolution provisions of Section XIII of the Consent Decree. Thereafter, if the dispute remains, Aux Sable shall invoke the Dispute Resolution provisions of Section XIII.

APPENDIX B

APPENDIX B

Environmental Mitigation Projects

In accordance with Section VII (Mitigation Projects) of the Consent Decree, Aux Sable shall implement and secure the environmental benefits of the Environmental Mitigation Projects described below.

A. Locomotive Diesel Engine Repowering Project (“Repowering Project”)

1. Consistent with the requirements of Section C of this Appendix and with Section VII Subsection B (Locomotive Projects) of this Consent Decree, Aux Sable shall repower two or more Tier 0 or lower switch locomotive engines that operate within the Chicago Non-Attainment Area for National Ambient Air Quality Standards (“NAAQS”) for ozone (smog) (“Repowering Project”). The Chicago Non-Attainment Area is the Chicago-Naperville, IL-IN-WI Non-Attainment Area for 8-Hour Ozone (2008) (“Chicago Ozone Non-Attainment Area”) and includes the greater Chicago area including Grundy County where the Facility is located, and the northwest Indiana counties of Lake and Porter. Repowering for purposes of the Consent Decree refers to replacing the existing engine(s) with an engine or engines certified to the EPA Tier 3 or more stringent locomotive emissions standards and includes the conversion of two existing Tier 0 locomotives into a mother-slug configuration consisting of (i) one “mother” unit certified to EPA Tier 3 or more stringent locomotive standards and (ii) one “slug” unit without an engine. The Repowering Project will reduce emissions and fuel consumption, resulting in annual emission reductions of NO_x, VOC, PM, and CO^{2E} within the Chicago Ozone Non-Attainment Area. Aux Sable shall submit to EPA a proposal for carrying out the Repowering Project. This proposal shall describe how Aux Sable will meet each of the following Repowering Project requirements:

- a. At a minimum, no less than two locomotives will be repowered for operation in the Chicago Ozone Non-Attainment Area. This includes identification of the owner and/or operator, as applicable, of each locomotive, each locomotive’s age and location at the time of conversion, its power rating, whether it is to be used as a line haul or switcher locomotive, its actual or estimated number of operating hours per year, and its actual or estimated fuel burned per year; and a description of how the Repowering Project will result in environmental benefits, including NO_x, VOC, PM, and CO₂ emission reductions within the Chicago Ozone Non-Attainment Area;
- b. Aux Sable shall spend no less than \$2,000,000 in Project Dollars on this Repowering Project. Subject to Paragraph A(3) below, Aux Sable may claim no more than 65% of the cost of the Repowering Project, as set forth in the project proposal as creditable against Aux Sable’s obligation under this Paragraph A. Aux Sable may seek the remaining sums for the Repowering Project from the owner and/or operator, as applicable, of the locomotive to be repowered;
- c. Aux Sable shall obtain a certification from the owner and/or operator, as applicable, of each locomotive proposed for inclusion in the Repowering

Project and the supporting evidence demonstrating that, prior to repowering, the locomotive was expected to have remained in use for no less than 15 years from the date projected for repowering;

- d. Aux Sable shall obtain certification from the owner and/or operator, as applicable, and the supporting evidence, demonstrating that each of the Tier 0 or lower switch locomotive engine to be repowered is permanently destroyed (or arranged for the permanent destruction of) after each such locomotive has been repowered;
- e. The project proposal shall include the proposed schedule under which the engine repowerings and permanent destruction will occur within the Completion Date set forth in Paragraph A(2) below; and
- f. Aux Sable shall obtain and provide to EPA an agreement by the owner and/or operator, as applicable, of each locomotive to be repowered to grant the EPA access to its property and to provide information to EPA upon request for the purpose of confirming Aux Sable's compliance with this Consent Decree.

2. Completion Date: Aux Sable shall complete the Repowering Project by no later than 30 months from the Effective Date.

3. If Aux Sable is unable to reach agreement with enough owners or operators that will cost share the remainder of costs set forth in Paragraph A(1), Aux Sable may transmit to EPA, in writing for EPA approval, a request to allow a greater per locomotive cost percentage to be creditable against Aux Sable's obligation to expend at least \$2,000,000 in Project Dollars. With this transmittal, Aux Sable shall provide a summary of the proposals it made, the costs per locomotive for which it seeks credit, the number of replacements projected to occur, and the owners or operators to which it intends to offer the reduced cost share. Aux Sable shall also certify that it was unable to secure an adequate number of locomotive engine repowerings using the owner/operator cost share allowed under Paragraph A(1)(b) above.

B. Switcher Locomotive Idle Reduction Project ("Switcher Project")

1. Consistent with the requirements of Section C of this Appendix and Section VII Subsection B (Locomotive Projects) of this Consent Decree, Aux Sable shall (a) outfit 25 or more switcher locomotives with equipment necessary to enable use of a layover heating system and (b) install a layover system infrastructure consisting of 12 or more wayside stations, power lines, poles, transformers, and power distribution panels installed at two or more railyards and/or rail hubs within the Chicago Ozone Non-Attainment Area ("Switcher Project"). The Switcher Project will result in reduced idling time and therefore reduced fuel usage and reduced emissions of PM, NO_x, and VOCs in an urban environment within the Chicago Ozone Non-Attainment Area. Aux Sable shall submit to EPA a proposal for carrying out the Switcher Project. This proposal shall describe how Aux Sable will meet each of the following Switcher Project requirements:

- a. At a minimum, 25 switcher locomotives will be outfitted with equipment for use in a layover heating system and 12 wayside stations, power lines, poles,

transformers, and power distribution panels will be installed in two or more railyards and/or rail hubs in the Chicago Ozone Non-Attainment Area. This includes identification of each railyard where a switcher station or wayside station will be installed; the number of switcher locomotives to be outfitted and the estimated cost for each; the number of switcher stations to be installed and the estimated cost for each; the owner and/or operator, as applicable, of each affected locomotive and proposed switcher station; the actual or estimated number of idling hours per year reduced per locomotive; and a description of how the Switcher Project will result in environmental benefits, including a reduction of NO_x, VOC, PM, and CO₂ within the Chicago Ozone Non-Attainment Area;

- b. Aux Sable shall spend no less than \$1,000,000 in Project Dollars on this Switcher Project;
- c. Aux Sable shall obtain a certification from the owner and/or operator, as applicable, of each switcher locomotive proposed for inclusion in the Switcher Project and the supporting evidence demonstrating that the locomotive will use the switcher stations in accordance with the owner/operator operating procedures;
- d. The project proposal shall include the proposed schedule under which each layover heating system and proposed switcher station will be installed and commence operation within the Completion Date set forth in Paragraph B(2) below; and
- e. Aux Sable shall obtain and provide to EPA an agreement by the owner and/or operator, as applicable, of each switcher locomotive and affected railyard to grant the EPA access to its property and to provide information to EPA upon request for the purpose of confirming Aux Sable's compliance with this Consent Decree.

2. Completion Date: Aux Sable shall complete the Switcher Project above by no later than 30 months from the Effective Date.

C. Overall Schedule and Budget

1. Within 180 Days from the Effective Date, Aux Sable shall submit its Repowering Project and Switcher Project proposals to EPA for review and approval pursuant to Paragraphs 90–94 (Approval of Submittals) of the Consent Decree for completing the Projects listed in Parts A and B of this Appendix in accordance with the deadlines established in this Appendix.

2. Upon approval by EPA of the proposal(s) required by this Appendix, Aux Sable shall complete the approved Project(s) according to the approved proposal(s). Nothing in this Consent Decree shall be interpreted to prohibit Aux Sable from completing the Project ahead of schedule.

3. No greater than 15% of the Project Dollars shall go towards administrative support and outreach costs associated with implementation of the Repowering Project or the Switcher Project.

4. Any funds designated for a specific Project that are left unspent, or are projected to be left unspent, at the Project's completion, may be redirected by Aux Sable, after consultation with and approval by EPA, to the other Project listed in this Appendix B.

5. In accordance with the requirements of this Appendix and Section X (Reporting Requirements), Aux Sable shall include in its Initial Compliance Status Report and each Subsequent Compliance Status Report a description of the progress of each Project and the Project Dollars expended on each Project to date.

6. Project Completion Report: In accordance with the requirements of this Appendix and Paragraph 69 of this Consent Decree, by no later than 90 days following the completion of each Project, Aux Sable shall submit to EPA a project completion report for that Project ("Project Completion Report"). The Project Completion Report shall include the following:

- a. A detailed timeline of all completed activities for the Project;
- b. A breakdown of the total costs incurred by Aux Sable to implement the Project;
- c. A description of any significant problems that occurred during implementation of the Project and how they were overcome; and
- d. The results of implementation of the Project, including the estimated emission reductions (including NOX, VOC, PM, and CO₂, as applicable) and other environmental benefits to the Chicago Ozone Non-Attainment Area.

If EPA concludes based on the Project Completion Report or subsequent information provided by Aux Sable that a Project has been performed and completed in accordance with the Consent Decree, then EPA will approve completion of the Project for purposes of the Consent Decree.