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WHEREAS, Plaintiff, the United States of America (“Plaintiff” or “United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), has simultaneously filed a Complaint against and lodged this Consent Decree with Defendant, Shell Chemical Yabucoa, Inc. (“Shell”), for alleged environmental violations at the Shell petroleum refinery in Yabucoa, Puerto Rico;

WHEREAS, the United States alleges that Shell has violated and/or continues to violate the following statutory and regulatory provisions of the Clean Air Act:

1) Prevention of Significant Deterioration (“PSD”) requirements found at Part C of Subchapter I of the Clean Air Act (the “Act”), 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. §§ 52.21, 51.165 and 51.166 (the “PSD Rules”), for heaters and boilers for nitrogen oxide (“NO<sub>x</sub>”) and sulfur dioxide (“SO<sub>2</sub>”);

2) New Source Performance Standards (“NSPS”) found at 40 C.F.R. Part 60, Subparts A, Db, J, and QQQ promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411 (“Refinery NSPS Regulations”), for sulfur recovery plants, fuel gas combustion devices, steam generating units, and wastewater systems;

3) National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Benzene Waste Operations promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), and found at 40 C.F.R. Part 61, Subpart FF (“Benzene Waste NESHAP Regulations”);

4) Leak Detection and Repair (“LDAR”) requirements promulgated pursuant to Sections 111 and 112 of the Act, 42 U.S.C. §§ 7411 and 7412, and found at 40 C.F.R. Part 60

Subparts VV and GGG; 40 C.F.R. Part 61, Subparts J and V; and 40 C.F.R. Part 63, Subparts F, H, and CC (“LDAR Regulations”);

5) National Emission Standards for Hazardous Air Pollutants (“NESHAP”) From Petroleum Refineries promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), and found at 40 C.F.R. Part 63, Subpart CC (“Petroleum Refinery MACT”), which refers to and requires compliance with storage vessel provisions of the NESHAP for the Synthetic Organic Chemical Manufacturing Industry for Processing Vents, Storage Vessels, Transfer Operations, and Wastewater promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), and found at 40 C.F.R. Part 63, Subpart G (“NESHAP Subpart G”);

6) National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), and found at 40 C.F.R. Part 63, Subpart UUU, §§ 63.1560 through 63.1579 (“NESHAP Subpart UUU”);

7) Chlorofluorocarbon requirements promulgated pursuant to Sections 608 and 114 of the Act, 42 U.S.C. §§ 7671g and 7414, and found at 40 C.F.R. Part 82, Subpart F, §§ 82.150 through 82.169 (“CFC Regulations”).

WHEREAS, the United States also specifically alleges that, upon information and belief, Shell has been and/or continues to be in violation of other rules, regulations, and permits adopted or issued by the Commonwealth of Puerto Rico to the extent that such plans, rules, regulations, and permits implement, adopt, or incorporate the above-described federal requirements;

WHEREAS, Shell denies the violations alleged in the Complaint;

WHEREAS, the United States is engaged in a nationwide federal strategy for achieving cooperative agreements with U.S. petroleum refineries to achieve across-the-board reductions in emissions (“Global Settlement Strategy”);

WHEREAS, Shell consents to the simultaneous filing of the Complaint and lodging of this Consent Decree, despite its denial of the violations alleged in the Complaint, and agrees to undertake the installation of air pollution control equipment and enhance its air pollution management practices to reduce air emissions;

WHEREAS, the United States anticipates that the affirmative relief identified in Section IV of this Consent Decree will reduce annual emissions from the Refinery by the following amounts: 1) nitrogen oxides by approximately 784 tons per year; and 2) sulfur dioxide by approximately 645 tons per year.

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

WHEREAS, Shell has waived any applicable federal, Commonwealth, or local requirements of statutory notice of the alleged violations;

WHEREAS, by signing this Consent Decree, Shell has waived the right of service of process, and the United States agrees that Shell need not answer the Complaint;

WHEREAS, EPA sought and Shell provided information concerning Refinery operations and configuration;

WHEREAS, the Parties engaged in numerous meetings over the past two and a half years to resolve this matter;

WHEREAS, the Parties agree that: (i) settlement of the matters set forth in the Complaint is in the best interests of the Parties and the public; and (ii) entry of this Consent Decree without litigation is the most appropriate means of resolving this matter;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated at arms length and in good faith and that this Consent Decree is fair, reasonable, and in the public interest;

WHEREAS, the United States is contemporaneously lodging, in the District Court for the Southern District of Texas, a consent decree with a related company, Shell Chemical Company, resolving similar allegations of violations and requiring pollution reduction measures at Shell Chemical Company's petroleum refineries in Saraland, Alabama and St. Rose, Louisiana. The requirements of and emissions reductions to be achieved under that consent decree have been taken into account in resolving the allegations of this Consent Decree; and

WHEREAS, Shell decided for independent business reasons to cease refining oil in Yabucoa as of July 31, 2008, and as of the Date of Lodging, the Facility is operating solely as a terminal;

NOW THEREFORE, with respect to the matters set forth in the Complaint and in Section XII (Effect of Settlement), and before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. In addition, this Court has jurisdiction over the subject matter of this action pursuant to Sections 113(b) and 167 of the CAA, 42 U.S.C.

§§ 7413(b) and 7477. The Complaint states a claim upon which relief may be granted for injunctive relief and civil penalties against Shell under the Clean Air Act. Authority to bring this suit is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519 and Section 305 of the CAA, 42 U.S.C. § 7605.

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

3. EPA has given notice of the commencement of this action to the Commonwealth of Puerto Rico as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

## **II. APPLICABILITY AND BINDING EFFECT**

4. The provisions of this Consent Decree shall apply to the Refinery and the Facility, and shall be binding upon the United States and Shell, its agents, successors, and assigns.

5. Shell agrees not to contest the validity of this Consent Decree in any subsequent proceeding to implement or enforce its terms. Shell further agrees that, in any action to enforce this Consent Decree, it 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.

6. Shell agrees that the Refinery and the Facility are covered by this Consent Decree from the Date of Entry until termination pursuant to Section XIV. Prior to transferring ownership or operation of any portion of the Facility, Shell shall give written notice of this

Consent Decree and provide a copy of it to any intended successor in interest of all or part of the Facility.

7. Shell shall condition any transfer, in whole or in part, of ownership of, operation of, or other interest (exclusive of any non-controlling, non-operational shareholder interest) in the Facility upon the (1) certification by the transferee that it has the financial and technical ability to assume the obligations and liabilities under this Consent Decree, and (2) execution by the transferee, and the entry by the Court, of a modification to this Consent Decree, which makes the terms and conditions of this Consent Decree applicable to the transferee. At least 30 days prior to any such proposed transfer, Shell shall notify and certify to the United States, in accordance with the notice provisions in Paragraph 112, that the transferee is contractually bound to assume the obligations and liabilities under this Consent Decree.

8. By no earlier than 30 days after such notice, Shell may file a motion with the Court to modify this Consent Decree to make the terms and conditions of this Consent Decree applicable to the transferee. Shell shall remain responsible for the obligations and liabilities of this Consent Decree for the Facility if the Court finds that the transferee does not have the financial and technical ability to assume the obligations and liabilities under this Consent Decree.

9. Except as provided in Paragraph 7, Shell shall be solely responsible for ensuring that performance of the work required by this Consent Decree is undertaken in accordance with the deadlines and requirements contained in this Consent Decree and any attachments hereto. Shell shall provide a copy of the applicable provisions of this Consent Decree to each consulting or contracting firm that is retained to perform work required under this Consent Decree, upon execution of any contract relating to such work.

### III. DEFINITIONS

10. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Clean Air Act and the implementing regulations promulgated thereunder. The following terms used in this Consent Decree shall be defined, solely for purposes of this Consent Decree and the reports and documents submitted pursuant thereto, as follows:

- A. “CAA” or the “Act” shall mean the Clean Air Act, 42 U.S.C. § 7401 et seq.
- B. “Calendar Quarter” shall mean one of the three-month periods ending on March 31st, June 30th, September 30th, and December 31st.
- C. “Commonwealth” shall mean the Commonwealth of Puerto Rico.
- D. “Consent Decree” or “Decree” shall mean this Consent Decree, including any and all appendices attached to this Consent Decree.
- E. “Date of Entry” shall mean the date on which this Consent Decree is approved and signed by a United States District Court Judge for the District of Puerto Rico.
- F. “Date of Lodging” shall mean the date this Consent Decree is lodged with the United States District Court for the District of Puerto Rico.
- G. “Date of Termination” shall mean date of termination of this Consent Decree pursuant to Section XIV.
- H. “Day” or “Days” shall mean a calendar day or days unless expressly stated to be a Working Day or Days. In computing any period of time under this Consent Decree (except for the calculation of rolling averages), where the last day would fall on a Saturday, Sunday, or federal or Commonwealth holiday, the period shall run until the close of business of the next Working Day.

- I. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- J. “Facility” shall mean the facilities located at Carr. 901, Km. 2.7 Barrio Camino Nuevo, Yabucoa, Puerto Rico. “Facility” includes the Terminal operations and wastewater treatment plant. “Facility” does not include the Refinery.
- K. “NO<sub>x</sub>” shall mean nitrogen oxides.
- L. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.
- M. “Parties” shall mean the United States and Shell Chemical Yabucoa, Inc.
- N. “Refinery” shall mean the petroleum refinery located at Carr. 901, Km. 2.7 Barrio Camino Nuevo, Yabucoa, Puerto Rico, previously operated by Shell.
- O. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- P. “Shell” shall mean Shell Chemical Yabucoa, Inc. and its successors and assigns.
- Q. “SO<sub>2</sub>” shall mean sulfur dioxide.
- R. “Terminal” shall mean the equipment at the Facility used for unloading and loading trucks and marine vessels, and shall include the equipment at the dock, truck loading rack, tanks, and any piping connected to any of this equipment.
- S. “Working Day” or “Working Days” shall mean any Day or Days except Saturday, Sunday, a federal holiday or a Commonwealth holiday.

#### **IV. AFFIRMATIVE RELIEF**

##### **A. Permanent Shutdown of Refinery Process Units and Modification of Permit.**

11. By the Date of Lodging, Shell shall have permanently shut down all refinery process units and their associated emissions units at the Refinery and shall not operate nor re-start any refinery process units or associated emissions units at the Refinery.

12. Relinquishment of Permits/Application for Permits.

a. Within three months of the Date of Entry, Shell shall relinquish all permit coverage for all refinery process units, including their associated emission units, which are required to be permanently shut down under Paragraph 11. Shell shall not seek permits or modification of permits to re-start any refinery process units, including their associated emission units.

b. Shell shall take all steps necessary to comply with all applicable Title V or Puerto Rico Environmental Quality Board (“PREQB”) permitting requirements for the Facility, including applying for and obtaining all necessary federally-enforceable operating permits. Shell shall seek to incorporate the requirements of this Consent Decree into such permits.

c. Shell shall copy EPA Region 2 on each submission and/or request made to the PREQB pursuant to this Paragraph, in accordance with the notice provisions in Paragraph 112 of this Consent Decree.

##### **B. CERCLA/EPCRA**

13. To the extent that for any Flaring Incident prior to the Date of Lodging, Shell discovers information demonstrating a failure to comply with the reporting requirements for continuous releases of SO<sub>2</sub> pursuant to Section 103(c) of CERCLA and/or Section 304 of EPCRA, including the regulations promulgated thereunder, a voluntary disclosure by Shell of

any such violations will not be deemed “untimely” under EPA’s Audit Policy, solely on the ground that it is submitted more than twenty-one (21) days after it is discovered, provided all such disclosures are made by no later than thirty (30) days from the Date of Entry.

**C. Leak Detection And Repair Program**

**Program Summary:** Shell will undertake the following measures to improve the Facility’s LDAR program and minimize or eliminate fugitive emissions from valves and pumps in light liquid and/or in gas/vapor service and to make any existing facilities, as defined in 40 CFR, Part 60, Subpart A, General Provisions, “affected facilities,” as defined in the LDAR Regulations.

14. In order to minimize or eliminate fugitive emissions of volatile organic compounds (VOCs), benzene, volatile hazardous air pollutants (VHAPs), and organic hazardous air pollutants (HAPs) from valves and pumps in light liquid and/or in gas/vapor service, Shell will implement the requirements of this Section as part of the Facility’s LDAR program, which includes (or shall include) compliance with 40 C.F.R., Part 60, Subpart VV and GGG; 40 C.F.R. Part 61, Subparts J and V; 40 C.F.R. Part 63, Subparts F, H, and CC; and any applicable Commonwealth and local LDAR requirements that are federally enforceable. Collectively, these federal, Commonwealth and local requirements are the “LDAR Regulations.” The terms “in light liquid service” and “in gas/vapor service” have the definitions set forth in the LDAR Regulations.

**A. Applicability**

15. On the Date of Entry, Shell shall implement the requirements of this Section for all equipment qualifying as an “affected facility” under the LDAR Regulations as of the Date of Lodging (i.e., existing “affected facilities”).

16. Six (6) months after the Date of Lodging of the Consent Decree, all existing facilities, including the group of all Equipment (as defined by 40 C.F.R. § 60.591) and each

compressor that are not already subject to the LDAR Regulations as of the Date of Lodging, and all facilities added to the Terminal more than six (6) months after the Date of Lodging, shall become “affected facilities” for purposes of 40 C.F.R. Part 60, Subpart GGG and 40 C.F.R. Part 63, Subpart CC, and shall become subject to and comply with the requirements of 40 C.F.R. Part 60, Subpart GGG, and 40 C.F.R. Part 63, Subpart CC, and the requirements of this Section, regardless of whether such facilities have been constructed, modified or reconstructed prior to this date. Shell will monitor all Equipment that is operating at the Terminal. All such Equipment shall remain “affected facilities” after termination of this Consent Decree, including for any permitting purpose.

Notwithstanding the provisions of the termination Section of this Consent Decree, Shell shall apply the requirements of this Section (LDAR Program) to all “affected facilities” either until termination of this Consent Decree or for five (5) years after Date of Entry, whichever is longer.

**B. Written Facility-Wide LDAR Program.**

17. Within three (3) months of the Date of Lodging, Shell shall submit for EPA’s approval a written Facility-wide program (LDAR Program) that ensures compliance with the LDAR Regulations and the requirements of this Section within one (1) year of the Date of Lodging. The Facility-wide LDAR Program shall include:

a. Identification of all equipment in light liquid or in gas/vapor service that are or will be subject to the LDAR Regulations pursuant to Paragraphs 15 and 16 of this Section and that have the potential to leak VOCs, HAPs, VHAP, or benzene. The first audit shall include identification of equipment that is no longer in light liquid and/or gas/vapor service by virtue of being located in the shut down refinery process units and associated emissions units;

- b. Procedures for identifying leaking equipment;
- c. Procedures for keeping track of and repairing leaking equipment;
- d. Procedures for identifying and including in the LDAR Program new equipment;
- e. A process for evaluating new and replacement equipment to promote consideration and installation of equipment that will minimize leaks and/or eliminate chronic leakers; and
- f. A definition of “LDAR Personnel” and a process for accountability of LDAR personnel for LDAR performance.

18. If EPA notifies Shell that any portion of the Facility-wide LDAR Program is not acceptable, Shell will modify such portions in accordance with EPA’s comments, and re-submit those portions. Shell shall comply with the LDAR Program once submitted and while pending EPA approval, and shall modify such LDAR Program in the event that EPA notifies Shell of any unacceptable provisions.

**C. Training.**

19. Shell will provide training for LDAR personnel as follows:
- a. For personnel newly-assigned to LDAR responsibilities, within six (6) months of the Date of Lodging, require LDAR training prior to each employee beginning such work;
  - b. For all personnel with assigned LDAR responsibilities, within six (6) months of the Date of Lodging, provide and require completion of annual LDAR training;
  - c. For all other Terminal operations and maintenance personnel, provide training, within twelve (12) months of the Date of Lodging and every three (3) years thereafter,

that includes instruction on aspects of LDAR if and to the extent those aspect of LDAR are relevant to the person's duties.

20. If contractors are used to fulfill the requirements of this Section, Shell shall ensure that such contractors receive the training specified in Paragraph 19.

**D. LDAR Audits.**

21. LDAR Audits. Shell shall implement the Facility-wide LDAR audits set forth in Paragraphs 22a. and 23, to ensure the Facility's compliance with the LDAR Regulations and the requirements of this Consent Decree. Each LDAR audit shall include, but shall not be limited to, comparative monitoring, records review to ensure monitoring and repairs were completed in the required periods, field reviews to ensure all regulated equipment is included in the LDAR program, a review to ensure records and reports have been maintained and submitted as required, and observation of the LDAR technicians' calibration and monitoring techniques.

22. During each LDAR audit, Shell shall calculate leak rates for the Terminal for purposes of comparative monitoring.

a. Initial Compliance Audit. Within nine (9) months of the Date of Lodging, Shell shall complete a Facility-wide Initial Compliance Audit, conducted by a third party, to determine compliance with the LDAR Regulations and the requirements of the applicable sections of this Consent Decree. For purposes of this requirement, "third party" may include a qualified contractor, consultant, industry group, or trade association. All subsequent audits under this section shall only include those components that are in light liquid and/or gas/vapor service. Any equipment that is put back into such service after having been identified as no longer in light liquid and/or gas/vapor service shall be subject to the LDAR Regulations in effect at the time.

b. Reporting Requirements for the Initial Compliance Audit. Within 30 days of the completion of an Initial Compliance Audit, Shell shall submit to EPA and the Commonwealth or local permitting authority a report which summarizes the audit and lists any areas of non-compliance identified as a result of the audit. The report shall also include a proposed compliance schedule for correcting the non-compliance. If the proposed compliance schedule extends greater than 60 days beyond the audit completion date, Shell must provide a reason for the delay(s) in correcting specific items and seek approval of the compliance schedule from EPA. Shell shall implement the compliance schedule as proposed as soon as possible for those items that do not take longer than 60 days from the audit completion date to correct. For items that will take longer than 60 days from the audit completion date to correct, Shell shall begin the process of correction as soon as possible and implement the compliance schedule as proposed until the schedule is approved or disapproved by EPA.

c. Initial Certification of Compliance. Within 90 days of completing an Initial Compliance Audit, Shell shall certify to EPA that: (i) the Facility is in compliance with the LDAR Regulations; (ii) Shell has completed related corrective action and/or is on a compliance schedule (if necessary); and (iii) all existing equipment has been identified and included in the Facility's LDAR Program, to the extent required by the LDAR Regulations and this Consent Decree, as of the date such certification is made.

23. Subsequent LDAR Audits.

a. Internal LDAR Audits. Shell shall conduct Internal LDAR Audits by having a third party or company personnel from outside the Facility determine Shell's compliance with the LDAR Regulations and the requirements of this Section. Shell shall complete the first Internal LDAR Audit no later than two (2) years after the Initial Compliance

Audit was due to be completed. Shell shall conduct Internal LDAR Audits in the same Calendar Quarter at least once every four (4) years thereafter.

b. Third-Party LDAR Audits. Shell shall retain an independent contractor(s) to complete a Third-Party LDAR Audit no later than four years after the Initial Compliance Audit was due to be completed. Shell shall conduct Third-Party LDAR Audits in the same Calendar Quarter at least once every four (4) years thereafter.

c. Reporting Requirements for the Subsequent Audits. Within 30 days of the completion of an Internal or Third-Party LDAR Audit, Shell shall submit a report to EPA and the applicable Commonwealth or local permitting authority which summarizes the audit and lists any areas of non-compliance identified as a result of the audit. The report shall also include a proposed compliance schedule for correcting the non-compliance. If the proposed compliance schedule extends greater than 60 days beyond the audit completion date, Shell must provide a reason for the delay(s) and seek approval of the compliance schedule from EPA. Shell shall implement the compliance schedule as proposed as soon as possible for those items that do not take longer than the 60 days from the audit completion date to correct. For items that will take longer than the 60 days to correct, Shell shall begin the process of correction as soon as possible and implement the compliance schedule as proposed until the schedule is approved or disapproved by EPA.

d. Certification of Compliance. Within 90 days of completing each audit, Shell shall certify to EPA that: (i) the Facility is in compliance with the LDAR Regulations; (ii) Shell has completed related corrective action and/or is on a compliance schedule (if necessary); and (iii) all existing equipment has been identified and included in the Facility's LDAR Program,

to the extent required by the LDAR Regulations and this Consent Decree, as of the date such certification is made.

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

24. If any of the audits conducted pursuant to Section D identify any areas of non-compliance with, or any violations (e.g., failure to record a leak, failure to repair, failure to re-monitor after a repair) of, the LDAR Regulations, Shell will implement, as soon as practicable but no later than 30 days after completion of the audit report, all steps necessary to correct the area(s) of non-compliance or the violations. For purposes of this Paragraph, if the ratio of the Terminal's component leak percentage established through a comparative monitoring audit and the average component leak percentage reported for the Terminal for the four (4) quarters immediately preceding the audit, is equal to or greater than 3.0, EPA will consider Shell not in compliance with the LDAR Regulations for the Terminal and will require Shell to implement corrective actions. . If the calculated ratio yields an infinite result, Shell will assume one (1) leaking component was found in the Terminal through its routine monitoring during the preceding 4-quarter period.

25. Retention of Audit Reports and Records Showing Corrective Actions and Completion Dates. Until termination of the Consent Decree, Shell shall retain the audit reports generated pursuant to Paragraphs 22 and 23 and maintain a written record of the corrective actions taken in response to any deficiencies identified in any audits, including but not limited to, the personnel conducting the corrective action, a brief description of the corrective action, and the date of the corrective action.

**F. Internal Leak Definition for Valves and Pumps.**

26. Within nine months of the Date of Lodging of this Consent Decree, Shell shall utilize the following internal leak definitions for valves and pumps in light liquid and/or gas/vapor service, unless a lower leak definition is established under applicable permit(s), applicable Commonwealth LDAR Regulations or future regulations.

a. Leak Definition for Valves. Shell will use an internal leak definition of 500 ppm VOCs for valves in light liquid and/or in gas/vapor service.

b. Leak Definition for Pumps. Shell will use an internal leak definition of 2,000 ppm for pumps in light liquid and/or in gas/vapor service.

**G. Reporting, Recording, Tracking, Repairing and Remonitoring Leaks of Valves and Pumps Based on the Internal Leak Definitions.**

27. Reporting. For regulatory reporting purposes, Shell may continue to report leak rates in valves and pumps against the applicable regulatory leak definition, or may use the lower, internal leak definitions specified in Paragraph 26. For purposes of compliance with this Consent Decree, however, Shell must report leak rates in valves and pumps using the lower leak definitions in Paragraph 26 in the semi-annual report required in Paragraph 46 and in the audit reports required in Paragraphs 22 and 23.

28. Recording, Tracking, Repairing and Remonitoring Leaks. Within nine (9) months of the Date of Lodging, Shell shall record, track, repair and remonitor all leaks in excess of the internal leak definitions of Paragraph 26 in accordance with applicable provisions of the LDAR Regulations, except that Shell shall have five (5) days to make an initial attempt at repair, and 15 days either to make final repairs and remonitor the leak or to manage the leak according to Paragraph 43 (Extended Maintenance or Delay of Repair).

**H. First Attempt at Repair on Valves.**

29. Beginning no later than nine (9) months after the Date of Lodging of the Consent Decree, Shell will make a first attempt at repair within five (5) calendar days for each valve that is monitored that has a reading of > 200 ppm VOCs, excluding control valves and orbit valves. Shell will remonitor each valve within five (5) calendar days of identification (i.e., reading > 200 ppm). If the remonitored leak rate is less than or equal to 200 ppm, no further action will be necessary. If the re-monitored leak reading is greater than the applicable leak definition, Shell shall repair the leaking valve according to the requirements in Paragraph 28 (Recording, Tracking, Repairing and Remonitoring Leaks).

30. For each first attempt at repair, Shell shall record the date the valve was monitored in excess of 200 ppm, the date the first repair was attempted, the date the valve was remonitored and the remonitored value (in ppm). Shell shall maintain all records of repairs, repair attempts, and remonitoring until termination of the Consent Decree.

**I. LDAR Monitoring Frequency.**

31. Pumps: Unless more frequent monitoring is required by federal or a Commonwealth regulation, when the lower internal leak definition for pumps becomes applicable pursuant to Paragraph 26, Shell shall begin monitoring pumps in light liquid service, other than dual mechanical seal pumps or pumps vented to a control device, at the lower leak definition on a monthly basis.

32. Valves: Unless more frequent monitoring is required by federal or Commonwealth regulation, when the lower internal leak definition for valves becomes applicable pursuant to Paragraph 26, Shell shall begin monitoring valves in light liquid service,

other than difficult to monitor or unsafe to monitor as defined in the LDAR Regulations, at the lower leak definition on a quarterly basis.

**J. Electronic Monitoring, Storing, Reporting, and QA/QC of LDAR Data.**

33. Electronic Storing and Reporting of LDAR Data. Shell will store all LDAR data, including monitoring, repair, and component inventory data, in an electronic database, and submit such data, in electronic form, to EPA upon request. For all “affected facilities” under this Section that have electronic tags on the Date of Lodging, this requirement will take effect on the Date of Lodging. For all “affected facilities” under this Section that do not have electronic tags as of the Date of Lodging, this requirement will take effect 60 days after the Date of Lodging.

34. Electronic Data Collection During LDAR Monitoring. By no later than 60 days after the Date of Lodging, Shell will use dataloggers and/or electronic data collection devices during LDAR monitoring. Shell will transfer, on a daily basis, electronic data from electronic datalogging devices to the electronic database required by Paragraph 33. For all monitoring events in which an electronic data collection device is used, the collected monitoring data will include an accurate time and date stamp, operator identification, and instrument identification. Shell may use paper logs on an as-needed basis where necessary or more feasible (e.g., small rounds, remonitoring, or when dataloggers are not available or broken). When using paper logs, Shell will identify the technician undertaking the monitoring, the date, time, and the monitoring equipment. Shell will transfer any manually recorded monitoring data to the electronic database within seven (7) days of monitoring.

35. QA/QC of LDAR Data. By no later than sixty (60) days after the Date of Lodging, Shell will develop and implement a protocol to ensure a quality assurance/quality

control (“QA/QC”) review of all data generated by each LDAR monitoring technician. This QA/QC protocol shall require:

- a. Monitoring technician(s) will review and certify daily the accuracy of the monitoring data collected; and
- b. non-monitoring personnel to review monitoring data quarterly, including, but not limited to, number of components monitored per technician, time between monitoring events and abnormal data patterns.

**K. LDAR Personnel.**

36. By no later than the Date of Lodging, Shell will establish a program that will hold LDAR personnel accountable for LDAR performance. Shell will identify a person who is responsible for LDAR management and who has the authority to implement improvements in the Facility’s LDAR Program (the “LDAR Coordinator”).

**L. Adding New Valves and Pumps.**

37. Beginning no later than six (6) months after the Date of Lodging, Shell will continually incorporate into the Facility’s LDAR Program all valves and pumps subject to the LDAR Regulations that are added during maintenance and/or construction. Such valves and pumps will become subject to the internal leak definitions once in service and will be included in the next regularly scheduled monitoring. To ensure this incorporation, Shell will establish at the Facility a program to track maintenance records, which may be incorporated into the Facility’s existing Management of Change program.

**M. Calibration/Calibration Drift Assessment.**

38. Calibration. Shell shall conduct all calibrations of LDAR monitoring equipment using methane as the calibration gas, in accordance with 40 C.F.R. Part 60, EPA Reference Test Method 21.

39. Calibration Drift Assessment. Within six (6) months of the Date of Lodging, Shell shall conduct calibration drift assessments of all LDAR monitoring equipment at the end of each monitoring shift, at a minimum. Shell shall conduct the calibration drift assessment using a calibration gas corresponding to the then-applicable leak definition for valves. If any calibration drift assessment after the initial calibration shows a negative drift of more than 10% from the previous calibration, Shell shall remonitor the following equipment: (a) all valves subject to the LDAR Regulations and this Consent Decree that were monitored since the last calibration and that had a reading greater than 500 ppm if the applicable leak definition for valves is 10,000 ppm, or 100 ppm if the applicable leak definition for valves is 500 ppm; and (b) all pumps qualifying as equipment that were monitored since the last calibration and that had a reading greater than 2,000 ppm if the applicable definition for pumps is 10,000 ppm, or 500 ppm if the applicable leak definition for pumps is 2,000 ppm.

**N. Fixing Leaking Valves.**

41. Chronic Leakers. As of the Date of Entry and for twelve (12) months thereafter, a component is chronically leaking under this Paragraph if it leaks above 10,000 ppm in two out of 16 consecutive monitoring periods. Twelve (12) months from Date of Entry, a component is chronically leaking under this Paragraph if it leaks above 5,000 ppm in two out of 16 consecutive monitoring periods. As of the Date of Entry, Shell will replace, repack, or perform similarly

effective repairs on chronically leaking, non-control valves within 60 days after they are identified as chronically leaking.

42. Drill and Tap for Valves Leaking at a rate of 10,000 ppm VOC or greater. Beginning no later than 90 days from the Date of Lodging, Shell will use a “drill and tap” or equivalent method for fixing valves that have a reading of > 10,000 ppm, unless Shell can demonstrate and documents that there is a safety, mechanical, or adverse environmental concern posed by attempting to repair the leak in this manner. Shell will perform the first “drill and tap” (or equivalent repair method) within fifteen (15) days, and a second attempt (if necessary) within thirty (30) days after the leak is detected. If a new method develops for repairing such valves, Shell will advise EPA prior to implementing the use of such new method in place of drill and tap for repairs required under this Consent Decree.

**O. Extended Maintenance and Delay of Repair**

43. Beginning no later than 90 days from the Date of Lodging.

a. Before placing any valve, other than control valves and pressure relief valves, on a delay of repair list under the LDAR Regulations and this Consent Decree, Shell shall require use of “drill and tap” or similarly effective repairs, unless the valve can be repaired by other means or Shell can demonstrate and records, with supporting material, that there is a safety, mechanical, or adverse environmental concern posed by attempting to repair the leak in this manner. Shell shall perform at least two (2) “drill and tap” attempts (or similarly effective repairs) within fifteen (15) days of identification of the leak, if necessary, to repair the valve. If a new method develops for repairing such valves, Shell will advise EPA prior to implementing the use of such new method in place of drill and tap for repairs required under this Decree. Shell

shall report the circumstances of all leaks attempted to be repaired under this Paragraph in the semiannual reports required under Paragraph 46.

b. If, after having implemented (a), Shell still finds that one or more of the extended leak repair techniques identified therein cannot repair the leak, Shell may delay repair of the leak for 60 days.

c. Notwithstanding subparagraph (b), if the LDAR Coordinator certifies that any component, including a valve, is technically infeasible to repair without draining the associated storage tank to isolate the component, Shell may delay repair of such component until either the next tank shutdown or three years from the date the leak was identified, whichever is earlier.

d. For all equipment on a delay of repair list, Shell shall:

i. continue to monitor the equipment in its LDAR monitoring program; and

ii. include a list of all equipment designated under (b) and (c) and the monitoring results under (d)(i) for each component in the semi-annual report required under Paragraph 45.

44. At no time shall more than 0.2% of the Terminal's valves be in a delay of repair status.

**P. Recordkeeping and Reporting Requirements for this Section.**

45. For at least five (5) years following termination of this Consent Decree, unless applicable regulations require the records to be maintained longer, Shell shall maintain all records that document its compliance with the requirements of this Consent Decree, including but not necessarily limited to, the records listed in Paragraph 46 below.

46. In addition to the information required under 40 C.F.R. §§ 60.487 and 63.654 (Semi-Annual LDAR Report) or any other applicable regulatory reporting requirement, Shell will submit to EPA and the applicable EPA Regional Office:

a. As part of the next scheduled semi-annual report after the applicable compliance date for each requirement, and using the certification language of Paragraph 49:

i. A certification of its implementation of the training requirements of Paragraph 19;

ii. A certification of its implementation of the “first attempt at repair” requirements of Paragraph 29;

iii. A certification that Shell uses electronic data collection devices during LDAR monitoring, pursuant to the requirements of Paragraph 34;

iv. A certification that Shell has implemented the provisions of Paragraphs 33 and 35 regarding Collecting, Storing, Reporting, and QA/QC of LDAR data;

v. A certification that Shell has established a tracking program for maintenance records, as required by Paragraph 37 (Adding New Valves and Pumps); and

vi. A certification of the implementation of the calibration and calibration drift assessment procedures of Paragraphs 38 and 39.

b. As part of the reports required under 40 C.F.R. §§ 60.487 and 63.654 (Semi-Annual LDAR Report) or any other applicable regulatory reporting requirement:

i. Audit Information. The audit report for any audit that was conducted pursuant to the requirements of Paragraph 23 in the previous

semiannual period; identification of the actions that Shell has taken to correct each deficiency identified in the audit, including the date such action was completed; and identification of each action Shell intends to take but has not yet taken to correct deficiencies identified in the audit.

ii. Training. A description of the measures taken to comply with the provisions of Paragraph 19 in the previous six-month period.

iii. An identification of the individual, by name and title, at the Facility responsible for LDAR performance during the applicable reporting period as required by Paragraph 36 (LDAR Personnel);

iv. A certification that Shell has incorporated all valves and pumps added during maintenance and construction into the Facility's LDAR program as required by Paragraph 37 (Adding New Valves and Pumps);

v. Monitoring. A description of:

(a) The process units monitored during the reporting period;

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

(c) The number of valves and pumps monitored in each process unit and an explanation, if less than the number in iii(b);

(d) The number of valves and pumps found leaking using the internal leak definition described in the Consent Decree;

(e) The number of "difficult to monitor" pieces of equipment monitored;

- (f) The percentage of “difficult to monitor” valves of the valves required to be monitored;
- (g) The projected month of the next monitoring event for that unit;
- (h) A list of all pumps and valves currently on the “delay of repair” list, the date each component was placed on the list, the date each component was determined to be leaking above the applicable leak definition, the date of each drill and tap or equivalent method of repair, the date of an extended maintenance activity and the corresponding circumstances, the component’s associated monitoring results throughout the 6 month period, and whether such activities were completed in a timely manner under Paragraph 41;
- (i) A list of all first attempts and the re-monitoring dates under Paragraph 29 (First Attempt at Repair on Valves);
- (j) The number of missed or untimely repairs under Paragraph 28 (Recording, Tracking, Repairing, and Remonitoring Leaks);  
and
- (k) The number of missed or untimely repairs under Paragraphs 41 (Chronic Leakers) and 44 (Delay of Repair).

**Q. Excluded Equipment.**

47. The requirements in this Section do not apply to valves and pumps that are expressly exempt under the LDAR Regulations. In addition, nothing in this Consent Decree is

intended to require Shell to monitor difficult to-monitor valves or unsafe-to-monitor valves more frequently than is otherwise required under the LDAR Regulations.

**R. New Monitoring Technologies.**

48. New Monitoring Technologies. Shell may propose a protocol for a pilot project at the Terminal to demonstrate that an optical imaging-based LDAR program is an equivalent or better means than a Method 21-based program in reducing VOC emissions from Terminal equipment and in monitoring for emissions of VOCs at the internal leak definition levels of this Consent Decree. EPA has sole discretion to approve or disapprove all or parts of this protocol. Upon receiving EPA's full approval of the protocol, Shell may implement the pilot project. Any such implementation must be in strict accordance with the approved protocol and must not be inconsistent with the requirements of 40 C.F.R. §§ 60.18, 63.11, and 65.7, as amended on December 22, 2008. After any such pilot project is conducted, Shell must submit the full results, including complete data sets, to EPA. EPA will review the results. After EPA's review, EPA may, in its sole discretion, approve a change to a part or all of these LDAR provisions to take advantage of the new leak detection technology if EPA has determined that the completed pilot project has demonstrated that an optical imaging-based LDAR program is an equivalent or better means than a Method 21-based program in reducing VOC emissions from Terminal equipment using the internal leak definitions of this Consent Decree. Any such modification to these LDAR provisions will be filed with the Court in accordance with the requirements of Paragraph 116.

**D. Certification**

49. All notices, reports or any other submissions required of Shell by this Section IV shall be signed by either the person responsible for environmental management at the Facility or

by a person responsible for overseeing implementation of this Consent Decree, making the following certification:

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

50. The reporting requirements set forth in this Consent Decree do not relieve Shell of its obligation to any Commonwealth, local authority, or EPA to submit any other reports or information required by the CAA, or by any other Commonwealth, federal or local requirements.

**E. Prohibition on Use of Emission Reductions**

51. Prohibition. Shell shall not use any NO<sub>x</sub>, SO<sub>2</sub>, PM, VOC, or CO emissions reductions that result from implementing the requirements of this Consent Decree as netting reductions or emissions offsets in any PSD, major non-attainment, and/or synthetic minor New Source Review permit or permit proceeding, nor shall Shell obtain any emission reduction credits for such reductions.

**V. REPORTING AND RECORDKEEPING**

52. Shell shall retain all records required to be maintained in accordance with this Consent Decree for a period of five (5) years or until termination, whichever is longer, unless applicable regulations require the records to be maintained longer.

53. Beginning thirty (30) days after the end of the first semi-annual period after the Date of Entry and semi-annually thereafter on January 31 and July 31 until termination of this Consent Decree, Shell will submit to EPA a progress report for the Facility, containing:

- a. a progress report on the implementation of the requirements of Section IV (Affirmative Relief);
- b. a description of any problems anticipated with respect to meeting the requirements of Section IV (Affirmative Relief);
- c. any such additional matters as Shell believes should be brought to the attention of EPA.

54. Each report shall be signed by Shell by either the person responsible for environmental management or by a person responsible for overseeing implementation of this Consent Decree, making the following certification: “To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

## **VI. CIVIL PENALTY**

55. In satisfaction of the civil claims asserted by the United States in the Complaint filed in this matter, by no later than thirty (30) days after Shell receives the instructions referenced in Paragraph 56, but no earlier than 30 days from the Date of Entry, Shell shall pay a civil penalty of \$1.5 million to the United States.

56. Payment to the United States shall be made by Electronic Funds Transfer (“EFT”) to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number, DOJ Case Number 90-5-2-1-08703, and the civil action case name and number in the District of Puerto Rico. The costs of such EFT shall be the responsibility of Shell. Payment shall be made in accordance with instructions provided to Shell

by the Financial Litigation Unit of the United States Attorney's Office for the District of Puerto Rico. Any funds received after 11:00 a.m. (EDT) shall be credited on the next business day. Shell shall provide notice of payment, referencing the USAO File Number, DOJ Case Number 90-5-2-1-08703, and the civil action case name and number, to the United States as provided in Paragraph 112 (Notice).

57. The civil penalty set forth herein, as well as any stipulated penalty incurred pursuant to Section VII, is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and therefore Shell will not treat such penalty payment as tax deductible for purposes of federal or Commonwealth law.

58. Upon the Date of Entry, this Consent Decree will constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001, et seq., and other applicable federal authority. The United States will be deemed a judgment creditor for purposes of collecting any unpaid amounts of the penalty and interest pursuant to this Section, or any stipulated penalty owed pursuant to Section VII.

## **VII. STIPULATED PENALTIES**

59. Shell shall pay stipulated penalties, as provided in this Section, to the United States for each failure by Shell to comply with the terms of this Consent Decree. Stipulated penalties shall be calculated in the amounts specified in this Section. For those provisions where a stipulated penalty of either a fixed amount or 1.2 times the economic benefit of delayed compliance is available, the decision of which alternative to seek is at the discretion of the United States.

**A. Requirements to Permanently Shut Down Refinery Units and Modify Permit**

60. For failure to keep refinery process units and their associated emissions units at the Refinery shut down, as required by Paragraph 11, \$250,000.

61. For failure to relinquish all permit coverage for all refinery process units, including their associated emission units, as required by Paragraph 12.a.:

Period of Delay	penalty
1 <sup>st</sup> day through 30 <sup>th</sup> day after deadline	\$1,000
31 <sup>st</sup> day through 60 <sup>th</sup> day after deadline	\$2,500
Beyond 60 <sup>th</sup> day after deadline	\$5,000

**B. Requirements for Leak Detection and Repair Program**

62. Requirements for Leak Detection and Repair Program:

a. For failure to have the written LDAR program under Paragraph 17: \$3,500 per week.

b. For failure to provide the training required by Paragraph 19: \$10,000 per month,

c. For failure to implement the requirements under Paragraphs 21-23 (Audits): \$5,000 per month per audit.

d. For failure to implement the requirements under Paragraph 26 (Leak Definitions): \$100 per component, up to \$10,000 per month. .

e. For failure to implement the requirements under Paragraph 29 (First Attempt at Repair): \$100 per component, up to \$10,000 per month.

f. For failure to implement the requirements under Paragraphs 31 and 32 (Monitoring Frequency): \$100 per component, up to \$10,000 per month.

- g. For failure to implement the requirements under Paragraphs 33-35 (Electronic Storage and Datalogging): \$5,000 per month.
- h. For failure to implement the requirements under Paragraph 36 (LDAR Personnel): \$3,750 per week.
- i. For failure to implement the requirements under Paragraphs 38 and 39 (Calibration Drift Assessment): \$100 per missed event per day.
- j. For failure to attempt the Drill and Tap method under Paragraph 42: \$5,000 per component.
- k. For failure to comply with the requirement for chronic leakers set forth in Paragraph 41: \$5,000 per valve.
- l. For each valve in a delay of repair status exceeding the number allowed in Paragraph 44 (Extended Maintenance and Delay of Repair), \$2,000 per valve per Calendar Quarter.
- m. If, after the initial audit required under Paragraph 22.a, an EPA or Commonwealth investigator or inspector, or their agent, discovers that Shell failed to include a component in the LDAR program for monitoring within 120 days of the component's documented date of installation: \$1,500 per component.
- n. If, after the initial audit required under Paragraph 22.a, Shell discovers that it failed to include a component in the LDAR program for monitoring within 120 days of the component's documented date of installation: \$175 per component.
- o. For failure to correctly perform EPA Test Method 21, as indicated by the leak percentage ratio determined through comparative monitoring and calculated as described in Paragraph 24:

Ratio process unit valve leak percentage to average valve leak percentage reported (§24)	Stipulated Penalty for 4-monitoring periods
3.0	\$3,333
4.0	\$6,666
5.0	\$12,000
6.0 or greater	\$20,000

p. For failure to comply with the requirements of 40 C.F.R. Part 60, Subpart GGG, as required in Paragraph 16 within nine months after the Date of Lodging:

Period of Non-Compliance	Penalty per day
1 <sup>st</sup> through 30 <sup>th</sup> day	<u>\$750</u>
31 <sup>st</sup> through 60 <sup>th</sup> day	\$1,500
Beyond 60 <sup>th</sup> day	\$2,500 or an amount equal to 1.2 times the economic benefit of delayed compliance whichever is greater.

**C. Requirements for Monitoring, Reporting and Recordkeeping**

63. For failure to submit reports in compliance with Section IV.P., Reporting and Recordkeeping for LDAR requirements, or Section V Reporting and Recordkeeping, per report, per day:

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

**D. Requirements to Pay Civil Penalty**

64. For failure to make any civil penalty payment required by Section VI, Shell shall be liable for: \$15,000 per day, and interest on the amount overdue at the rate specified in 28 U.S.C. § 1961(a).

**E. Requirement to Pay Stipulated Penalties**

65. For failure to pay stipulated penalties as required by Paragraph 67 (Payment of Stipulated Penalties), unless Shell has timely invoked dispute resolution and escrowed the disputed stipulated penalties as provided in Paragraph 68: \$2,500 per day, per penalty, plus interest on the amount overdue at the rate specified in 28 U.S.C. § 1961(a).

**F. General Provisions Related to Stipulated Penalties**

66. Payment of Stipulated Penalties. Stipulated penalties under this Section will begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and will continue to accrue until performance is satisfactorily completed or until the violation ceases.

67. Shell shall pay stipulated penalties upon written demand by the United States no later than 60 days after Shell receives such demand. Stipulated penalties shall be paid to the United States in the manner set forth in Section VI (Civil Penalty). A demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount for each violation (as can be best estimated), the method by which it was calculated, and the basis for the demand. The United States may, in its unreviewable discretion, waive payment of all or any portion of stipulated penalties that accrue under this Consent Decree.

68. If Shell disputes its obligation to pay a demanded stipulated penalty, it may avoid the imposition of a stipulated penalty for failure to pay a stipulated penalty under Paragraph 62 by invoking the dispute resolution provisions of Section XI within the time provided in Paragraph 67 for payment of stipulated penalties and by placing the disputed amount demanded in a commercial escrow account pending resolution of the matter. If the dispute is ultimately resolved in Shell's favor, the escrowed amount plus accrued interest shall be returned to Shell; otherwise, the United States shall be entitled to the amount that was ultimately determined to be due, plus the interest that has accrued in the escrow account on such amount, with the balance, if any, returned to Shell. The payment of stipulated penalties shall not alter in any way Shell's obligation to comply with the other requirements of this Consent Decree. Where a violation of this Consent Decree is also a violation of the Clean Air Act, its regulations, a Commonwealth law, a Commonwealth regulation, or a permit, the United States will not seek civil penalties where stipulated penalties have already been secured from Shell for the same violations, nor will the United States demand stipulated penalties from Shell for a Consent Decree violation if litigation under the Clean Air Act has been commenced against Shell for the same violations.

#### **VIII. INTEREST**

69. Shell shall be liable for interest on the unpaid balance of the civil penalty specified in Section VI, and/or interest on any unpaid balance of stipulated penalties to be paid in accordance with Section VII. All such interest shall accrue at the rate established pursuant to 28 U.S.C. § 1961(a) – i.e., a rate equal to the coupon issue yield equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the Date of Lodging of this Consent Decree. Interest shall be computed daily and compounded annually. Interest shall be calculated from the date payment is

due through the date of actual payment. For purposes of this Paragraph, interest will cease to accrue on the amount of any stipulated penalty payment placed into an interest-bearing escrow account as provided by Paragraph 68.

#### **IX. RIGHT OF ENTRY**

70. Any authorized representative of EPA, upon presentation of credentials, shall have a right to enter the Facility at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting equipment and systems, and inspecting and copying all records maintained by Shell pursuant to this Consent Decree or deemed necessary by EPA to verify compliance with the Decree. Except where other time periods are specifically noted in this Consent Decree, Shell shall retain such records for the period of this Consent Decree. Nothing in this Consent Decree shall limit the authority of EPA to conduct tests, inspections, or other activities under any statutory or regulatory authority.

#### **X. FORCE MAJEURE**

71. For purposes of this Consent Decree, a “Force Majeure Event” shall mean an event that has been or will be caused by circumstances beyond the control of Shell, its contractors, or any entity controlled by Shell that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite Shell’s best efforts to fulfill the obligation. “Best efforts to fulfill the obligation” include using best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay or violation is minimized to the greatest extent possible.

72. Making a Claim of Force Majeure. Shell may make a claim that delay or non-compliance should be excused due to Force Majeure as provided in this Paragraph. For any event that occurs, has occurred, or fails to occur that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, for which Shell intends to make a claim of Force Majeure, Shell shall so notify the United States in writing as soon as practicable, but in no event later than twenty (20) business days following the date Shell first knew, or by the exercise of due diligence should have known, that the event caused or may cause such delay or violation. In this notice of claim, Shell shall reference this Paragraph and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by Shell to prevent or minimize the delay or violation, the schedule by which Shell proposes to implement those measures, and Shell's rationale for attributing a delay or violation to a Force Majeure Event. Shell shall adopt all reasonable measures to avoid or minimize such delays or violations. Shell shall be deemed to know of any circumstance which Shell, its contractors, or any entity controlled by Shell knew or should have known.

73. Failure to Make Timely Claim. If Shell materially fails to comply with the timeliness requirement of this Section, the United States may void Shell's claim for Force Majeure as to the specific event for which Shell has failed to comply with such requirement.

74. United States' Response. The United States shall notify Shell in writing regarding Shell's claim of Force Majeure as soon as reasonably practicable.

a. Agreement. If the United States agrees that a delay in performance has been or will be caused by a Force Majeure Event, and that Shell could not have prevented the delay by the exercise of due diligence, the United States and Shell shall stipulate to an extension

of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Paragraph 116 (Modification). Shell shall not be liable for stipulated penalties for the period of any such delay.

b. Disagreement. If the United States does not accept Shell's claim of Force Majeure, or if the United States and Shell cannot agree on the length of the delay actually caused by the Force Majeure Event, or the extent of relief required to address the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XI (Dispute Resolution).

75. Burden of Proof. In any dispute regarding Force Majeure, Shell shall bear the burden of proving that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. Shell shall also bear the burden of proving that Shell gave the notice required by this Section and the burden of proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

76. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of Shell's obligations under this Consent Decree, or Shell's financial inability to perform any obligations under this Consent Decree, shall not constitute Force Majeure Events.

77. Potential Force Majeure Events. The Parties agree that, provided that Shell has satisfied all requirements in Paragraphs 71-75, and other than provided in Paragraph 76, the kinds of events listed below are among those that could qualify as Force Majeure Events within

the meaning of this Section: construction, labor, or equipment delays; acts of God; and acts of war or terrorism.

78. As part of the resolution of any matter submitted to this Court under Section XI (Dispute Resolution) regarding a claim of Force Majeure, the United States and Shell by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any Force Majeure Event agreed to by the United States or approved by the Court. Shell shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

#### **XI. RETENTION OF JURISDICTION/DISPUTE RESOLUTION**

79. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and adjudicating all disputes between the United States and Shell that may arise under the provisions of this Consent Decree until the Decree terminates in accordance with Section XIV.

80. The dispute resolution procedure set forth in this Section shall be available to resolve any and all disputes arising under this Consent Decree, provided that the Party making such application has made a good faith attempt to resolve the matter with the other Party.

81. The dispute resolution procedure required herein shall be invoked by one Party giving to the other written notice of a dispute pursuant to this Section. The notice shall describe the nature of the dispute, and shall state the noticing Party's position with regard to such dispute.

82. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not

extend beyond 90 days from the date of the first meeting between representatives of the Parties, unless the Parties agree in writing that this period should be extended.

83. In the event that the Parties are unable to reach agreement during the informal negotiation period pursuant to Paragraph 82, the United States shall provide Shell with a written summary of its position regarding the dispute. The position advanced by the United States shall be considered binding unless, within 45 days of Shell's receipt of the written summary of the United States' position, Shell files with the Court a petition that describes the nature of the dispute. The United States shall respond to the petition within 60 days of the petition's filing. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their initial filings with the Court under this Paragraph, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular issue or issues in dispute.

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

## **XII. EFFECT OF SETTLEMENT**

85. Definitions. For purposes of this Section, the following definitions apply:

- a. "Applicable NSR/PSD Requirements" shall mean:

i. PSD requirements at Part C of Subchapter I of the Act, 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. §§ 52.21 and 51.166; the portions of the applicable SIPs and related rules adopted as required by 40 C.F.R. §§ 51.165 and 51.166;

ii. Title V regulations that implement, adopt, or incorporate the specific regulatory requirements identified above; any applicable federally-enforceable Commonwealth regulations that implement, adopt, or incorporate the specific federal regulatory requirements identified above; any Title V permit provisions that implement, adopt, or incorporate the specific regulatory requirements identified above; and

iii. any applicable Commonwealth laws or regulations that implement, adopt, or incorporate the specific federal regulatory requirements identified above regardless of whether such laws or regulations have been formally approved by EPA as part of the applicable State Implementation Plan.

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

c. “Benzene Waste NESHAP Requirements” shall mean the requirements imposed by the National Emission Standard for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF, and any applicable Commonwealth regulations that implement, adopt or incorporate the Benzene Waste NESHAP.

d. “LDAR Requirements” shall mean the requirements relating to equipment in light liquid service and/or gas/vapor service set forth at 40 C.F.R. Part 60, Subpart GGG; 40 C.F.R. Part 61, Subparts J and V; and 40 C.F.R. Part 63, Subparts F, H and CC; and any applicable Commonwealth regulations or State Implementation Plan requirements that implement, adopt or incorporate those federal regulations or set similar standards.

e. “NESHAP Subpart CC” shall mean the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) From Petroleum Refineries promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), and found at 40 C.F.R. Part 63, Subpart CC.

f. “NESHAP Subpart G” shall mean the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for the Synthetic Organic Chemical Manufacturing Industry for Processing Vents, Storage Vessels, Transfer Operations, and Wastewater promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), and found at 40 C.F.R. Part 63, Subpart G.

g. “NESHAP Subpart UUU” shall mean the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), and found at 40 C.F.R. Part 63, Subpart UUU, §§ 63.1560 through 63.1579.

h. “CFC Regulations” shall mean the Chlorofluorocarbon requirements promulgated pursuant to Sections 608 and 114 of the Act, 42 U.S.C. §§ 7671g and 7414, and found at 40 C.F.R. Part 82, Subpart F, §§ 82.150 through 82.169.

86. Liability Resolution Regarding the Applicable NSR/PSD Requirements. With respect to emissions of the following pollutants from the following units, entry of this Consent

Decree shall resolve all civil liability of Shell to the United States for violations of the Applicable NSR/PSD Requirements related to NO<sub>x</sub> and SO<sub>2</sub> resulting from the construction or modification of the heaters and boilers at the Refinery where such violations commenced and ceased prior to the Date of Lodging of this Consent Decree.

87. Reservation of Rights Regarding Applicable NSR/PSD Requirements: Release for Violations Continuing After the Date of Lodging Can Be Rendered Void. Any release of liability in the previous Paragraph during the period between the Date of Lodging and the post lodging date of compliance shall be rendered void if Shell fails to materially comply with the corresponding obligations and requirements of Paragraph 11 (relating to permanent shutdown of Refinery units). Such releases shall not be rendered void if Shell remedies such material failure and pays all stipulated penalties due as a result of such material failure.

88. Exclusions from Release Coverage Regarding Applicable NSR/PSD Requirements: Construction and/or Modification Not Covered. Notwithstanding the resolution of liability in Paragraph 86, nothing in this Consent Decree precludes the United States or the Commonwealth from seeking injunctive relief, penalties, or other appropriate relief from Shell for violations by Shell of the Applicable NSR/PSD Requirements resulting from: (i) construction or modification that commenced prior to the Date of Lodging of this Consent Decree, if the resulting violations relate to pollutants or units not covered by the Decree; or (ii) any construction or modification that commences after the Date of Lodging.

89. Evaluation of Applicable NSR/PSD Requirements. Increases in emissions from units covered by this Consent Decree, which result from the Post-Lodging construction or modification of any units within the Refinery, are beyond the scope of the release in Paragraph

86, and Shell is not relieved of its obligation to evaluate any such increases in accordance with the Applicable NSR/PSD Requirements.

90. Resolution of Liability Regarding Applicable NSPS Requirements. With respect to emissions of SO<sub>2</sub> from all fuel gas combustion devices, including flaring devices, and the sulfur recovery plant, including the sulfur pit at the Refinery, entry of this Consent Decree shall resolve all civil liability of Shell to the United States for violations of the Applicable NSPS Subparts A and J Requirements where such violations commenced and ceased prior to the Date of Lodging.

91. Reservation of Rights Regarding Applicable NSPS Requirements: Release for Violations Continuing After the Date of Lodging Can Be Rendered Void. Any release of liability in the previous Paragraph shall be rendered void if Shell fails to comply with the obligations and requirements of Paragraph 11 (relating to permanent shutdown of refinery process units). Such releases under the previous Paragraph shall not be rendered void if Shell remedies such failure and pays all stipulated penalties due as a result of such failure.

92. Resolution of Liability Regarding Benzene Waste NESHAP Requirements. Entry of this Consent Decree shall resolve all civil liability of Shell to the United States for violations of the statutory and regulatory requirements set forth in subparagraphs a. and b. at the Refinery that commenced and ceased prior to the Date of Lodging.

a. Benzene Waste NESHAP. The National Emission Standard for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF, promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), including any federal regulation that adopts or incorporates the requirements of Subpart FF by express reference, but only to the extent of such adoption or incorporation;

b. Any applicable, federally-enforceable Commonwealth regulations that implement, adopt, or incorporate the specific federal regulatory requirements identified in subparagraph a. above.

93. Resolution of Liability Regarding LDAR Requirements. Entry of this Consent Decree shall resolve all civil liability of Shell to the United States for violations of the statutory and regulatory requirements set forth in subparagraphs a. and b. at the Refinery or the Terminal that (i) commenced and ceased prior to the Date of Lodging, or (ii) commenced prior to the Date of Lodging and continued past the Date of Lodging, provided that the events giving rise to such violations are identified by Shell in its Initial Compliance Audit Report submitted pursuant to Paragraph 22 and corrected by Shell as required under Paragraph 24.

a. LDAR Requirements. For all equipment in light liquid and/or gas/vapor service, the LDAR requirements promulgated by EPA pursuant to Sections 111 and 112 of the Clean Air Act and codified at 40 C.F.R. Part 60, Subparts VV and GGG, 40 C.F.R. Part 61, Subparts J and V, and 40 C.F.R. Part 63, Subparts F, H, and CC;

b. Any applicable, federally-enforceable Commonwealth regulations or permits that implement, adopt, or incorporate the specific regulatory requirements identified in subparagraph a. above; and

94. Reservation of Rights Regarding Benzene Waste Operations NESHAP Requirements. Notwithstanding the resolution of liability in Paragraph 92, nothing in this Consent Decree precludes the United States from seeking from Shell injunctive and/or other equitable relief or civil penalties for violations by Shell of Benzene Waste Operations NESHAP requirements at the Refinery that commenced after the Date of Lodging.

95. Reservation of Rights Regarding LDAR Requirements. Notwithstanding the resolution of liability in Paragraph 93, nothing in this Consent Decree precludes the United States from seeking from Shell injunctive and/or other equitable relief or civil penalties for violations by Shell of LDAR requirements at the Facility that (i) commenced prior to the Date of Lodging and continued after the Date of Lodging if Shell fails to identify and correct such violations as required by Paragraphs 22 and 24, or (ii) commenced after the Date of Lodging.

96. Resolution of Liability Regarding NESHAP Subparts CC and G. Entry of this Consent Decree shall resolve all civil liability of Shell to the United States for violations of the “Storage vessel provisions” in 40 C.F.R. § 63.646 of NESHAP Subpart CC, which refers to and requires compliance with Sections 63.119 through 63.121 of NESHAP Subpart G (except as provided in Section 63.646(b) through (l) of NESHAP Subpart CC), at the Refinery and the Terminal that commenced and ceased prior to the Date of Lodging.

97. Resolution of Liability Regarding NESHAP Subpart UUU. Entry of this Consent Decree shall resolve all civil liability of Shell to the United States for violations of 40 C.F.R. §§ 63.1574(a)(2), 63.1574(a)(3)(ii), and 63.1571(a) of the NESHAP Subpart UUU at the Refinery’s sulfur recovery unit (SRU) and catalytic reformer unit (CRU) that commenced and ceased prior to the Date of Lodging.

98. Resolution of Liability Regarding CFC Regulations. Entry of this Consent Decree shall resolve all civil liability of Shell to the United States for violations of 40 C.F.R. § 82.156(i)(5) of the CFC Regulations for comfort cooling units at the Refinery that commenced and ceased prior to the Date of Lodging.

99. Resolution of Liability Regarding Db Regulations. Entry of this Consent Decree shall resolve all civil liability of Shell to the United States for violations of 40 C.F.R. §§ 60.40b –

60.49b (Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units) with respect to Boilers #2, #3, and #4 at the Refinery that commenced and ceased prior to the Date of Lodging.

100. Audit Policy. Nothing in this Consent Decree is intended to limit or disqualify Shell, on the grounds that information was not discovered and supplied voluntarily, from seeking to apply EPA's Audit Policy to any violations or noncompliance that Shell discovers during the course of any investigation, audit, or enhanced monitoring that Shell is required to undertake pursuant to this Consent Decree.

101. Claim/Issue Preclusion. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, penalties, or other appropriate relief relating to Shell for violations of the PSD/NSR, NSPS, NESHAP, and/or LDAR requirements not identified in this Section:

a. Shell shall not assert, and may not maintain, in any subsequent administrative, civil, or criminal action commenced by the United States any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting. Nor may Shell assert or maintain any other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding should have been brought in the instant case. Nothing in the preceding sentences is intended to affect the ability of Shell to assert that the claims are deemed resolved by virtue of this Section.

b. Except as set forth in subparagraph a., above, the United States may not assert or maintain that this Consent Decree constitutes a waiver or determination of, or otherwise obviates, any claim or defense whatsoever, or that this Consent Decree constitutes acceptance by

Shell of any interpretation or guidance issued by EPA related to the matters addressed in this Consent Decree.

102. Imminent and Substantial Endangerment. Nothing in this Consent Decree shall be construed to limit the authority of the United States to undertake any action against any person, including Shell, to abate or correct conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

### **XIII. GENERAL PROVISIONS**

103. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Shell of its obligations to comply with all otherwise applicable federal and Commonwealth laws and regulations, including, but not limited to, more stringent standards. Nothing in this Consent Decree shall be construed to prohibit or prevent the United States or the Commonwealth of Puerto Rico from developing, implementing, and enforcing more stringent standards subsequent to the Date of Lodging through rulemaking, the permit process, or as otherwise authorized or required under federal or Commonwealth laws and regulations. Except as provided in Section XII (Effect of Settlement) and Paragraph 68, nothing contained in this Consent Decree shall be construed to prevent or limit any power of the United States or the Commonwealth of Puerto Rico to seek or obtain other remedies or sanctions due to Shell's violation of this Consent Decree or of the statutes and regulations upon which this Consent Decree is based, or for Shell's violation of any applicable provision of law.

104. Post-Permit Violations. Nothing in this Consent Decree shall be construed to prevent or limit the right of the United States or the Commonwealth to seek injunctive or monetary relief for violations of limits that have been incorporated into permits pursuant to this Consent Decree.

105. Failure of Compliance. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Shell's complete compliance with the terms of the Decree will result in compliance with the provisions of the CAA or comparable Commonwealth statutes and regulations. Notwithstanding the review or approval by EPA of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Shell shall remain solely responsible for compliance with the terms of this Consent Decree, all applicable permits, and all applicable federal and Commonwealth laws and regulations, except as provided in Paragraph 7 and Section X (Force Majeure).

106. Changes to Law. In the event that during the life of this Consent Decree there are changes in the statutes or regulations that provide the underlying basis for the Consent Decree such that Shell would not otherwise be required to perform any of the obligations herein or would have the option to undertake or demonstrate compliance in an alternative or different manner, Shell may petition the Court for relief from any such requirements, in accordance with Rule 60 of the Federal Rules of Civil Procedures. However, if Shell applies to the Court for relief under this Paragraph, the United States reserves the right to seek to void all or part of the Resolution of Liability reflected in Section XII (Effect of Settlement). Nothing in this Paragraph is intended to enlarge the Parties' rights under Rule 60, nor does this Paragraph confer on any Party any independent basis, outside of Rule 60, for seeking such relief.

107. Service of Process. Shell hereby 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 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The

persons identified by Shell in Paragraph 112 (Notice) are authorized to accept service of process with respect to all matters arising under or relating to this Consent Decree.

108. Post-Lodging, Pre-Entry Obligations. Obligations of Shell under this Consent Decree to perform duties after the Date of Lodging but prior to the Date of Entry shall be legally enforceable only on or after the Date of Entry. Liability for stipulated penalties, if applicable, shall accrue for violations of such obligations, and the United States may demand payment as provided in the Decree, provided that stipulated penalties accruing between the Date of Lodging and the Date of Entry may not be collected unless and until this Decree is entered by the Court.

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

110. Public Documents. All information and documents submitted by Shell pursuant to this Consent Decree shall be subject to public inspection in accordance with applicable federal law, unless subject to legal privileges or protection, or identified and supported as trade secrets or confidential business information in accordance with the applicable federal statutes or regulations.

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

112. Notice. Unless otherwise provided herein, notifications to or communications between the Parties shall be deemed submitted on the date they are postmarked and sent by U.S. Mail or overnight mail, postage prepaid, except for notices under Section X (Force Majeure) and Section XI (Retention of Jurisdiction/Dispute Resolution), which shall be sent by overnight mail or by certified or registered mail, return receipt requested. By agreement between the Parties, Shell may submit these materials electronically. Notifications to or communications mailed to Shell shall be deemed to be received on the earlier of (i) actual receipt by Shell or (ii) receipt of an electronic version sent to the addressees set forth in this Paragraph. Each report, study, notification, or other communication of Shell shall be submitted as specified in this Consent Decree. If the date for submission of a report, study, notification, or other communication falls on a Saturday, Sunday, or federal or Commonwealth holiday, the report, study, notification, or other communication will be deemed timely if it is submitted the next Working Day. Except as otherwise provided herein, all reports, notifications, certifications, or other communications required or allowed under this Consent Decree shall be addressed as follows:

As to the United States:

Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
Reference Case No. 90-5-2-1-08703

Director  
Air Enforcement Division  
Office of Civil Enforcement (2242A)  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

and an electronic copy, in .pdf format, to:

Director  
Air Enforcement Division  
Office of Civil Enforcement  
c/o Matrix New World Engineering, Inc.  
120 Eagle Rock Ave., Suite 207  
East Hannover, New Jersey 07936-3159

and an electronic copy, in .pdf format, to:

csullivan@matrixnewworld.com

As to EPA Region 2:

Harish Patel  
United States Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

And

Teresita Rodriguez  
U.S. Environmental Protection Agency  
Caribbean Environmental Protection Division  
Centro Europa Building  
1492 Ponce de Leon Avenue  
Suite 417  
Santurce, Puerto Rico 00907-4127

As to Shell:

Mike Gallagher  
Regional Manager HSSE Americas  
Shell Downstream  
One Shell Plaza – Room 1248B  
Houston, TX 77002

And an electronic copy to [Pierre.espejo@shell.com](mailto:Pierre.espejo@shell.com) and [jdomike@wallaceking.com](mailto:jdomike@wallaceking.com)

113. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address. In addition, the nature and frequency of reports required by this Consent Decree may be

modified by mutual consent of the Parties. The consent of the United States to such modification must be in the form of a written notification from EPA, but need not be filed with the Court to be effective.

114. Approvals. All EPA approvals or comments required under this Consent Decree shall be in writing.

115. Paperwork Reduction Act. The information required to be maintained or submitted pursuant to this Consent Decree is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

116. Modification. This Consent Decree contains the entire agreement of the Parties and will not be modified by any prior oral or written agreement, representation, or understanding. Prior drafts of this Consent Decree will not be used in any action involving the interpretation or enforcement of the Consent Decree. Non-material modifications to this Consent Decree will be effective when signed by the United States and Shell. The United States will file non-material modifications with the Court on a periodic basis. For purposes of this Paragraph, non-material modifications include, but are not limited to, modifications to the frequency of reporting obligations and modifications to schedules that do not extend the date for compliance with emissions limitations following the installation of control equipment, provided that such changes are agreed upon in writing between the United States and Shell. Material modifications to this Consent Decree will be in writing, signed by the United States and Shell, and will be effective upon approval by the Court. Specific provisions in this Consent Decree that govern specific types of modifications shall be effective as set forth in the specific provision governing the modification.

117. Effect of Shutdown. The permanent shutdown of all Terminal Equipment and the surrender of all permits for that Equipment shall be deemed to satisfy all requirements of this Consent Decree applicable to that Equipment on and after the later of: (i) the date of the shutdown of the equipment; or (ii) the date of the surrender of all permits applicable to the equipment. The permanent shutdown of the Terminal and the surrender of all air permits for the Terminal shall be deemed to satisfy all requirements of this Consent Decree applicable to the Terminal on and after the later of: (i) the date of the shutdown of the Terminal; or (ii) the date of the surrender of all air permits.

#### **XIV. TERMINATION**

118. Certification of Completion: Applicable Sections. Prior to moving for termination under Paragraph 123, Shell may seek to certify completion of one or more of the following Sections of the Consent Decree.

a. Section IV.A. Permanent Shutdown of Refinery Process Units and Modification of Permit.

b. Sections IV.C. LDAR.

119. Certification of Completion: Shell Actions. If Shell concludes that any of the subsections of the Consent Decree identified in Paragraph 118 have been completed, Shell may seek certification of completion by submitting a written report to EPA describing the activities undertaken and certifying that the applicable Section(s) have been completed in full satisfaction of the requirements of this Consent Decree, and that Shell is in substantial and material compliance with all of the other requirements of the Consent Decree. The report will contain the following statement, signed by a responsible corporate official of Shell.

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

120. Certification of Completion: EPA Actions. Upon receipt of Shell’s certification, EPA will notify Shell whether the requirements set forth in the applicable Section have been completed in accordance with this Consent Decree.

a. If EPA concludes that the requirements have not been fully complied with, EPA will notify Shell as to the activities that must be undertaken to complete the applicable Section of the Consent Decree. Shell will perform all activities described in the notice, subject to its right to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution); and/or

b. If EPA concludes that the requirements of the applicable Section have been completed in accordance with this Consent Decree, EPA will so certify in writing to Shell. This certification will constitute the certification of completion of the applicable Section for purposes of this Consent Decree. The parties recognize that ongoing obligations under such Sections remain and necessarily continue (e.g., reporting, recordkeeping, training, auditing requirements), and that Shell’s certification is that it is in current compliance with all such obligations.

121. Certification of Completion: No Impediment to Stipulated Penalty Demand. Nothing in Paragraphs 119 and 120 will preclude the United States from seeking stipulated penalties for a violation of any of the requirements of the Consent Decree regardless of whether a Certification of Completion has been issued under Paragraph 120.b. In addition, nothing in

Paragraph 120 will permit Shell to fail to implement any ongoing obligations under the Consent Decree regardless of whether a Certification of Completion has been issued.

122. Termination: Conditions Precedent. This Consent Decree will be subject to termination upon motion by the Parties or upon motion by Shell alone under the conditions identified in this Paragraph. Prior to seeking termination, Shell must have completed and satisfied all of the following requirements of this Consent Decree:

a. Compliance with all provisions contained in this Consent Decree. Such compliance may be established for specific parts of the Consent Decree in accordance with Paragraphs 118-120;

b. Payment of all penalties and other monetary obligations due under the terms of the Consent Decree;

c. Relinquishment of permit coverage for all refinery process units, including their associated emission units, and application for and receipt of all federally-enforceable operating permits for the Facility required pursuant to Paragraph 12.b., which incorporate the standards established under this Consent Decree.

123. Termination: Procedure. At such time as Shell believes that it has satisfied the requirements for termination set forth in Paragraph 122, Shell will certify such compliance and completion to the United States in accordance with the certification language of Paragraph 119. Unless the United States objects in writing with specific reasons within one-hundred twenty (120) days of receipt of Shell's certification under this Paragraph, the Court may upon motion by Shell order that this Consent Decree be terminated. If the United States objects to the certification by Shell, then the matter may be submitted to the Court for resolution under Section

XI (Retention of Jurisdiction/Dispute Resolution). In such case, Shell will bear the burden of proving that this Consent Decree should be terminated.

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

- a. Section IV.A. Permanent Shutdown of Refinery Process Units and Modification of Permit.
- b. Section IV.C LDAR - all equipment are “affected facilities.”
- c. Section IV.E. Prohibition on Use of Emission Reductions.

**XV. SIGNATORIES**

Each of the undersigned representatives certifies that he or she is fully authorized to enter into this Consent Decree on behalf of the applicable Party, and to execute and to bind such Party to this Consent Decree.

SO ORDERED:

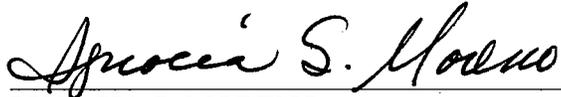
Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
United States District Judge

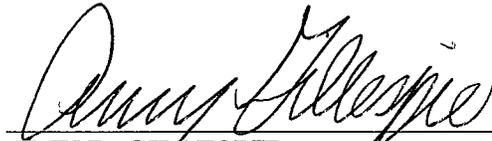
**WE HEREBY CONSENT** to the entry of this Consent Decree in United States v. Shell Chemical Yabucoa, Inc., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

**FOR PLAINTIFF THE UNITED STATES OF AMERICA:**

Date: 1/12/10

  
IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Date: 12.23.09

  
AMY R. GILLESPIE  
Trial Attorney, Bar No. G01001  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611

ROSA E. RODRIGUEZ-VELEZ  
United States Attorney

ISABEL MUNOZ  
Assistant United States Attorney  
P.R. Bar No. 128302  
District of Puerto Rico  
Torre Chardon, Suite 1201  
350 Carlos Chardon Avenue  
San Juan, PR 00918  
Tel. (787) 766-5656  
Fax (787) 766-6219

**WE HEREBY CONSENT** to the entry of this Consent Decree in United States . v. Shell Chemical Yabucoa Inc., subject to the public notice and comment requirements of 28 C.F.R. § 50.7

**FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY:**

Date: 3/30/10



CYNTHIA GILES

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

Date: 3/22/10



ADAM M. KUSHNER

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

Date: 3/12/10



PAMELA MAZAKAS

Acting Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Washington, D.C. 20460

Date: 2/2/10



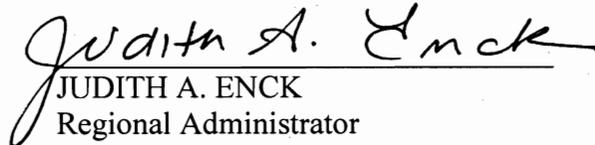
TERESA DYKES

Attorney, Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Washington, D.C. 20460

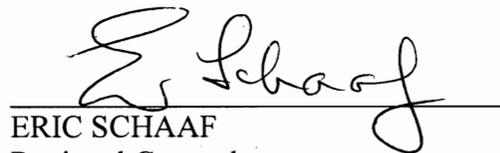
**WE HEREBY CONSENT** to the entry of this Consent Decree in United States v. Shell Chemical Yabucoa, Inc., subject to the public notice and comment requirements of 28 C.F.R. § 50.7

**FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY,  
REGION 2:**

Date: 3/29/10

  
\_\_\_\_\_  
JUDITH A. ENCK  
Regional Administrator  
United States Environmental Protection Agency  
Region 2  
New York, New York 10007

Date: 3/18/10

  
\_\_\_\_\_  
ERIC SCHAAF  
Regional Counsel  
United States Environmental Protection Agency  
Region 2  
New York, New York 10007

**WE HEREBY CONSENT** to the entry of this Consent Decree in United States v. Shell Chemical Yabucoa, Inc., subject to the public notice and comment requirements of 28 C.F.R. § 50.7

FOR SHELL CHEMICAL YABUCOA, INC.:



Juan M. López  
Puerto Rico Country Chairman Representative  
Shell Chemical Yabucoa, Inc.  
Site Manager  
Shell Chemical Yabucoa, Inc.  
P. O. Box 186  
Yabucoa, Puerto Rico 00767-0186

12/17/2009

Date