IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, Plaintiff and STATE OF WYOMING, Plaintiff-Intervenor, v. HERMES CONSOLIDATED, INC. dba Wyoming Refining Company Defendant.	)	Civil No. 09CV 028-J

CONSENT DECREE

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CONSENT DECREE

WHEREAS, plaintiff, the United States of America ("Plaintiff" or "the United States"), by the authority of the Attorney General of the United States and through his undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency ("EPA"), is simultaneously filing a complaint and lodging this Consent Decree with the consent of defendant, Hermes Consolidated, Inc., dba Wyoming Refining Company ("the Company"), concerning the Company's petroleum refinery in Newcastle, Wyoming ("the Refinery");

WHEREAS, Plaintiff-Intervenor, the State of Wyoming, is filing a Complaint in Intervention and is moving to intervene in this action;

WHEREAS, the complaints allege that the Company has violated and continues to violate the following statutory and regulatory provisions:

1) Prevention of Significant Deterioration ("PSD") requirements found at Part C of Subchapter I of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the "PSD Rules") and "Plan Requirements for Non Attainment Areas" at Part D of Subchapter I of the Act, 42 U.S.C. §§ 7502-7503 and the regulations promulgated thereunder at 40 C.F.R. § 51.165(a) and (b) and at Title 40, Part 51, Appendix S and at 40 C.F.R. § 52.24 ("PSD/NSR Regulations"), for certain heaters, boilers (for NO_x and SO_2) and the Refinery's fluid catalytic cracking unit catalyst regenerator (for NO_x, SO_2, CO and PM);

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

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

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

WHEREAS, the United States and the State of Wyoming also specifically allege upon information and belief, the Company has been and/or continues to be in violation of the State Implementation Plan ("SIP") and other state rules adopted by the State of Wyoming , including such plans or rules that implement, adopt or incorporate the above-described Federal requirements;

WHEREAS, the United States is engaged in a nation-wide federal strategy for achieving agreements with petroleum refineries to achieve across-the-board reductions in emissions;

WHEREAS, the Company denies and continues to deny the alleged violations and maintains that it has been and remains in compliance with all applicable statutes, regulations and other requirements and is not liable for civil penalties or injunctive relief, but in the interest of settlement and to accomplish its objectives of cooperatively reconciling the goals of the United States, the State of Wyoming, and the Company under the Clean Air Act and the corollary state statutes, the Company has agreed to undertake the installation of air pollution control equipment and to implement certain air pollution management practices at the Refinery to reduce air emissions;

WHEREAS, notwithstanding the foregoing reservations, the Parties agree that entry of the Consent Decree without litigation is the most appropriate means of resolving this matter;

WHEREAS, the Company represents that the affirmative relief and environmental projects identified in Section V of this Consent Decree will reduce annual emissions from the Refinery of nitrogen oxides by approximately 20 tons per year and of sulfur dioxide by approximately 788 tons per year;

WHEREAS, the Company has waived any applicable federal or state requirements of statutory notice of the alleged violations;

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

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law and upon the consent and agreement of the Parties to the Consent Decree, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1) This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367(a). In addition, this Court has jurisdiction over the subject matter of this action pursuant to §§ 113(b) and 167 of the CAA, 42 U.S.C. §§ 7413(b) and 7477, § 109(c) of CERCLA, 42 U.S.C. § 9609(c), and § 325(b) of EPCRA, 42 U.S.C. § 11045(b). The United States' and State of Wyoming's complaints state claims upon which relief may be granted for injunctive relief and civil penalties against the Company under the Clean Air Act, CERCLA and EPCRA. Authority to bring this suit is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519 and § 305 of the CAA, 42 U.S.C. § 7605.

2) Venue is proper in the District of Wyoming pursuant to § 113(b) of the CAA, 42 U.S.C. § 7413(b), section 113(b) of CERCLA, 42 U.S.C. § 9613(b), section 325(b)(3) of EPCRA, 42. U.S.C. § 11045(b)(3), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a). The Company consents to the personal jurisdiction of this Court and waives any objections to venue in this District.

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

II. APPLICABILITY AND BINDING EFFECT

4) The provisions of the Consent Decree shall apply to the Refinery. The provisions of the Consent Decree shall be binding upon the United States, the State of Wyoming, and the Company, its successors and assigns.

5) The Company agrees not to contest the validity of the Consent Decree in any subsequent proceeding to implement or enforce its terms.

6) Effective from the Date of Entry of the Consent Decree until its termination, the Company agrees that its Refinery is covered by this Consent Decree. Effective from the Date of Lodging of the Consent Decree, the Company shall give written notice of the Consent Decree to any successors in interest prior to the transfer of ownership or operation of any portion of the Refinery and shall provide a copy of the Consent Decree to any successor in interest. The Company shall notify the United States and the State of Wyoming in accordance with the notice provisions set forth in Paragraph 155 (Notice), of any successor in interest at least thirty (30) days prior to any such transfer.

7) In the event that the Company sells or otherwise assigns any of its right, title or interest in the Refinery prior to the termination of this Consent Decree, the conveyance shall not release the Company from any obligation imposed by this Consent Decree unless the party to whom the right, title or interest has been transferred agrees in writing to fulfill all applicable Consent Decree obligations.

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

III. OBJECTIVES

9) It is the purpose of the Parties in this Consent Decree to further the objectives of the Clean Air Act and the Wyoming Environmental Quality Act and the Wyoming State Implementation Plan.

IV. DEFINITIONS

10) Unless otherwise defined herein, terms used in the Consent Decree shall have the meaning given to those terms in the Clean Air Act and the implementing regulations promulgated thereunder. The following terms used in the Consent Decree shall be defined for

purposes of the Consent Decree and the reports and documents submitted pursuant thereto as follows:

A. "Alternative Monitoring Plan" or "AMP" shall mean a plan for alternative monitoring procedures or technologies developed for the purpose of demonstrating compliance with New Source Performance Standards and approved pursuant to 40 CFR § 60.13(i).

B. "Applicable Federal and State Agencies" shall mean EPA and WDEQ.

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

D. "CEMS" shall mean a continuous emissions monitoring system.

E. "The Company" shall mean Hermes Consolidated, Inc., dba Wyoming Refining Company, and its successors and assigns.

F. "Consent Decree" or "Decree" shall mean this Consent Decree, including any and all appendices attached to this Consent Decree.

G. "CO" shall mean carbon monoxide.

H. "Date of Lodging" and "Date of Lodging of the Consent Decree" shall mean the date the Consent Decree is filed with the Clerk of the Court for the United States District Court for the District of Wyoming.

I. "Date of Entry of the Consent Decree" and "Entry" shall mean the date the Consent Decree is entered by the Clerk of the Court for the United States District Court for the District of Wyoming after being signed by the United States District Court Judge.

J. "Day" or "days" as used herein shall mean a calendar day or days.

K. "EPA" shall mean the United States Environmental Protection Agency.

L. "FCCU" shall mean the Refinery's fluidized catalytic cracking unit, its regenerator and associated CO boiler(s).

M. "Flaring" shall mean the combustion of refinery-generated gases in a Flaring Device.

N. "Flaring Device" shall mean a device used to safely control (through combustion) any excess volume of a refinery-generated gas. The Flaring Device currently in service at the Refinery is the Plant Flare designated as H-10.

O. "Flaring Incident" shall mean the continuous or intermittent flaring of refinery-generated gases in a Flaring Device that results in the emission of sulfur dioxide equal to, or greater than five hundred (500) pounds in a 24-hour period; provided, however, that if five-hundred (500) pounds or more of sulfur dioxide have been emitted in a twenty-four (24) hour period and Flaring continues into subsequent, contiguous, non-overlapping twenty-four (24) hour period(s), each period of which results in emissions equal to, or in excess of five-hundred (500) pounds of sulfur dioxide, then only one Flaring Incident shall have occurred. Subsequent, contiguous, non-overlapping periods are measured from the initial commencement of Flaring within the Flaring Incident.

P. "Fuel Oil" shall mean any liquid fossil fuel with sulfur content of greater than 0.05% by weight.

Q. "Full Burn Operation" shall mean, during periods of Normal Operation of the FCCU, when essentially all of the CO produced in the FCCU regenerator is

converted to CO_2 inside the regenerator and there is O_2 (greater than 0.5% by volume as measured on a daily basis) present in the regenerator flue gas.

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

S. "Natural Gas Curtailment" shall mean a restriction imposed by a natural gas supplier, which limits the Company's ability to purchase natural gas.

T. "Normal Operation" shall mean all periods of operation except startup, shutdown, or malfunction.

U. "NO_x" shall mean nitrogen oxides.

V. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

W. "Partial Burn Operation" shall mean, during periods of Normal Operation of the FCCU, operating in other than "Full Burn Operation."

X. "Parties" shall mean the United States, the State of Wyoming, and the Company.

Y. "Plaintiff" shall mean the United States; and "Plaintiffs" shall mean the United States and the State of Wyoming through the WDEQ.

Z. "PM" shall mean particulate matter as determined by 40 C.F.R. Part 60, Appendix A, Method 5B or 5F.

AA. "Refinery" shall mean the refinery owned and operated by the Company in Newcastle, Wyoming.

BB. "Root Cause" shall mean the primary cause(s) of a Flaring Incident as determined through a process of investigation.

CC. "Shutdown," as specified in 40 C.F.R. § 60.2, shall mean the cessation of operation of an affected facility for any purpose.

DD. "SIP" shall mean the State of Wyoming State Implementation Plan.

EE. "SO_2" shall mean sulfur dioxide.

FF. "Startup," as specified in 40 C.F.R. § 60.2, shall mean the setting in operation of an affected facility for any purpose.

GG. "State of Wyoming" shall mean the State of Wyoming through the WDEQ.

HH. "Torch Oil" shall mean FCCU feedstock or light cycle oil that is combusted in the FCC regenerator.

II. "WDEQ" shall mean the Wyoming Department of Environmental Quality and any successor environmental departments or agencies of the State of Wyoming.

V. AFFIRMATIVE RELIEF/ENVIRONMENTAL PROJECTS

A. NO_x Emissions Reductions from the FCCU

The Company shall implement a program to reduce NO_x emissions from its FCCU during Full Burn Operation and Partial Burn Operation as set forth below.

11) By no later than December 31, 2008, the Company shall comply with the following "Final NO_x Emissions Limits" on the FCCU:

(a) 50 ppmvd @ 0% O_2 on a 365 day rolling average basis, and

(b) 100 ppmvd @ 0% O_2 on a seven (7) day rolling average basis.

12) If the Company elects to switch from "Full Burn Operation" to "Partial Burn Operation", by making physical changes (including the installation of any necessary control

technology) or by making a change in the method of operation, then the Company shall notify EPA and WDEQ in writing of its intent to switch to Partial Burn Operation no later than 90 days prior to submitting any permit application for the change or 180 days prior to implementing the change, whichever is earlier. Such notice shall include a description of the FCCU's physical or operational change(s), their effects on emissions of criteria pollutants, and all associated permitting planned and/or applied for by the Company. By no later than 180 days after the Company switches to Partial Burn Operation, the Company shall comply with the following Final NO_x Emissions Limits on the FCCU:

(a) 20 ppmvd @ 0% O_2 on a 365 day rolling average basis, and

(b) 40 ppmvd @ 0% O_2 on a seven (7) day rolling average basis.

13) Startup, Shutdown and Malfunction. NO_x emissions during periods of start-up, shutdown, or malfunction shall not be used in determining compliance with the Final NOx Emissions Limits of 100 ppmvd ("Full Burn Operation") and 40 ppmvd ("Partial Burn Operation") @ 0% O_2 on a seven (7) day rolling average basis, provided that during such periods the Company implements good air pollution control practices to minimize NO_x emissions.

14) Demonstrating Compliance with FCCU NO_x Emission Limits. The Company currently has NOx and O_2 CEMS installed on its FCCU at the point of emission to the atmosphere, which will be used to demonstrate compliance with the Final NO_x Emission Limits. The Company shall continue to certify, calibrate, maintain, and operate the FCCU NO_x and O_2 CEMS in accordance with the requirements of 40 C.F.R. §§ 60.11, 60.13 and Part 60 Appendix A, and the applicable performance specification test of 40 C.F.R. Part 60, Appendices B and F.

B. SO_2 Emissions Reductions from the FCCU

The Company shall implement a program to reduce SO_2 emissions from its FCCU as set forth below:

15) Final SO_2 Limits. The Company shall install a Wet Gas Scrubber ("WGS") on its FCCU and, by no later than December 31, 2010, comply with "Final SO_2 Emission Limits" of 25 ppmvd at 0% O_2 on a 365-day rolling average basis and 50 ppmvd at 0% O_2 on a 7-day rolling average basis at its FCCU.

16) Malfunction. SO_2 emissions during periods of malfunction of the WGS or during malfunction of the FCCU shall not be used in determining compliance with the Final SO_2 Emissions Limits of 50 ppmvd at 0% O_2 on a 7-day rolling average basis, provided that during such periods the Company implements good air pollution control practices to minimize SO_2 emissions.

17) Demonstrating Compliance with FCCU SO_2 Emission Limits. The Company currently has SO_2 and O_2 CEMS installed on its FCCU at the point of emission to the atmosphere which will be used to demonstrate compliance with the Final SO_2 Emission Limits. The Company shall continue to calibrate, maintain, and operate the SO_2 CEMS required by this Consent Decree in accordance with the requirements of 40 C.F.R. §§ 60.11, 60.13 and Part 60 Appendix A, and the applicable performance specification test of 40 C.F.R. Part 60 Appendices B and F. These CEMS will be used to demonstrate compliance with the Final SO_2 limits.

C. CO Emission Reductions from the FCCU

18) CO Emission Limits. At any time during the term of the Consent Decree, the Company may accept the following "Final CO Emission Limit" for its FCCU:

100 ppmvd on a 365-day rolling average basis at 0% O_2.

In addition, based on being subject to NSPS Subpart J pursuant to Paragraph 23, the Company shall comply, by no later than December 31, 2010, with the following short-term limit:

500 ppmvd on a 1-hour average basis at 0% O_2.

Upon accepting such Final CO Emission Limit for its FCCU, the Company, in accordance with Section V.L of this Consent Decree, shall apply for a federally-enforceable permit that incorporates such Final CO Emission Limit.

19) Startup, Shutdown and Malfunction. CO emissions during periods of start-up, shutdown, or malfunction of the FCCU shall not be used in determining compliance with the foregoing CO emission limit of 500 ppmvd on a 1-hour average basis at 0% O2, provided that during such periods the Company implements good air pollution control practices to minimize CO emissions.

20) Demonstrating Compliance with CO Emission Limits.

(a) No later than December 31, 2010, and continuing thereafter, the Company shall use CO and O_2 CEMs to monitor compliance of the FCCU with the 500 ppm CO Emissions Limit required pursuant to Paragraph 18.

(b) If the company elects to accept the "Final CO Emission Limit" pursuant to paragraph 18, the company shall use CO and O_2 CEMs to monitor compliance with the final CO Emission Limit no later than the date of such election.

(c) The Company shall certify, calibrate, maintain, and operate the FCCU CO and O_2 CEMS in accordance with the requirements of 40 C.F.R. §§ 60.11, 60.13 and Part 60 Appendix A, and the applicable performance specification test of 40 C.F.R. Part 60, Appendices B and F.

D. PM Emission Reductions from the FCCU

21) Elective PM Emission Limits. By no later than December 31, 2011, the Company may accept a "Final PM Emissions Limit" of 0.5 pounds of PM per 1,000 pounds of coke burned on a 3-hour average basis, based on the average of three test runs. Upon accepting such Final

PM Emissions Limit, the Company, in accordance with Section V.L. of this Consent Decree, shall apply for a federally-enforceable permit that shall incorporate the Final PM Emissions Limit.

22) Start-up, Shutdown and Malfunction. PM emissions during periods of start-up, shutdown or malfunction of the FCCU, or during periods of malfunction of the FCCU's WGS, will not be used in determining compliance with the Final PM Emissions Limit, provided that during such times, the Company implements good air pollution control practices to minimize emissions of PM.

E. NSPS Applicability to FCCU Regenerator

23) By no later than December 31, 2010, the FCCU regenerator at the Refinery shall be an affected facility, as that term is used in the NSPS, 40 C.F.R. Part 60, and shall be subject to and comply with the Requirements of NSPS Subparts A and J for SO_2, CO, and PM.

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

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

F. NO_x Emissions Reductions from Heaters and Boilers

The Company has implemented a program to reduce NO_x emissions from certain Heaters and Boilers at the Refinery through the installation of controls and permanent shutdown (which requires removal of the heater or boiler from the Refinery's construction and operating permits) of equipment as set forth below:

24) Emission Limits. By no later than the Date of Entry of this Consent Decree, the Company shall: (1) comply with a NO_x emission limit of 0.030 lb/mmBTU at each of heaters H-01 and H-03; (2) permanently shut down H-02 and request revocation of the applicable construction and operating permits; and (3) incorporate the foregoing final limits into federally-enforceable permit conditions in accordance with Paragraph 82 of this Consent Decree.

25) Monitoring. The Company shall conduct annual stack tests on Heaters H-01 and H-03 to demonstrate compliance with the NO_x emission limit of 0.030 lbs/mmBtu NO_x. Testing shall be conducted in accordance with Methods 7E and 19, or any approved alternatives.

26) The requirements of this Section V.F. do not exempt the Company from complying with any and all federal and state requirements that may require technology, equipment, monitoring, or other upgrades based on actions or activities occurring after the Date of Entry of this Consent Decree, or based upon new or modified regulatory, statutory, or permit requirements.

G. SO_2 Emissions Reductions from and NSPS Applicability to Heaters and Boilers

27) NSPS Applicability of Heaters and Boilers. By the dates specified in Appendix A, all heaters and boilers at the Refinery are considered to be affected facilities as that term is used in 40 C.F.R. Part 60, Subparts A and J, and shall be subject to and comply with the requirements of NSPS Subparts A and J. The Company shall certify, calibrate, maintain and

operate one or more fuel gas CEMS for fuel gas burned in any heater or boiler in accordance with the requirements of 40 C.F.R. §§ 60.11, 60.13 and Part 60 Appendix A, and the applicable performance specification test of 40 C.F.R. Part 60 Appendices B and F, unless the company has or obtains an approved AMP for that affected heater or boiler fuel gas stream. The CEMS and/or AMP will be used to demonstrate compliance with applicable heater and boiler emission limits.

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

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

28) RESERVED

29) Elimination/Reduction of Fuel Oil Burning. From and after the Date of Entry, the Company shall not burn Fuel Oil in any combustion device, except during periods of Natural Gas Curtailment. Nothing herein is intended to limit, or shall be interpreted as limiting the use of Torch Oil in the FCCU regenerator to assist in starting, restarting, maintaining hot standby, or maintaining regenerator heat balance.

H. Flaring Devices

30) NSPS Applicability. The H-10 flare is an affected facility, as that term is used in NSPS, 40 C.F.R. Part 60, and is subject to and must comply with the requirements of 40 C.F.R. Part 60, Subparts A and J for fuel gas combustion devices.

(a) If prior to the termination of the Consent Decree, H-10 becomes subject to NSPS Subpart Ja for a particular pollutant due to a "modification" (as that term is defined in the final Subpart Ja rule), the modified affected facility shall be subject to and comply with NSPS Subpart Ja in lieu of NSPS, Subpart J for that regulated pollutant to which a standard applies as a result of the modification.

(b) If prior to the termination of the Consent Decree, H-10 becomes subject to NSPS Subpart Ja due to a "reconstruction" (as that term is defined in the final Subpart Ja rule), the reconstructed facility shall be subject to and comply with NSPS Subpart Ja in lieu of Subpart J.

31) Emergency Flare Pit. The Company shall operate the Emergency Flare Pit only to combust process upset gases or fuel gas released to the Emergency Flare Pit as a result of relief valve leakage or other emergency malfunctions. The Company shall permanently shut down the Emergency Flare Pit and request revocation of the relevant portions of the appropriate construction and operating permits on or before December 31, 2010.

32) Continuous or Intermittent, Routinely-Generated Refinery Fuel Gases. For continuous or intermittent, routinely-generated refinery fuel gases that are combusted in H-10, the Company shall continue to comply with the emission standard and prohibition in 40 C.F.R. § 60.104(a)(1).

33) Non-Routinely Generated Gases. The combustion of process upset gases or fuel gas released to a Flaring Device as a result of relief valve leakage or other emergency Malfunction shall be exempt from the requirement to comply with 40 C.F.R. § 60.104(a)(1).

34) Good Air Pollution Control Practices. Each Flaring Device shall comply with the NSPS obligation to implement good air pollution control practices as required by 40 C.F.R. § 60.11(d) to minimize emissions and Flaring Incidents.

35) Monitoring the Flaring Devices and Reporting. No later than the Date of Entry, all continuous or intermittent, routinely-generated refinery fuel gases combusted in a Flaring Device, other than inherently low sulfur streams that meet the requirements of 40 C.F.R. § 60.105(a)(4)(iv) (e.g., the depropanizer overhead vent gas stream), shall be monitored with a CEMS as required by 40 C.F.R. § 60.105(a)(4) or pursuant to an EPA-approved AMP under 40 C.F.R. § 60.13(i). The gases referred to in the previous sentence do not include process upset gases or fuel gas released to a Flaring Device as a result of relief valve leakage or other emergency Malfunction. The Company shall comply with the reporting requirements of 40 C.F.R. Part 60, Subpart J or Ja, as applicable, for all such Flaring Devices.

I. Hydrocarbon Flaring Incidents

36) The Company has implemented (or is in the process of identifying and implementing) corrective actions to minimize the number and duration of Flaring Incidents. As of the Date of Lodging, the Refinery does not have a Claus sulfur recovery plant or a tail gas unit and does not produce acid gas. For hydrocarbon Flaring Incidents after the Date of Entry of the Consent Decree, the Company shall follow the investigative, reporting, and corrective action procedures outlined in Paragraphs 38 and 39. The formulas at Paragraph 40 shall be used to calculate the quantity and rate of sulfur dioxide emissions during hydrocarbon Flaring Incidents.

37) Review of Flaring Incidents. By no later than six months from Date of Entry, the Company will identify and provide to EPA and WDEQ the root causes of all Flaring Incidents and combustion of excess refinery fuel gases in the emergency flare pit that occurred between the Date of Entry of the Consent Decree and five years prior to the Date of Entry.

38) Investigation and Reporting. After the Date of Entry of the Consent Decree, by no later than forty-five (45) days following the end of a Flaring Incident, the Company shall conduct an investigation into the root cause(s) of the Flaring Incident and record the findings of the investigation in a report. The report for each Flaring Incident shall include, at a minimum, the following:

(a) The date and time that the Flaring Incident started and ended. To the extent that the Flaring Incident involved multiple releases either within a twenty-four (24) hour period or within subsequent, contiguous, non-overlapping twenty-four (24) hour periods, the Company shall set forth the starting and ending dates and times of each release;

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

(c) The steps, if any, that the Company took to limit the duration and/or quantity of sulfur dioxide emissions associated with the Flaring Incident;

(d) A detailed analysis that sets forth the Root Cause and all significant contributing causes of that Flaring Incident, to the extent determinable;

(e) An analysis of the measures, if any, that are available to reduce the likelihood of a recurrence of a Flaring Incident resulting from the same Root Cause or significant contributing causes in the future. If two or more reasonable alternatives exist to address the Root Cause, the analysis shall discuss the alternatives, if any, that are available, the probable effectiveness and cost of the alternatives, and whether or not an outside consultant should be retained to assist in the analysis. Possible design, operation and maintenance changes shall be evaluated.

(f) If the Company concludes that corrective action(s) under Paragraph 39 is (are) required, the report shall include a description of the action(s) and, if not already completed, a schedule for its (their) implementation, including proposed commencement and completion dates. If the Company concludes that corrective

action under Paragraph 39 is not required, the report shall explain the basis for that conclusion;

(g) To the extent that investigations of the causes and/or possible corrective actions still are underway on the due date of the report, a statement of the anticipated date by which a report or follow-up report fully conforming to the requirements of this Paragraph 38 shall be submitted. Nothing in this Paragraph shall be deemed to excuse the Company from its investigation, reporting, and corrective action obligations under this Section for any other Flaring Incident at the Refinery.

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

39) Corrective Action.

(a) In response to any Flaring Incident occurring after the Date of Entry, the Company shall take, as expeditiously as practicable, such interim and/or long-term corrective actions, if any, as are consistent with good engineering practice to minimize the likelihood of a recurrence of the Root Cause and all significant contributing causes of that Flaring Incident.

(b) EPA does not, by its agreement to the entry of this Consent Decree or by its failure to object to any corrective action that the Company may take in the future, warrant or aver in any manner that any of the Company's corrective actions in the future will result in compliance with the provisions of the Clean Air Act or its implementing regulations. Notwithstanding EPA's review of any plans, reports, corrective actions or procedures under this Section V.I, the Company shall remain solely responsible for compliance with the Clean Air Act and its implementing regulations.

(c) After a review of any report required by this Section V.I. and submitted as required by Paragraph 40A (Semi-Annual Reporting), EPA shall notify the Company in writing of (1) any deficiencies in the corrective actions listed in the findings and/or (2) any objections to the schedules of implementation of the corrective actions. The Company will implement an alternative or revised corrective action or implementation schedule based on EPA's comments. If a corrective action that EPA has identified as deficient is already completed, the Company will be put on notice that such corrective action is deficient and not acceptable for remedying any subsequent, similar root cause(s) of any incident. If EPA and the Company cannot agree on the appropriate corrective action(s) or implementation schedule(s) to be taken in response to a root cause, either party may invoke the Dispute Resolution provisions of Section XV. of the Consent Decree.

(d) Nothing in this Paragraph 39 shall be construed to limit the right of the Company to take such corrective actions as it deems necessary and appropriate immediately following a Flaring Incident or in the period during preparation and review of any reports required under this Section V. I. (Flaring Incidents).

40) Calculation of the Quantity of SO_2 emissions resulting from a Flaring Incident.

(a) Calculation of the Quantity of Sulfur Dioxide Emissions resulting from Flaring. For purposes of this Consent Decree, the quantity of SO_2 emissions resulting from Flaring shall be calculated by the following formula:

$$\text{Tons of } SO_2 = [FR][TD][Conc H_2S][8.44 \times 10^{-5}]$$

The quantity of SO_2 emitted shall be rounded to one decimal point, and, in instances where the result before rounding ends exactly with the digit "5" in the

second decimal place, the quantity shall be rounded up or down to the nearest even digit in the first decimal place. (Thus, for example, for a calculation that results in a number equal to 10.050 tons, the quantity of SO_2 emitted shall be rounded down to 10.0 tons and a result equal to 10.150 tons shall be rounded up to 10.2 tons). For purposes of determining the occurrence of, or the total quantity of SO_2 emissions resulting from, a Flaring Incident that is comprised of intermittent Flaring, the quantity of SO_2 emitted shall be equal to the sum of the quantities of SO_2 flared during each such period of intermittent Flaring.

(b) Calculation of the Rate of SO_2 Emissions During Flaring. For purposes of this Consent Decree, the rate of SO_2 emissions resulting from Flaring shall be expressed in terms of pounds per hour, and shall be calculated by the following formula:

$$ER = [FR][Conc_{H_2S}][0.169]$$

The emission rate shall be rounded to one decimal point, and, in instances where the result before rounding ends exactly with the digit "5" in the second decimal place, the quantity shall be rounded up or down to the nearest even digit in the first decimal place. (Thus, for example, for a calculation that results in an emission rate of 19.95 pounds of SO_2 per hour, the emission rate shall be rounded up to 20.0 pounds of SO_2 per hour; for a calculation that results in an emission rate of 20.05 pounds of SO_2 per hour, the emission rate shall be rounded down to 20.0.)

(c) Meaning of Variables and Derivation of Multipliers in this Paragraph's Equations:

ER = Emission Rate in pounds of SO_2 per hour

FR =	Average Flow Rate to Flaring Device(s) during Flaring, in standard cubic feet per hour
TD =	Total Duration of Flaring in hours
ConcH_2S =	Average Concentration of Hydrogen Sulfide in gas during Flaring (or immediately prior to Flaring if all gas is being flared) expressed as a volume fraction (scf H_2S/scf gas)
8.44×10^{-5} =	[lb mole H_2S/379 scf H_2S][64 lbs SO_2/lb mole H_2S][Ton/2000 lbs]
0.169 =	[lb mole H_2S/379 scf H_2S][1.0 lb mole SO_2/1 lb mole H_2S][64 lb SO_2/1.0 lb mole SO_2]

The flow of gas to the Flaring Device(s) ("FR") shall be as measured by the relevant flow meter or reliable flow estimation parameters. Hydrogen sulfide concentration ("ConcH_2S") shall be determined from knowledge of the sulfur content of the process gas being flared, by direct measurement by tutwiler or drager tube analysis or by any other method approved by EPA or WDEQ. In the event that any of these data points is unavailable or inaccurate, the missing data point(s) shall be estimated according to best engineering judgment. The report required to be prepared under Paragraph 38 shall include the data used in the calculation and an explanation of the basis for any estimates of missing data points.

40A) Semi-Annual Report. The Company shall submit a Semi-Annual Report that includes copies of each and every report of all Flaring Incidents, as required by Paragraph 38, that the Company was required to prepare during the previous six month period *(e.g.*, July to December). Each Semi-Annual report shall also include a summary of the Incidents including the following:

(a) Date;

(b) Summary of root cause(s);

(c) Duration;

(d) Amount of SO_2 released;

(e) Corrective Action completed; and

(f) A list of all Flaring Incidents for which corrective actions are still outstanding.

Such Semi-Annual report shall also include a summary analysis of any trends identified by the Company in the number, Root Cause, types of corrective action, or other relevant information regarding Flaring Incidents at the Refinery during the previous six-month period. Such Semi-Annual report shall be included with reports required by Paragraph 93.

J. Benzene Waste NESHAP Program

The Company shall undertake the measures set forth in this Section V.J. to ensure continuing compliance with 40 C.F.R. Part 61, Subpart FF and to minimize or eliminate fugitive benzene waste emissions.

41) Current Compliance Status. As of the Date of Lodging of the Consent Decree, the Company believes that the Refinery has a Total Annual Benzene ("TAB") of less than 10 Mg/yr. The Company will review and verify the TAB at the Refinery consistent with the requirements of Paragraph 43.

42) Refinery Compliance Status Changes. Except as provided in Paragraph 45(a), if at any time from the Date of Lodging of the Consent Decree through its termination, the Refinery is determined to have a TAB equal to or greater than 10 Mg/yr, the Company shall comply with the compliance option set forth at 40 C.F.R. § 61.342(e) (hereinafter referred to as the "6 BQ Compliance Option").

43) One-Time Review and Verification of TAB.

(a) Phase One: Within one year of the Date of Lodging of the Consent Decree, the Company shall complete a review and verification of the TAB at the Refinery. The review and verification process shall include, but not be limited to:

(i) an identification of each waste stream that is required to be included in the Refinery's TAB (e.g., slop oil, tank water draws, spent caustic, desalter rag layer dumps, desalter vessel process sampling points, other sample wastes, maintenance wastes, turnaround wastes and materials transported via vacuum truck);

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

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

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

(v) By no later than thirty (30) days following the completion of Phase One of the review and verification process, the Company shall submit a Benzene Waste NESHAP Compliance Review and Verification report ("BWN Compliance Review and Verification Report") that sets forth the results of Phase One, including but not limited to the items identified in (i) through (iv) of this Paragraph 43.

(b) Phase Two: Based on EPA's review of the BWN Compliance Review and Verification Report, EPA may select up to 20 additional waste streams at the Refinery for sampling for benzene concentration. The Company will conduct the required sampling and submit the results to EPA within one hundred and twenty (120) days of receipt of EPA's request. The Company will use the results of this additional sampling to recalculate the TAB and to amend the BWN Compliance

Review and Verification Report, as needed. To the extent that EPA requires the Company to re-sample a Phase One waste stream as part of this Phase Two review, the Company may average the results of the two sampling events. If Phase Two sampling is required by EPA, the Company shall submit an amended BWN Compliance Review and Verification Report within one hundred twenty (120) days following the submission of the Phase Two sampling results to EPA.

44) Amended TAB Reports. If the results of the BWN Compliance Review and Verification Report indicate that the Refinery has failed to file the reports required by 40 C.F.R. § 61.357(c), or that the Refinery's most recently-filed report is inaccurate and/or does not satisfy the requirements of Subpart FF, the Company, shall submit, by no later than ninety (90) days after completion of the BWN Compliance Review and Verification Report(s), an amended TAB report to EPA Region 8 and WDEQ. The Company's BWN Compliance Review and Verification Report(s) shall be deemed an amended TAB report for purposes of Subpart FF reporting to EPA.

45) Corrective Action.

(a) If the results of the BWN Compliance Review and Verification Report indicate that the Refinery has a TAB of over 10 Mg/yr, the Company shall submit to EPA and WDEQ by no later than 180 days after completion of the BWN Compliance Review and Verification Report, a plan that identifies with specificity: (i) the actions it will take to ensure that the Refinery's TAB remains below 10 Mg/yr for each calendar year; or (ii) the compliance strategy and schedule that the Company will implement to ensure that the Refinery complies with the 6 BQ Compliance Option as soon as practicable.

(b) Any plan submitted pursuant to Paragraph 45(a) shall be subject to approval, disapproval or modification by EPA, which shall act in consultation with WDEQ. Within sixty (60) days after receiving any notification of disapproval or request for modification from EPA, the Company shall submit a revised plan that responds to all identified deficiencies to EPA and WDEQ. Upon receipt of approval or approval with conditions, the Company shall implement the plan. If EPA does not respond to the Company within sixty days of receiving a revised plan, the Refinery will implement the revised plan as submitted.

(c) By no later than thirty (30) days after completion of the implementation of all actions, if any, required pursuant to Paragraph 45(a)(ii) to come into compliance with the 6 BQ Compliance Option, the Company shall submit a report to EPA and WDEQ that the Refinery complies with the Benzene Waste NESHAP.

46) Annual Program. Within one year from the Date of Lodging of the Consent Decree, the Company shall establish an annual program of reviewing process information for the Refinery, including but not limited to any construction projects, to ensure that all new benzene waste streams are included in the Refinery's benzene waste stream inventory.

47) Carbon Canisters: If at any time from the Date of Lodging of the Consent Decree through its termination, the TAB at the Refinery equals or exceeds 10 Mg/yr, then the Company shall comply with the requirements of Subpart FF and with the requirements of this Paragraph where a carbon canister(s) is utilized as a control device under the Benzene Waste NESHAP as follows:

(a) The Company shall within 180 days use primary and secondary carbon canisters and operate them in series at its Refinery.

(b) In the first report due under Paragraph 60, after the installation of the primary and secondary carbon canister, the Company shall submit a report certifying that dual carbon canister systems are in use at all locations where carbon canisters are used to comply with the Benzene Waste NESHAP. The report shall include a list of all locations within the Refinery where secondary carbon canisters are installed, and whether VOC or benzene will be used to monitor for breakthrough at each such canister.

(c) Except as expressly permitted under Paragraph 47(g), the Company shall not use single carbon canisters for any new process units or installations that require controls pursuant to the Benzene Waste NESHAP at the Refinery.

(d) For dual carbon canister systems, "breakthrough" between the primary and secondary canister is defined as any reading equal to or greater than 50 ppm volatile organic compounds, excluding methane and ethane (hereinafter "VOC"), or 5 ppm benzene.

(e) The Company shall monitor for breakthrough between the primary and secondary carbon canisters in accordance with the frequency specified in 40 C.F.R. § 61.354(d), and shall monitor the outlet of the secondary canister on a monthly basis to verify the proper functioning of the system. This requirement shall commence within seven days after installation of a new, dual carbon canister system.

(f) The Company shall replace the original primary carbon canisters immediately when breakthrough is detected between the primary and secondary canister. The original secondary carbon canister will become the new primary carbon canister and a fresh carbon canister will become the secondary canister. For purposes of this Paragraph, "immediately" shall mean within twelve (12) hours of the detection of a breakthrough for canisters of 55 gallons or less, and within twenty-four (24) hours of the detection of a breakthrough for canisters greater than 55 gallons. In lieu of replacing the primary canister immediately, the Company may elect to monitor the outlet of the secondary canister beginning on the day breakthrough between the primary and secondary canister is identified and each calendar day thereafter. This daily monitoring shall continue until the primary canister is replaced. If the constituent being monitored (either benzene or VOC) is detected above background levels at the outlet of the secondary canister during this period of daily monitoring, the primary canister must be replaced within twelve (12) hours of the detection of a breakthrough. The original secondary carbon canister will become the new primary carbon canister and a fresh carbon canister will become the secondary canister.

(g) Temporary Applications. The Company may utilize properly sized single canisters for short-term operations such as with temporary storage tanks or as temporary control devices. For canisters operated as part of a single canister system, breakthrough is defined for purposes of this Decree as any reading of VOC above background or benzene above 1 ppm. The Company shall monitor for breakthrough from single carbon canisters each calendar day. The Company

shall replace the single carbon canister with a fresh carbon canister, discontinue flow, or route the stream to an alternate, appropriate device immediately when breakthrough is detected. For this Paragraph, "immediately" shall mean within twelve (12) hours of the detection of a breakthrough for canisters of 55 gallons or less and within twenty-four (24) hours of the detection of a breakthrough for canisters greater than 55 gallons. If the Company discontinues flow to the single carbon canister or routes the stream to an alternate, appropriate control device, such canister may not be placed back into BWN vapor control service until it has been appropriately regenerated or replaced.

(h) The Company shall maintain a readily available supply of fresh carbon canisters at the Refinery at all times or otherwise ensure that such canisters are readily available to implement the requirements of this Paragraph 47.

(i) The Company shall maintain records associated with the requirements of this Paragraph in accordance with or as under 40 C.F.R. § 61.356(j)(10), including the monitoring readings observed and the constituents being monitored.

48) Laboratory Audits. The Company shall conduct or contract to conduct audits of all laboratories that perform analyses of the Company's Benzene Waste NESHAP samples to ensure that proper analytical and quality assurance/quality control procedures are followed for such samples.

(a) An initial audit of each laboratory currently used to analyze the Refinery's benzene samples shall be conducted prior to conducting the Phase One Review and Verification process. In addition, the Company shall audit any laboratory to

be used for analyses of benzene samples prior to such use. However, if the Company has completed an audit of any current or new laboratory within two years prior to the Date of Entry, initial audits of those laboratories shall not be required.

(b) The Company shall conduct subsequent laboratory audits for each laboratory continuing to perform analyses of the Company's Benzene Waste NESHAP samples, such that each laboratory is audited every two (2) years for the life of the Consent Decree.

(c) The Company may itself conduct the audits required under this Section, retain third parties to conduct such audits, or use audits conducted by others as its own, but the responsibility to ensure compliance with this Consent Decree and Subpart FF rests solely with the Company.

49) Benzene Spills. For each spill at the Refinery which occurs after the Date of Entry of the Consent Decree, the Company shall review such spills to determine if benzene waste, as determined by Subpart FF, was generated. The Company shall include benzene generated by such spills in the Refinery's TAB.

50) Training.

(a) The Company shall develop and implement annual (i.e., once each calendar year) training for all employees asked to draw benzene waste samples by no later than the Date of Entry of the Consent Decree. The Company shall keep records of the attendance at such training throughout the life of the Consent Decree.

(b) If and when the Refinery's TAB reaches 10 Mg/yr or more, the Company shall complete the development of standard operating procedures for all control equipment used to comply with the Benzene Waste NESHAP. The Company shall complete an initial training program regarding these procedures for all operators assigned to this equipment. Comparable training shall be provided to any persons who subsequently become operators, prior to their assumption of this duty. "Refresher" training shall be performed annually, or more often if the Company chooses. The Company shall propose a schedule for the initial and refresher training at the same time it proposes a plan that identifies the strategy and schedule that the Company will implement to come into compliance with the 6 BQ Compliance Option under Paragraph 45(a) or 58(c).

(c) As part of the Company's training program, it must ensure that the employees of any contractors hired to perform the requirements of this Paragraph are properly trained to implement all provisions of this Paragraph at the Refinery prior to performing those duties.

51) Waste/Slop/Off-Spec Oil Management.

(a) Within one year after the Date of Entry of the Consent Decree, the Company shall submit to EPA and WDEQ schematics for the Refinery that: (i) depict the waste management units (including sewers) that handle, store, and transfer waste oil/slop oil/off-spec oil streams; and (ii) show how such oil is transferred within the Refinery. For the purposes of the Refinery's TAB calculation, representatives from the Company and EPA thereafter shall confer about the appropriate characterization of waste oil/slop oil/off-spec oil streams for

the waste management units handling such oil streams. At a mutually-agreed upon time, the Company shall submit, if necessary, revised schematics that reflect the agreements between EPA and the Company regarding the characterization of these oil streams and the applicable Subpart FF control standards.

(b) Organic Benzene Waste Streams. If and when the Refinery's TAB reaches 10 Mg/yr and a compliance strategy is approved, all waste management units handling "organic" benzene wastes, as defined in Subpart FF, shall meet the applicable control standards of Subpart FF by no later than the date approved by EPA under Paragraph 45(b).

(c) Aqueous Benzene Waste Streams. For purposes of calculating the Refinery's TAB pursuant to the requirements of 40 C.F.R. § 61.342(a), the Company shall include all waste oil/slop oil/off-spec oil streams that become "aqueous." Adjustment shall be made to such calculations to avoid double-counting of benzene. If and when the Refinery's TAB reaches 10 Mg/yr, all waste management units handling aqueous benzene waste streams shall either meet the applicable control standards of Subpart FF or shall have their uncontrolled benzene quantity count toward the applicable 6 BQ limit by no later than the date approved by EPA under Paragraph 45(b).

(d) Plan to Quantify Uncontrolled Waste/Slop/Off-Spec Oil Streams. Within one year of the Date of Lodging, the Company shall submit a plan to quantify waste/slop/off-spec oil movements for all benzene waste streams which are not controlled. EPA will review the plan and may recommend revisions consistent with Subpart FF. Upon plan approval, the Company shall implement its plan, as

it may be revised in response to EPA comment, and shall maintain records quantifying such movements.

52) Benzene Waste Operations Sampling Plan (TAB < 10 Mg). Unless the Refinery TAB is determined to be less than 1 MG/yr and by no later than one year after the Date of Lodging of the Consent Decree, the Company will submit to EPA and WDEQ a benzene waste operations sampling plan designed to describe the sampling of benzene waste streams that it will undertake to estimate the quarterly and annual TAB. Such plan must identify:

(a) All waste streams that at the point of generation contributed 0.05 Mg/yr or more to the previous year's TAB calculations; and

(b) End-of-the-line sampling locations and methods for flow calculations to be used in projecting quarterly and annual TAB quantities under Paragraph 56.

(c) The sampling plan will require the Company to take and have analyzed at least three representative samples of all waste streams identified under Paragraph 52(a) once each calendar year and at all locations identified in Paragraph 52(b) once each calendar quarter.

53) Supplemental Benzene Waste Operations Sampling Plan (TAB > 10 Mg). If it is determined that the Refinery TAB equals or exceeds 10 Mg/yr and by no later than the date it must submit a compliance plan under Paragraph 45(a) or Paragraph 58(c), the Company will submit to EPA and WDEQ a supplemental benzene waste operations sampling plan designed to describe the sampling of benzene waste streams it will undertake to calculate quarterly and projected annual uncontrolled benzene quantities under the 6 BQ Compliance Option. Such plan must identify:

(a) All waste streams that contributed 0.05 Mg/yr or more of uncontrolled benzene at the point of generation to the previous year's TAB calculations; and

(b) Sampling locations and methods for flow calculations to be used in calculating projected quarterly and annual benzene quantity calculations under Paragraph 56.

Such supplemental plan will require the Company to take and have analyzed, in each calendar quarter, at least three representative samples from each such identified location. To the extent that the Company believes that such sampling will not be effective until it completes implementation of an approved compliance plan under Paragraph 45(a), the Company may request EPA approval for postponing its submitting a sampling plan and commencing sampling until the compliance plan is completed. EPA will not unreasonably withhold its consent.

54) Benzene Waste Operations Sampling Plans: Timing for Implementation. The Company will implement the sampling required under the applicable sampling plan, either paragraph 52 or 53, during the first full calendar quarter after it submits the plan and shall continue to implement such plan unless and until it is disapproved by EPA, revised or modified under Paragraph 55.

55) Benzene Waste Operations Sampling Plan Modifications

(a) Changes in Processes, Operations, or Other Factors. If changes in processes, operations, or other factors lead the Company to conclude that a sampling plan may no longer provide an accurate basis for estimating quarterly or annual TABs under Paragraph 56 the Company shall submit a revised plan to EPA and WDEQ within ninety (90) days after the Company determines that such plan no longer provides an accurate measure. The Company will implement the

revised plan in the first full calendar quarter after submitting it to EPA for approval. The Company will continue to implement the revised plan unless and until EPA disapproves the revised plan, after an opportunity for consultation with WDEQ. If the revised plan is disapproved by EPA, the Company will implement its previous plan.

(b) Requests for Modifications. After two (2) years of implementing a sampling plan, the Company may submit a request to EPA for approval, with a copy to WDEQ, to revise a sampling plan, including sampling frequency. EPA will not unreasonably withhold its consent. The Company will not implement any proposed revisions under this Subparagraph unless and until approved by EPA, after an opportunity for consultation with WDEQ.

56) TABs and Uncontrolled Benzene Quantities. At the end of each calendar year and based on sampling results under Paragraph 52, the Company will calculate its annual TAB. At the end of each of the first three quarters of each year and based on sampling results and approved flow calculations, the Company will calculate a quarterly and projected annual TAB and (if sampling is required under Paragraph 53) uncontrolled benzene quantity. In making this calculation, the Company will use the average of the three samples collected at each sampling location for each sampling event. If these calculations do not identify any potential violations of the benzene waste operations NESHAP, the Company will submit these calculations in the reports due under Section IX of this Decree.

57) Corrective Measures. The Company will implement corrective measures:

(a) If the quarterly TAB equals or exceeds 2.5 Mg or the projected annual TAB equals or exceeds 10 MG for the then-current compliance year; and/or

(b) If sampling is required under Paragraph 53 (6 BQ Compliance Option) and the quarterly uncontrolled benzene quantity equals or exceeds 1.5 Mg or the projected annual uncontrolled benzene quantity equals or exceeds 6 Mg for the then-current compliance year.

(c) Provided, however, that if the Company can identify the reason(s) in any particular calendar quarter that the quarterly and projected annual calculations result in benzene quantities in excess of those identified in Paragraph 57(a) and/or (b), as applicable, and states that it does not expect such reason or reasons to recur, then the Company may exclude the benzene quantity attributable to the identified reason(s) from the calculations under Paragraph 56. If that exclusion results in no potential violation of the Benzene Waste Operation NESHAP, the Company will not be required to implement corrective measures under this Paragraph 57, and the Company may exclude the benzene attributable to the identified reason(s) in determining the applicability of Paragraph 58. At any time that the Company proceeds under this Paragraph, it must describe how it satisfied the conditions in this Paragraph in its reports under Section IX of this Decree.

58) Compliance Assurance Plan.

(a) If the Company meets one or more condition in Paragraph 57(a) or (b) (except as provided in 57(c)), then by no later than sixty (60) days after the end of the calendar quarter in which one or more of the conditions were met, the Company shall submit a compliance assurance plan to EPA and WDEQ that identifies the cause(s) of the potentially-elevated benzene quantities, all corrective actions that the Company has taken or plans to take to ensure that the cause(s)

will not recur, and the schedule of actions that it will take to ensure that the Refinery complies with the Benzene Waste Operations NESHAP for the calendar compliance year.

(b) Third-Party Assistance. If at least one of the conditions in Paragraph 57(a) and/or (b) exists in two consecutive quarters and the Company cannot identify the reason(s) for the exceedance(s) as allowed under Paragraph 57(c), the Company shall retain a third-party contractor during the third consecutive quarter to undertake a TAB study and compliance review at the Refinery. By no later than ninety (90) days after the Company receives the results of the third-party TAB study and compliance review, it shall submit such results and a plan and schedule for remedying any deficiencies identified in the third-party study and compliance review to EPA and WDEQ.

(c) EPA Approval. If it is determined that the Refinery TAB is greater than 10 Mg/yr for the previous calendar year and a compliance plan under this Paragraph or Paragraph 45(a) has not yet been submitted by the Company, then the plan submitted under this Paragraph shall identify with specificity the compliance strategy and schedule that the Company will implement to ensure that the Refinery complies with the 6BQ Compliance Option as soon as practical. Such plan will be reviewed and approved in accordance with Paragraph 45(b), and the Company will certify compliance in accordance with Paragraph 45(c).

59) Miscellaneous Measures. The provisions of this Paragraph will apply to the Refinery by no later than the date it submits a compliance strategy under Paragraph 45(a) or 58(c):

(a) If and when the Refinery TAB equals or exceeds 10 Mg, conduct monthly visual inspections of all Subpart FF water traps within the Refinery's individual drain systems;

(b) Identify and mark all area drains that are segregated storm water drains. This provision is required whether or not the TAB is in excess of 10 Mg;

(c) If and when the Refinery TAB equals or exceeds 10 Mg, on a weekly basis, visually inspect all Subpart FF conservation vents on process sewers for detectable leaks; reset any vents where leaks are detected; and record the results of the inspections. After two (2) years of weekly inspections, and based upon an evaluation of the recorded results, the Company may submit a request to EPA to modify the frequency of the inspections. EPA will not unreasonably withhold its consent. Nothing in this Paragraph (c) will require the Company to monitor conservation vents on fixed roof tanks. Alternatively, for conservation vents with indicators that identify whether flow has occurred, the Company may elect to visually inspect such indicators on a monthly basis and, if flow is then detected, it will then visually inspect that indicator on a weekly basis for four (4) weeks. If flow is detected during any two (2) of those four (4) weeks, the Company will install a carbon canister on that vent until appropriate corrective action(s) can be implemented to prevent such flow;

(d) If and when the Refinery TAB equals or exceed 10 Mg, conduct quarterly monitoring of the controlled oil-water separators in benzene service in accordance with the "no detectable emissions" provision in 40 C.F.R. § 61.347; and

(e) If and when the Refinery TAB equals or exceed 10 Mg, manage all groundwater remediation wastes that are covered by Subpart FF at the Refinery in appropriate waste management units under and as required by the Benzene Waste Operations NESHAP.

60) Recordkeeping and Reporting Requirements The Company shall submit, as and to the extent required, the following reports to EPA and WDEQ:

(a) BWN Compliance Review and Verification Report (Paragraph 43(a)), as amended, if necessary (Paragraph 43(b));

(b) Amended TAB Report, if necessary (Paragraph 44);

(c) Plan for the Refinery to ensure that the Refinery's TAB remains below 10MG/yr or strategy to come into compliance with the 6 BQ Compliance Option upon discovering that its TAB equals or exceeds 10 Mg/yr through the BWN Compliance Review and Verification Report (Paragraph 45(a)), or as the result of sampling (Paragraph 58(c)) if necessary;

(d) Compliance report, if necessary (Paragraph 45(c));

(e) Schematics of waste/slop/off-spec oil movements, as revised, if necessary (Paragraph 51(a));

(f) Plan to quantify uncontrolled waste/slop/off-spec oil movements (Paragraph 51(d));

(g) Sampling Plans (Paragraphs 52 and 53), as revised, if necessary (Paragraph 55(a));

(h) Any compliance assurance plan that is required by Paragraph 58(a);

(i) Training Records as required by Paragraph 50(a); and

(j) Third-Party TAB Study and Compliance Review and plan to implement its results, if necessary (Paragraph 58(b)).

61) Reporting Requirements Under Section IX. The Company shall submit the following as part of its periodic reports under Section IX:

(a) A description of the measures that the Company took to comply with the training provisions of Paragraph 50;

(b) The results of annual sampling under Paragraph 54 (this information shall be submitted in the first periodic report submitted in the following calendar year);

(c) The results of the quarterly sampling under Paragraph 54, including a list of all waste streams sampled, the results of the benzene analysis for each sample, and the computation of the benzene quantity for the respective quarter and the information required by Paragraph 56.

K. Leak Detection and Repair ("LDAR") Program

In order to ensure continuing compliance and to minimize or eliminate fugitive emissions of volatile organic compounds ("VOCs"), from compressors and equipment in light liquid and/or in gas/vapor service, the Company shall implement the program identified in this Section V.K for all equipment identified in Paragraph 62.

62) Scope of the LDAR Program. As used in this Section, the terms "compressor," "equipment," "in light liquid service" and "in gas/vapor service" shall have the definitions set forth in the applicable provisions of Title 40 of the Code of Federal Regulations, Part 60, Subparts VV and GGG; 40 C.F.R. Part 61, Subparts J and V and applicable state LDAR regulations. By the Date of Entry of the Consent Decree, the group of all equipment (as defined by 40 C.F.R. § 60.591) within each process unit and each compressor shall become affected

facilities for purposes of 40 C.F.R. Part 60, Subpart GGG, and shall become subject to and comply with the requirements of 40 C.F.R. Part 60, Subpart GGG.

63) Written Refinery-Wide LDAR Program. By no later than December 31, 2008, the Company shall develop and maintain a written, refinery-wide program for compliance with all applicable federal and state LDAR regulations. Until termination of this Decree, the Company shall implement this program and update the Refinery's program as necessary to ensure continuing compliance. This refinery-wide program shall include at a minimum:

(a) An overall, refinery-wide leak rate goal that will be a target for achievement on a process-unit-by-process-unit basis;

(b) An identification of all equipment in light liquid and/or in gas/vapor service that has the potential to leak VOCs within process units that are owned and maintained by the Refinery;

(c) Procedures for identifying leaking equipment within process units owned and maintained by the Refinery;

(d) A tracking program for maintenance records (e.g., a Management of Change program) to ensure that valves and pumps are integrated into the LDAR program;

(e) Procedures for repairing and keeping track of leaking equipment;

(f) 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

(g) A definition of "LDAR Personnel" and a process for accountability, identifying the person or position that will be the "LDAR Coordinator."

Consistent with the Company management authorities, this person shall have the responsibility to implement improvements to the LDAR program.

64) Training. By no later than June 30, 2009, the Company shall implement the following training programs at the Refinery:

(a) For personnel newly-assigned to LDAR responsibilities, the Company shall require LDAR training prior to each employee beginning such work;

(b) For all personnel assigned LDAR responsibilities, the Company shall provide, require and complete the first round of annual LDAR training; and

(c) For all other Refinery operations and maintenance personnel (including contract personnel), the Company shall provide, require and complete an initial training program that includes instruction on aspects of LDAR that are relevant to the person's duties. Until termination of this Decree, "refresher" training in LDAR shall be performed on a three year cycle.

(d) If contract employees are performing LDAR work, the Company shall maintain all training records required under this Paragraph for the contract employees.

65) LDAR Audits. The Company shall retain a contractor(s) to perform a third-party audit of the Refinery's LDAR program at least once every two years. The first third-party audit of the Refinery shall be completed no later than June 30, 2009. The LDAR audits shall include but shall not be limited to, comparative monitoring, records review to ensure monitoring and repairs were completed in the required period, component identification procedures, field reviews to ensure all regulated equipment is included in the LDAR program, data management, procedures and observation of the LDAR technician's calibration and monitoring techniques.

During the LDAR audits, leak rates shall be calculated for each process unit where comparative monitoring was performed. No later than 60 days after completion of each audit, the Company shall report to EPA and WDEQ any areas of noncompliance identified as a result of its refinery-wide audit and submit in writing a proposed compliance schedule for correcting the non-compliance. If the proposed compliance schedule extends greater than 60 days beyond the audit completion date, the Company must seek approval of the compliance schedule from EPA. The Company shall implement the compliance schedule as proposed until the schedule is approved or disapproved by EPA. Within 60 days of completion of each audit, the Company shall certify to EPA that the refinery: is in compliance; has completed related corrective action (if necessary); and/or is on a compliance schedule, and shall specifically certify that all affected equipment has been identified and included in the facility LDAR program.

66) Implementation of Actions Necessary to Correct Non-Compliance. If the results of any of the audits conducted pursuant to Paragraph 65 identify any areas of non-compliance, the Company shall implement, as soon as practicable, all steps necessary to correct the area(s) of non-compliance, and to prevent, to the extent practicable, a recurrence of the cause of the non-compliance. For purposes of this Paragraph, if a ratio of the process-unit valve leak percentage established through a comparative monitoring audit pursuant to Paragraph 65, and the average valve leak percentage reported for the process unit for the four quarters immediately preceding the audit, is equal to or greater than 3.0, it shall be cause for corrective action; provided, however, that if three or fewer valves in a process unit are found to be leaking in the comparative monitoring audit, then no corrective action is required for that process unit. If the calculated ratio yields an infinite result, the Company shall assume one leaking valve was found in the process unit through its routine monitoring during the 4-quarter period. Until termination of the

Consent Decree, the Company shall retain the audit reports generated pursuant to Paragraph 65 and maintain a written record of the corrective actions that the Company takes in response to any deficiencies identified in any audits. The Company shall submit the audit reports and corrective action records for audits performed as part of its periodic reporting under Section IX of this Consent Decree.

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

(a) Leak Definition for Valves. By no later December 31, 2009, the Company shall utilize an internal leak definition of 500 ppm VOCs for valves, excluding pressure relief devices.

(b) Leak Definition for Pumps. The Company shall utilize an internal leak definition of 2000 ppm for pumps by the following dates:

(i) By no later than December 31, 2008, the Company shall utilize this definition for 50% of the total number of pumps at the Refinery;

(ii) By no later than December 31, 2009, the Company shall utilize this definition for all pumps at the Refinery.

68) Compressors: NSPS Applicability. The FCCU wet gas compressor at the Refinery shall be subject to, and achieve compliance with, the requirements of 40 C.F.R. § 60.482-3, and the corollary reporting and recordkeeping requirements, by the Date of Entry of the Consent Decree.

69) Reporting. For regulatory reporting purposes, the Company may continue to report leak rates in valves and pumps based on the applicable regulatory leak definition, or may use the lower, internal leak definitions specified in Paragraph 67.

70) Recording, Tracking, Repairing and Remonitoring Leaks. By no later than the date the Refinery is required to fully implement the lower leak definitions under Paragraphs 67(b)(ii), the Refinery shall record, track, repair and re-monitor all leaks in excess of the internal leak definitions in Paragraph 67. The Company shall have five (5) days to make an initial repair attempt and remonitor the component and thirty (30) days either to make repairs and remonitor leaks that are greater than the internal leak definitions but less than the applicable regulatory leak definitions or to place the component on the delay of repair list according to Paragraph 79. All records of repairs, repair attempts, and remonitoring shall be maintained for the life of the Consent Decree.

71) Initial Attempt at Repair on Valves. Beginning no later than ninety days after the Date of Entry, the Refinery shall promptly make an "initial attempt" at repair on all valves that have a reading greater than 200 ppm of VOCs, excluding control valves. After the "initial attempt" at repair, the Refinery, or its designated contractor, shall re-monitor the leaking valve within five (5) days of identification. If the re-monitored leak reading is below the applicable leak definition in Paragraph 67, no further action will be necessary. If the re-monitored leak reading is greater than the applicable leak definition in Paragraph 67, the Refinery shall repair the leaking valve according to the requirements under Paragraph 80. All records of repairs, repair attempts, and remonitoring shall be maintained for the life of the Consent Decree. If the Company or its designated contractor can demonstrate with sufficient monitoring and repair data that this "initial attempt" at repair requirement at 200 ppm does not reduce emissions, the

Company may, after 2 years of implementing the "initial attempt" requirement, request that the United States reconsider or amend this requirement.

72) LDAR Monitoring Frequency.

(a) Pumps. When the lower leak definition for pumps becomes applicable pursuant to Paragraph 67, the Company shall monitor pumps on a monthly basis.

(b) Valves. By no later than March 31, 2009, the Company shall monitor valves (other than valves that are unsafe-to-monitor or difficult-to-monitor, as defined in 40 C.F.R. § 60.482-7(g) and (h) respectively) on a quarterly basis.

73) Electronic Storing, and Reporting of LDAR Data. The Company has begun and will continue to maintain an electronic database for storing and reporting LDAR data. By no later than the Date of Entry, this electronic database shall include data identifying the date and time of the monitored event, and the operator and instrument used in the monitored event. The Company shall maintain the LDAR information required by this Paragraph for the life of the Consent Decree.

74) Electronic Data Collection During LDAR Monitoring. By no later than the Date of Lodging of the Consent Decree, the Company shall use dataloggers and/or electronic data collection devices during all LDAR monitoring required by this decree, unless otherwise exempted by this Paragraph. The Company, or third party contractor(s) retained by the Company, shall use their best efforts to transfer, by the end of the next business day, electronic data from electronic datalogging devices to the electronic database. For all monitoring events in which an electronic data collection device is used, the collected monitoring data shall include a time and date stamp, the screening value, operator identification, and instrument identification. The Company may use paper logs where necessary or more feasible (e.g., small rounds,

remonitoring, or when dataloggers are not available or broken), and shall record the identification of the technician undertaking the monitoring, the date, time, the screening value, and the identification of the monitoring equipment. The Company shall transfer any manually recorded monitoring data to the electronic database within seven (7) days of monitoring. The Company shall maintain the LDAR information required by this Paragraph for the life of the Consent Decree.

75) QA/QC of LDAR Data. By no later than March 31, 2009, the Company, or a third party contractor retained by the Company, shall develop and implement a procedure to ensure a quality assurance/quality control ("QA/QC") review of all data generated by LDAR monitoring technicians. The Company shall ensure that monitoring technicians certify each day that the information collected that day is true, accurate and complete. At least once per calendar quarter, the Company shall perform QA/QC of the contractor's monitoring data which shall include, but not be limited to: number of components monitored per technician, time between monitoring events, and abnormal data patterns.

76) LDAR Personnel. By no later than December 31, 2008, the Company shall establish a program that will hold LDAR personnel accountable for LDAR performance. The Company shall maintain a position within the Refinery responsible for LDAR management, with the authority to implement improvements.

77) RESERVED.

78) Calibration/Calibration Drift Assessment. Beginning no later than ninety days after the Date of Entry, the Company or its contractor shall conduct all calibrations of LDAR monitoring equipment using methane as the calibration gas, in accordance with 40 C.F.R. Part 60, EPA Reference Test Method 21, and shall conduct calibration drift assessments of LDAR

monitoring equipment at the end of each monitoring shift, at a minimum. The Company or its contractor shall conduct the calibration drift assessment using, at a minimum, a 500 ppm calibration gas. If any calibration drift assessment after the initial calibration shows a negative drift of more than 10% from the previous calibration, the Company or its contractor shall remonitor all valves that were monitored since the last calibration that had a reading greater than 100 ppm and shall remonitor all pumps that were monitored since the last calibration that had a reading greater than 500 ppm.

79) Delay of Repair. Beginning no later than 180 days after the Date of Entry, the Company shall implement the following requirements:

(a) For all equipment:

(i) Require sign-off by the operations or safety representative supervisor that the piece of equipment is technically infeasible to repair without a process unit shutdown, before the component is eligible for inclusion on the "delay of repair" list; and

(ii) Include equipment that is placed on the "delay of repair" list in the Company's regular LDAR monitoring.

(b) For valves: For valves (other than control valves and pressure relief valves) leaking at a rate of 10,000 ppm or greater that cannot otherwise be repaired, the Company shall use "drill and tap" or similarly effective repair methods to repair such leaking valves unless the Company can demonstrate that there is a safety, mechanical, or major environmental concern posed by repairing the leak in this manner. The Company shall make the first repair attempt using "drill and tap" or a similarly effective repair method within 15 days of identification of the leak, and shall make a second attempt (if

necessary) using "drill and tap" or similarly effective repair method within 30 days of identification of the leak. After two unsuccessful attempts to repair a leaking valve under this paragraph 79(b), the Company may place the leaking valve on its "delay of repair" list.

80) Chronic Leakers. The Company shall replace, repack, or perform repairs on chronically leaking, non-control valves during the next process unit turnaround after identification. A component shall be classified as a "chronic leaker" under this paragraph if it leaks above 5,000 ppm twice in any consecutive four quarters, unless the component had not leaked in the six (6) consecutive quarters immediately prior to the relevant process unit turnaround.

81) Recordkeeping and Reporting Requirements.

(a) The Company shall keep records to demonstrate compliance with Section K of this Consent Decree throughout the life of the Consent Decree.

(b) At the later of the first report due under the Consent Decree or the first report covering the period in which a requirement becomes due, the Company shall include in such report under Section IX the following:

(i) A copy of refinery program under Paragraph 63;

(ii) A certification of the implementation of the lower leak definitions and monitoring frequencies in Paragraphs 67 and 72.

(iii) A certification of the implementation of the "initial attempt" at repair program under Paragraph 71;

(iv) A certification of the implementation of QA/QC procedures for review of data generated by LDAR technicians under Paragraph 75;

(v) An identification of the individual at the Refinery responsible for LDAR performance under Paragraph 76;

(vi) A certification of the implementation of the calibration drift assessment procedures under Paragraph 78; and

(vii) A certification of the implementation of the "delay of repair" procedures under Paragraph 79.

(viii) A certification of the implementation of the "chronic leaker" program of paragraph 80.

(c) Until termination of the Consent Decree, the Company shall identify each audit conducted under Paragraph 65 in the first periodic report submitted under Section IX in the following calendar year, including an identification of the auditors, a summary of the audit results, and a summary of the actions that the Company took or intends to take to correct all deficiencies identified in such audits.

(d) In each report due under 40 C.F.R. § 60.487, the Company shall include:

(i) Training. Information identifying the measures that the Company took to comply with the provisions of Paragraph 64; and

(ii) Monitoring. The following information on LDAR monitoring: (a) a list of the process units monitored during the reporting period; (b) the number of valves and pumps present in each process unit and the number of valves and pumps monitored in each process unit; (c) the number of valves and pumps found leaking, (d) an explanation for missed monitoring if the number of valves and pumps present exceeds the number of valves

and pumps monitored (e) the number of "difficult to monitor" pieces of equipment monitored; (f) the projected month of the next monitoring event for that unit; and (g) a list of all equipment currently on the "delay of repair" list and the date each component was placed on the list; (h) the number of missed or untimely repairs or delay of repair listings under Paragraphs 70, 71, 79 and 80.

L. Permits

82) Incorporation of Consent Decree Requirements into Federally-Enforceable Permits.

(a) By no later than 180 days after the Date of Entry, the Company shall submit applications to incorporate the "Surviving Requirements" (as defined in Paragraph 82 (c) below) in this Consent Decree that became effective as of the Date of Lodging or Date of Entry of the Consent Decree into minor or major new source review permits or other permits (other than Title V permits), which are federally enforceable. Following submission of the permit application, the Company shall cooperate with the permitting authority by promptly submitting all information it requests following receipt of the permit application.

(b) As soon as practicable, but in no event later than one hundred and eighty (180) days after the effective date or establishment of any other "Surviving Requirements" under Section V of this Consent Decree, the Company shall submit applications to incorporate those emission limits and standards into minor or major new source review permits or other permits (other than Title V permits), which are federally enforceable. Following submission of the permit application,

the Company shall cooperate with the permitting authority by promptly submitting all information it requests following receipt of the permit application.

(c) The paragraphs which contain requirements that are "Surviving Requirements" that will continue in effect after the termination of the Consent Decree through incorporation into federally-enforceable permit conditions as provided in Paragraphs 82(a) and (b) above are: Paragraphs 11-17 (FCCU NOx and SO_2), 18-20 (including, if the Company elects to accept it, the "Final CO Emission Limit" and corresponding monitoring (¶20(b)), 21-22 (if the Company elects to accept the "Final PM Emissions Limit") 23 (NSPS FCCU Regenerator), 24-25 (Heater/Boiler NOx), 27 (Heater/Boiler SO_2/NSPS), 29 (Prohibition on Fuel Oil Burning), 30-35 (NSPS Flare), 39(a) (Flare Corrective Action), and 86-89 (Emission Credit Generation). The Company has no obligation to submit applications to incorporate any requirements of the Consent Decree into any permit other than the Surviving Requirements listed above.

83) Title V Permits. Upon issuance of permits required under Paragraph 82, the Company shall file any applications necessary to incorporate the requirements of those permits into its Title V permit. The Parties agree that the incorporation of such requirements shall be in accordance with WAQSR Chapter 6, Section 3(c).

84) The Company agrees not to appeal any of its revised Title V permits on the basis of their incorporation of requirements from the permits referred to in Paragraph 82.

M. Construction Permits for Pollution Controls

85) The Company agrees to use its best efforts to obtain all required, federally enforceable permits for the construction of the pollution control technology and/or the installation of equipment necessary to implement the affirmative relief set forth in this Section V.

To the extent that the Company must submit permit applications for this construction or installation, it shall cooperate with the applicable permitting authority by promptly submitting all information it seeks following receipt of the permit application.

N. CERCLA/EPCRA

85A) To the extent that, during the course of the Company's development of the root cause failure analysis required by Section V.I, the Company discovers information demonstrating a failure by the Company to comply with the reporting requirements pursuant to Section 103 of CERCLA and/or Section 304 of EPCRA, including the regulations promulgated thereunder, a voluntary disclosure by the Company of any such violations will not be deemed "untimely" under EPA's Audit Policy or Wyoming'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 six months from the Date of Entry.

VI. EMISSION CREDIT GENERATION

86) The intent of this Section generally is to prohibit the Company from using the emissions reductions that will result from the installation and operation of the controls required by this Consent Decree for the purpose of emissions netting or emissions offsets, while still allowing the Company to use a fraction of these reductions if the units that use these reductions are modified or constructed for purposes of compliance with Tier II gasoline, MSAT2 or low sulfur diesel requirements, provided such units' emission limits are at the levels specified in Paragraph 88 at the time of permitting.

87) General Prohibition. The Company shall not use any NO_x, SO_2, PM, VOC or CO emissions reductions that result from any projects conducted or controls required pursuant to this Consent Decree as netting reductions or emissions offsets in any PSD, major non-attainment

and/or minor New Source Review ("NSR") permit or permit proceeding. Credits already used in permit proceedings identified in Appendix B of this Consent Decree are not subject to this General Prohibition.

88) Exception to General Prohibition. Notwithstanding the general prohibition in Paragraph 87, but subject to the requirements of Paragraph 89, the Company may use 10 tons per year each of NO_x, SO_2 and PM from the reductions required under this Consent Decree as credits or offsets in any PSD, major non-attainment and/or minor NSR permit or permit proceeding occurring after the Date of Lodging of the Consent Decree, provided that the new or modified emissions unit: (1) is being constructed or modified for purposes of compliance with Tier 2 gasoline, MSAT2 or low sulfur diesel requirements; and (2) already has or simultaneously obtains emissions limits for the new or modified unit at the time of permitting as follows:

(a) For heaters and boilers, a limit of 0.020 lbs. NO_x per million BTU or less on a 3-hour rolling average basis;

(b) For heaters and boilers, i) a limit of 0.10 grains of hydrogen sulfide per dry standard cubic foot of fuel gas or 20 ppmvd SO_2 corrected to 0% O_2, both on a 3 hour rolling average for sources subject to NSPS, subpart J; or ii) for sources subject to NSPS, subpart Ja, the limits of NSPS Subpart Ja for SO_2 and H_2S in fuel gas for fuel gas combustion devices;

(c) For heaters and boilers, no Fuel Oil burning or solid fuel firing capabilities;

(d) For an FCCU, a limit of 20 ppmvd NO_x corrected to 0% O_2 or less on a 365-day rolling average basis;

(e) For an FCCU, a limit of 25 ppmvd SO_2 corrected to 0% O_2 or less on a 365-day rolling average basis; and

(f) For a sulfur recovery unit, the lower of NSPS Subpart J or Ja, as applicable.

89) Conditions Precedent. Use of the exception set forth in Paragraph 88 is subject to the following conditions:

(a) Under no circumstances shall the Company use reductions required under the Consent Decree for netting and/or offsets prior to the time that such reductions have occurred;

(b) Reductions required under this Consent Decree may be used only at the Refinery.

(c) Reductions required under this Consent Decree are for purposes of this Consent Decree only and the Company may not use such reductions for any other purpose, including in any subsequent permitting or enforcement proceeding, except as provided herein;

(d) The Company still shall be subject to all federal and state regulations applicable to the PSD, major non-attainment and/or minor NSR permitting process when using such credits; and

(e) Sixty (60) days prior to submitting a permit application in which such credits are to be used, the Company shall submit a written notice that provides the information that is necessary to demonstrate that conditions (1) and (2) of Paragraph 88 have been met.

90) Outside the Scope of the General Prohibition. Nothing in this Section VI is intended to prohibit the Company from seeking to: (1) utilize or generate emissions credits or reductions from refinery units that are covered by this Consent Decree to the extent that the proposed credits or reductions represent the difference between the emissions limitations set forth in this Consent Decree for these refinery units and the more stringent emissions limitations that the Company may elect to accept for these refinery units in a permitting process; or (2)

utilize or generate emissions credits or reductions on refinery units or for pollutants that are not covered by this Consent Decree.

VII. RESERVED

VIII. RESERVED

91) RESERVED

92) RESERVED

IX. REPORTING AND RECORDKEEPING

93) Beginning with the first full even-numbered calendar quarter after the Date of Entry of the Consent Decree, the Company will submit to EPA and WDEQ a progress report within sixty (60) days after the end of that and each succeeding even-numbered calendar quarter thereafter until termination of this Consent Decree. Each report shall contain the following:

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

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

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

(d) flaring reports required by paragraph 40A; and

(e) any additional matters the Company believes should be brought to the attention of EPA and WDEQ.

94) In the semi-annual report required to be submitted after the second quarter of each year, the Company shall provide a summary of annual emissions data for the Refinery for the prior calendar year, to include:

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

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

(c) SO_2, CO and PM emissions in tons per year as a sum for all heaters and boilers;

(d) NO_x, SO_2, CO and PM emissions in tons per year for the FCCU;

(e) SO_2 emissions for the Wet Gas Scrubber in tons per year;

(f) SO_2 emissions from all Flaring Incidents in tons per year;

(g) NOx, SO_2, PM and CO emissions in tons per year as a sum for all other emission units for which emissions information is required to be included in the facilities' annual emissions summaries and are not identified above; and

(h) for each of the estimates in Subparagraphs 94(a) through 94(g) above, the basis for the emissions estimate or calculation (i.e., engineering judgment, stack tests, CEMS, emission factor, etc.). WRC is not required to undertake any additional testing for purposes of developing the estimates.

To the extent that the required emissions summary data is available in other reports generated by the Company, such other reports can be attached or the appropriate information can be extracted from such other reports and attached to the semi-annual report to satisfy the requirement. Any time during the life of this Decree, the Company may submit a request to EPA to terminate the

requirements of this Paragraph 94, and if EPA approves, the company will no longer be required to provide this additional information.

94A) Exceedances of Emission Limits. In each semi-annual report for the Refinery, the Company shall identify each exceedance of an emission limit required or established by this Consent Decree that occurred during the previous semi-annual period and, for any emissions limit that is required by the Consent Decree and monitored with CEMS or PEMS, any periods of CEMS or PEMS downtime that occurred during the prior semi-annual period.

(a) For each exceedance and/or period of CEMS or PEMS downtime, the Company shall include the following information:

(i) total period when the emission limit was exceeded, if applicable, expressed as a percentage of operating time for each calendar quarter;

(ii) where the operating unit has exceeded the emissions limit more than 1% of the total time of the calendar quarter, identification of each averaging period that exceeded the limit by time and date, the actual emissions of that averaging period (in the units of the limit), and any identified cause for the exceedance (including startup, shutdown, maintenance or malfunction), and, if it was a malfunction, an explanation and any corrective actions taken;

(iii) total downtime of the CEMS or PEMS, if applicable, expressed as a percentage of operating time for the calendar quarter;

(iv) where the CEMS or PEMS downtime is greater than 5% of the total time in a calendar quarter for a unit, identify the periods of downtime by time and date, and any identified cause of the downtime (including maintenance or malfunction), and, if it was a malfunction, an explanation and any corrective action taken.

(v) if a report filed pursuant to another applicable legal requirement contains all of the information required by this Paragraph 94A. in similar or same format, the requirements of this Paragraph 94A. may be satisfied by attaching a copy of such report.

(b) For any exceedance of an emissions limit required by the Consent Decree from an operating unit monitored through stack testing:

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

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

(iii) to the extent that the Company has already submitted the stack test results, it need not resubmit them, but may instead reference the submission in the report (e.g., date, addressee, reason for submission).

95) Each such report shall be certified by either the person responsible for environmental management and compliance for the Refinery, or by a person responsible for overseeing implementation of this Decree as follows:

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

The company shall retain all records required to be maintained in accordance with this Consent Decree for a period of no less than five (5) years or until Termination, whichever is longer, unless applicable regulations require the record to be maintained longer, in which case the Company shall comply with those regulations.

X. CIVIL PENALTY

96) In satisfaction of the claims asserted by the United States and the State of Wyoming in the complaint(s) filed in this matter, within thirty (30) days of the Date of Entry of

the Consent Decree, the Company shall pay a civil penalty of $150,000 as follows: (1) $75,000 to the United States; and (2) $75,000 to the State of Wyoming.

97) Payment of monies 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 USAO File Number 2006V00090 and DOJ Case Number 90-5-2-1-08001, and the civil action case name and case number of this action in the District of Wyoming. The costs of such EFT shall be the responsibility of the Company. Payment shall be made in accordance with instructions provided to the Company by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Wyoming. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. The Company shall provide notice of payment, referencing USAO File Number 2006V00090 and DOJ Case Number 90-5-2-1-08001, and the civil action case name and case number to the Department of Justice and to EPA, as provided in Paragraph 155 (Notice).

98) Payment of the civil penalty owed to the State of Wyoming under this Paragraph shall be made by certified or corporate check made payable to the State of Wyoming, Department of Environmental Quality and sent to the following address:

Wyoming Attorney General's Office
Attn.: Nancy Vehr, Senior Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82002

99) The civil penalty set forth herein is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore the Company shall not treat these penalty payments as tax deductible for purposes of federal, state, or local law.

100) Upon the Date of Entry of the Consent Decree, the Consent Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with

Federal Rule of Civil Procedure 69, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The United States and the State of Wyoming shall be deemed judgment creditors for purposes of collecting any unpaid amounts of the civil and stipulated penalties and interest.

XI. STIPULATED PENALTIES

101) The Company shall pay stipulated penalties for each failure by the Company to comply with the terms of this Consent Decree as provided herein. 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 shall rest exclusively within the discretion of the United States and the State of Wyoming.

102) Requirements for NO_x Emission Reductions from FCCU.

(a) For each failure to meet the Final NOx Emissions Limits set forth in Paragraphs 11 and 12 (as applicable), per unit, per day: $750 for each day in a calendar quarter on which the specified 7-day rolling average exceeds the applicable limit; and $2,500 for each day in a calendar quarter on which the specified 365-day rolling average exceeds the applicable limit.

(b) For failing to install, certify, calibrate, maintain and/or operate a NO_x CEMS and/or a O_2 CEMS as required by Paragraph 14, per unit, per day:

Period of Delay	Penalty per Day
1st through 30th day after deadline	$500
31st through 60th day after deadline	$1000

Beyond 60th day after deadline	$2000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

103) Requirements for SO_2 Emission Reductions from FCCU.

(a) For failure to meet the emissions limit for SO_2 set forth in Paragraph 15, per unit, per day: $750 for each day in a calendar quarter on which the specified 7-day rolling average exceeds the applicable limit; and $2500 for each day in a calendar quarter on which the specified 365-day rolling average exceeds the applicable limit.

(b) For failure to install, calibrate, maintain, and/or operate a SO_2 CEMS and O_2 CEMS as required by Paragraph 17, per unit, per day:

Period of Delay	Penalty per Day
1st through 30th day after deadline	$500
31st through 60th day after deadline	$1000
Beyond 60th day after deadline	$2000 or, an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

104) Requirements for CO Emissions from FCCU.

If and when the Company accepts the Final CO Emissions Limits:

(a) For failure to meet the emissions limit for CO set forth in Paragraph 18, per unit, per day: $750 for each day in a calendar quarter on which the specified 1-hour rolling average exceeds the applicable limit; and; $2500 for each day in a calendar quarter on which the specified 365-day rolling average exceeds the applicable limit.

(b) For failure to install, calibrate, maintain, and/or operate a CO CEMS and O_2 CEMS as required by Paragraph 20, per unit, per day:

Period of Delay	Penalty per Day
1st through 30th day after deadline	$500
31st through 60th day after deadline	$1000
Beyond 60th day after deadline	$2000 or, an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

105) Requirements for PM Emissions from FCCU.

If and when the Company accepts the Final PM Emissions Limit:

(a) For failure to meet the emissions limit for PM set forth in Paragraph 21, per unit, per day: $3000 for each day in a calendar quarter on which the emissions exceed the applicable limit.

106) Requirements for NO_x Emission Reductions from Heaters and Boilers.

(a) For failing to meet the emissions limit for NO_x set forth under Paragraph 24, per day, per unit: $1000 for each calendar day in a calendar quarter on which the emissions exceed the applicable limit, up to 30 days per quarter; and, beyond the 30th day of violation, $3,000 for each calendar day in a calendar quarter on which the emissions exceed the applicable limit.

(b) For failing to comply with the annual NO_x stack testing requirements pursuant to Paragraph 25, per unit, per day:

Period of Delay	Penalty per Day
1st through 30th day after deadline	$500
31st through 60th day after deadline	$1000

Beyond 60th day after deadline	$2000 or, an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

107) Requirements for SO_2 Emission Reductions from Heaters and Boilers.

(a) For burning any fuel gas that contains H_2S in excess of the applicable requirements of NSPS Subparts A and J (or Ja as applicable) in one or more heaters or boilers, identified in appendix A, per Paragraph 27, per event, per day:

Period of Non-Compliance	Penalty per Day
1st through 30th day	$2500
Beyond 31st day after deadline	$5000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

(b) For burning any Fuel Oil in any combustion unit at the Refinery in violation of Paragraph 29, per unit, per day:

Period of Non-Compliance	Penalty per Day
1st through 30th day	$1750
Beyond 31st day after deadline	$5000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

108) Flaring Devices.

(a) For failure to comply with NSPS Subpart J (or Ja as applicable) with respect to Flaring Devices at the Refinery pursuant to Paragraph 30, per violation per day:

Period of Delay	Penalty per Day

1st through 30th day after deadline	$500
31st through 60th day after deadline	$1500
Beyond 60th day after deadline	$2000

(b) For each failure to perform a Root Cause analysis or perform corrective actions for an Flaring Incident, as required by Paragraphs 38(a) or 39(a):

Period of Non-Compliance	Penalty per Day per Incident
1st through 30th day after deadline	$500
31st through 60th day after deadline	$1500
Beyond 60th day	$3000

109) Requirements for Benzene Waste NESHAP Program.

(a) For failure to complete the BWN Compliance Review and Verification Reports as required by Paragraph 43(a)(v), $5000 per month

(b) For failure to establish an annual review program to identify new benzene waste streams as required by Paragraph 46: $2500 per month.

(c) For failure to comply with the requirements set forth in Paragraph 47 (a)-(g) for use, monitoring, and replacement of carbon canisters: $1000 per incident of noncompliance per day.

(d) For failure to submit or maintain any records or materials as required by Paragraphs 47(h) and (i): $2000 per record or submission.

(e) For failure to perform any laboratory audits required under Paragraph 48: $5000 per month, per missed audit.

(f) For failure to include benzene waste from spills in the Refinery's TAB in accordance with the requirements of Paragraph 49: $7,500 per spill.

(g) For failure to implement the training requirements as set forth in Paragraph 50: $5,000 per quarter.

(h) RESERVED

(i) RESERVED

(j) For failure to install controls on waste management units handling organic wastes as required by Paragraph 51(b), per waste management unit: $10,000 per month.

(k) RESERVED

(l) For failure to conduct sampling in accordance with the sampling plan required by Paragraph 52 or 53: $5000 per week, per stream, or $30,000 per quarter, per stream, whichever is greater, but not to exceed $150,000 per quarter, per stream.

(m) For failure to perform the calculations required by Paragraph 56, per calculation, per day:

Period of Delay	Penalty per Day
1st through 30th day	$1250
31st through 60th day	$3000
Beyond 60th day	$5000

(n) RESERVED

(o) For failure to prepare, submit, and/or implement a BWON Corrective Measures Plan as required by Paragraph 57, per day:

Period of Delay	Penalty per Day
1st through 30th day	$1250
31st through 60th day	$3000
Beyond 60th day	$5000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

(p) For failure to retain a third-party contractor, and/or implement a plan for remedying any deficiencies identified in a Third-Party TAB Study and Compliance Review pursuant to Paragraph 58, per violation, per day:

Period of Delay	Penalty per Day
1st through 30th day	$1250

31st through 60th day	$3000
Beyond 60th day	$5000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

(q) For failure to conduct monthly visual inspections of all water traps as required by Paragraph 59: $500 per drain not inspected.

(r) For failure to identify and/or mark segregated storm water drains as required by Paragraph 59: $1000 per week per drain.

(s) For failure to monitor conservation vents as required by Paragraph 59: $500 per vent not monitored.

(t) For failure to conduct monitoring of controlled oil-water separators as required by Paragraph 59: $1000 per month, per unit.

(u) For failure to submit any of the written deliverables required by Paragraphs 60 and 61: $1000 per week, per deliverable.

(v) If it is determined through federal, state, or local investigation that the Company has failed to include all benzene waste streams in any TAB calculation for the Refinery, the Company shall pay the following, per waste stream:

Waste Stream	Penalty
For waste streams < 0.03 Mg	$250
For waste streams between 0.03 and 0.1 Mg/yr	$1000
For waste streams between 0.1 and 0.5 Mg/yr	$5000
For waste streams > 0.5 Mg/yr	$10,000

110) Requirements for Leak Detection and Repair Program.

(a) For failure to implement the requirements of Paragraph 63 [LDAR Program]: $3500 per week.

(b) For failure to implement in the requirements of Paragraph 64 [Training]: $10,000 per month, per program;

(c) For failure to implement the requirements of Paragraph 65 [Audits], $5000 per month, per audit;

(d) For failure to implement the requirements of Paragraph 66 [Corrective Action]:

Period of Delay	Penalty per Day
1st through 30th day after deadline	$1250
31st through 60th day after deadline	$3000
Beyond 60th day	$5000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

(e) For failure to implement the requirements of Paragraph 67 [Leak Definitions]: $100 per component, but not greater than $10,000 per month per process unit.

(f) For failure to implement the requirements of Paragraph 70 [Repair and Remonitoring of Leaks]: $500 per component, but not greater than $10,000 per month.

(g) For failure to implement the requirements of Paragraph 71 [Initial Attempt at Repair]: $100 per valve, but not greater than $10,000 per month.

(h) For failure to implement the requirements of Paragraph 72 [LDAR Monitoring Frequency]: $100 per component, but not greater than $10,000 per month, per unit.

(i) For failure to implement the requirements of Paragraphs 73 and 74 [Dataloggers and Electronic Data Storage]: $5000 per month

(j) For failure to implement the requirements of Paragraph 75 [QA/QC], $10,000 per month.

(k) For failure to implement the requirements of Paragraph 76 [LDAR Personnel Accountability]: $3750 per week.

(l) For failure to implement the requirements of Paragraph 78 [Calibration Drift Assessments], $100 per missed event.

(m) For failure to implement the requirements of Paragraph 79 [Delay of Repair], $5000 per valve or pump, per incident of non-compliance.

(n) For failure to implement the requirements of Paragraph 80 [Chronic Leakers]: $5000 per valve.

(o) For failure to submit any written deliverables required by Paragraph 81: $1000 per week, per report.

(p) If it is determined through a federal, state, or local investigation that the Company has failed to include all covered valves and pumps in its LDAR program, the Company shall pay $350 per component that it failed to include. If the Company discovers omitted valves or pumps. then the Company shall pay $175 per component omitted.

(q) For failure to perform Method 21 monitoring as evidenced by a ratio of leak rates in excess of 3.0 (except as provided by Paragraph 66), determined according to Paragraphs 65 and 66, per process unit:

(i) For ratios greater than 3.0 and less than or equal to 4.0, $15 per light-liquid or gas-vapor valve in the process unit;

(ii) For ratios greater than 4.0 and less than or equal to 5.0, $30 per light-liquid or gas-vapor valve in the process unit;

(iii) For ratios greater than 5.0 and less than or equal to 6.0, $45 per light-liquid or gas-vapor valve in the process unit; and

(iv) For ratios greater than 6.0, $60 per light-liquid or gas-vapor valve in the process unit.

111) Incorporation of Requirements into Federally-Enforceable Permits. For each failure to submit a permit application as required under Section V.L, per day:

Period of Delay	Penalty per Day
1st through 30th day after deadline	$800
31st day through 60th day after deadline	$1500
Beyond 60th day	$3000

112) RESERVED.

113) Reporting. For failure to submit a report or deliverable required under Section IX, per day, beginning on the 7th day past the report's due date (day 8 would be considered the first day of violation for which stipulated penalties would apply):

Period of Delay	Penalty per Day
1st through 30th day after deadline	$500
31st through 60th day after deadline	$1000
Beyond 60th day	$2000

114) Payment of Civil Penalties. For the Company's failure to pay the civil penalty as required by Section X of this Consent Decree: $10,000 per day plus interest on the amount overdue at the rate specified in 28 U.S.C § 1961(a).

115) Escrow Stipulated Penalties. For failure to escrow stipulated penalties as required by Paragraph 117. $2500 per day, per penalty, plus interest on the amount overdue at the rate specified in 28 U.S.C. § 1961(a).

116) Payment of Stipulated Penalties. The Company shall pay stipulated penalties upon written demand by the United States or the State of Wyoming no later than sixty (60) days after the Company receives such demand. Demand from one agency shall be deemed a demand from both agencies, but the agencies shall consult with each other prior to making a demand. Stipulated penalties owed by the Company shall be paid 50% to the United States and 50% to the State of Wyoming. Stipulated penalties shall be paid to the United States and the State of Wyoming in the manner set forth in Section X (Civil Penalty) of this Consent Decree. A demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount demanded for each violation (as well as can be estimated), the calculation method underlying the demand, and the grounds upon which

the demand is based. After consultation with each other, the United States and the State of Wyoming may, in their unreviewable discretion, waive payment of any portion of stipulated penalties that may accrue under this Consent Decree.

117) Stipulated Penalties Dispute. Should the Company dispute its obligation to pay part or all of a stipulated penalty or the amount demanded, it may avoid the imposition of a stipulated penalty for failure to pay a stipulated penalty under Paragraph 116 by placing the disputed amount demanded in a commercial escrow account pending resolution of the matter and by invoking the dispute resolution provisions of Section XV within the time provided in Paragraph 116 for payment of stipulated penalties. If the dispute is thereafter resolved in the Company's favor, the escrowed amount plus accrued interest shall be returned to it; otherwise, the United States and the State of Wyoming shall be entitled to the amount that was determined to be due by the Court, plus the interest that has accrued in the escrow account on such amount. The United States and the State of Wyoming reserve the right to pursue any other non-monetary remedies to which they are entitled, including but not limited to, additional injunctive relief for the Company's violations of this Consent Decree.

XII. INTEREST

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

due under the Consent Decree through the date of actual payment. For purposes of this Paragraph 118, interest pursuant to this Paragraph will cease to accrue on the amount of any stipulated penalty payment made into an interest bearing escrow account as contemplated by Paragraph 117. Monies timely paid into escrow shall not be considered to be an unpaid balance under this Section.

XIII. RIGHT OF ENTRY

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

XIV. FORCE MAJEURE

120) 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 the Company, its contractors, and any entity controlled by the Company that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite the Company'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 as it is occurring and after it has occurred, such that the delay or

violation is minimized to the greatest extent possible. If the Company wishes to assert the existence of a Force Majeure Event, the Company shall notify the United States and the State of Wyoming in writing as soon as practicable, but in any event within ten (10) business days of the date when the Company first knew of the event or should have known of the event by the exercise of due diligence. In this notice, the Company shall specifically reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay or violation may persist, the cause or causes of the delay or violation, and the measures taken or to be taken by the Company to prevent or minimize the delay or violation and the schedule by which those measures shall be implemented. The Company shall adopt all reasonable measures to avoid or minimize such delays. The notice required by this Section shall be effective upon the mailing of the same by certified mail, return receipt requested, as specified in Paragraph 155 (Notice).

121) Failure by the Company to substantially comply with the notice requirements of this Section, as specified above, shall render this Section XIV (Force Majeure) voidable by the United States, after an opportunity for consultation with the State of Wyoming, as to the specific event for which the Company has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

122) The United States, after an opportunity for consultation with the State of Wyoming, shall notify the Company in writing regarding its/their claim of a delay or impediment to performance within thirty (30) days of receipt of the force majeure notice provided under this Section.

123) If the United States, after an opportunity for consultation with the State of Wyoming, agrees that the delay or violation has been or will be caused by circumstances beyond the control of the Company including any entity controlled by the Company, could not have

prevented the delay or violation by the exercise of due diligence, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances. Such stipulation shall be treated as a non-material modification to the Consent Decree pursuant to the modification procedures established in this Consent Decree. The Company shall not be liable for stipulated penalties for the period of any such delay.

124) If the United States, after an opportunity for consultation with the State of Wyoming, does not accept the Company's claim of a Force Majeure Event, the Company must submit the matter to the Court for resolution to avoid payment of stipulated penalties, by filing a petition for determination with the Court. Once the Company has submitted this matter to the Court, the United States and the State of Wyoming shall have thirty (30) business days to file their responses to the petition. If the Court determines that the delay or violation has been or will be caused by circumstances beyond the control of the Company including any entity retained or controlled by the Company and that the delay or violation could not have been prevented by the Company by the exercise of due diligence, the Company shall be excused as to that event(s) and delay or violation (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances.

125) The Company shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its control, including any entity retained or controlled by it, and that it could not have prevented the delay by the exercise of due diligence. The Company shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. 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 or dates.

126) Unanticipated or increased costs or expenses associated with the performance of the Company's obligations under this Consent Decree shall not constitute circumstances beyond its/their control, or serve as the basis for an extension of time under this Section XIV.

127) Notwithstanding any other provision of this Consent Decree, this Court shall not draw any inferences nor establish any presumptions adverse to either Party as a result of the Company serving a force majeure notice or the Parties' inability to reach agreement.

128) As part of the resolution of any matter submitted to this Court under this Section XIV, the Parties by agreement, or the Court, by order, may in appropriate circumstances extend or modify the schedule for completion of work under the Consent Decree to account for the delay in the work that occurred as a result of any delay or impediment to performance agreed to by the United States or approved by this Court. The Company shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

XV. RETENTION OF JURISDICTION/DISPUTE RESOLUTION

129) This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of the Consent Decree and for the purpose of adjudicating all disputes (including, but not limited to, determinations under Section V (Affirmative Relief/Environmental Projects) of the Consent Decree) among the Parties that may arise under the provisions of the Consent Decree, until the Consent Decree terminates in accordance with Section XVIII of this Consent Decree (Termination).

130) The dispute resolution procedure set forth in this Section XV shall be available to resolve 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(ies).

131) The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the Parties to this Consent Decree to another advising of a dispute pursuant to this Section XV. The notice shall describe the nature of the dispute, and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice and the Parties shall expeditiously (not later than fourteen (14) days from the receipt of such notice) schedule a meeting to discuss the dispute informally.

132) 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 thirty (30) calendar days from the date of the first meeting between representatives of the Parties, unless it is agreed that this period should be extended.

133) In the event that the Parties are unable to reach agreement during such informal negotiation period, the United States or the State of Wyoming shall provide the Company with a written summary of its position regarding the dispute. The position advanced by the United States or the State of Wyoming shall be considered binding unless, within forty-five (45) calendar days of the Company's receipt of such written summary, the Company files with the Court a petition that describes the nature of the dispute. The United States or the State of Wyoming shall respond to the petition within forty-five (45) calendar days of filing. The decision of the Court will be binding on all Parties.

134) In the event that the United States and the State of Wyoming make differing determinations or take differing actions that affect the Company's rights or obligations under this Consent Decree, the final decisions of the United States shall take precedence.

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

136) The Parties do not intend that the invocation of this Section XV by a Party shall cause the Court to draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this Section.

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

XVI. EFFECT OF SETTLEMENT

138) For purposes of this Section XVI, 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 SIP and related rules adopted as required by §§ 51.165 and 51.166;

(ii) "Plan Requirements for Non-Attainment Areas" at Part D of Subchapter I of the Act, 42 U.S.C. §§ 7502-7503, and the regulations promulgated thereunder at 40 C.F.R. §§ 51.165 (a) and (b); Title 40, Part 51, Appendix S; and 40 C.F.R. § 52.24;

(iii) Any Title V or other federal or state permitting regulations that implement, adopt, or incorporate the specific regulatory requirements identified above, as amended from time to time; and

(iv) Any applicable state or local laws or regulations that are federally or state enforceable and that implement, adopt, or incorporate the specific federal regulatory requirements identified above, regardless of whether such state or local laws or regulations have been formally approved by EPA as being a part of the Wyoming SIP.

(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 40 C.F.R. §§ 60.1 through 60.19 (Subpart A) that are applicable to any affected facility covered by Subpart J; and any Title V regulations that implement, adopt, or incorporate the specific regulatory requirements identified above; any applicable state or local regulations that implement, adopt, or incorporate the specific federal regulatory requirements identified above; and any Title V permit provisions that implement, adopt, or incorporate the specific regulatory requirements identified above.

(c) "Post-Lodging Compliance Dates" shall mean any dates in this Section after the Date of Lodging. Post-Lodging Compliance Dates include dates certain (e.g., "December 31, 2008"), dates after Lodging represented in terms of "months after Lodging" (e.g., "Twelve Months after the Date of Lodging"), and dates after Lodging represented by actions taken (e.g., "Date of Certification"). The Post-Lodging Compliance Dates represent the dates by which work is required to be completed or an emission limit is required to be met under the applicable provisions of this Consent Decree.

139) New Source Review/Prevention of Significant Deterioration.

(a) Specific Pollutant and Units. With respect to emissions of the following pollutants from the following units, entry of this Consent Decree shall resolve all civil liability of the Company to the United States and the State of Wyoming for violations of the Applicable NSR/PSD Requirements resulting from pre-Date of Lodging construction or modification accrued up to the following dates:

Unit	Pollutant	Date
FCCU	SO_2	December 31, 2010
	NO_x	December 31, 2008
H-02	SO_2 and NO_x	Date of Entry
All Other Heaters and Boilers	SO_2	December 31, 2013
	NO_x	Date of Entry

(b) Conditional Resolution of Liability for CO and PM Emissions Under the Applicable NSR/PSD Requirements. If and when the Company accepts the following Final CO and/or Final PM Emissions Limits at the FCCU pursuant to Paragraphs 18 or 21, and demonstrates compliance as specified therein, then all

civil liability of the Company to the United States and WDEQ shall be resolved for alleged violations of the Applicable NSR/PSD Requirements relating to CO and/or PM or both (as applicable) from any pre-Date of Lodging construction or modification of the FCCU until the Company accepts the Final CO and/or PM Emissions Limits:

(i) CO -- 100 ppmvd on a 365-day rolling average basis, at 0% O_2

(ii) PM – 0.5 pounds PM per 1000 pounds coke burned on a 3-hour average basis.

(c) Reservation of Rights: Release for Violations Continuing After the Date of Lodging Can be Rendered Void. Notwithstanding the resolution of liability in Paragraph 139 (a) above, the release of liability by the United States and the State of Wyoming to the Company for violations of the Applicable NSR/PSD Requirements during the period between the Date of Lodging of the Consent Decree and the Post-Lodging Compliance Dates shall be rendered void if the Company materially fails to comply with the obligations and requirements of Paragraphs 11-22; provided however, that the release of liability by the United States and the State of Wyoming in Paragraph 139 (a) shall not be rendered void if the Company remedies such material failure and pays any stipulated penalties due as a result of such material failure.

(d) Exclusions from Release Coverage: Construction and/or Modification Not Covered. Notwithstanding the resolution of liability in Paragraph 139 (a), nothing in this Consent Decree precludes the United States and/or the State of Wyoming from seeking from the Company injunctive relief, penalties, or other equitable relief for violations by the Company of the Applicable NSR/PSD Requirements

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

(e) Evaluation of Applicable PSD/NSR Requirements Must Occur. Increases in emissions from units covered by this Consent Decree, where the increases result from the Post-Lodging construction or modification of any units within the Refinery are beyond the scope of the release in Paragraph 139 (a), and the Company must evaluate any such increases in accordance with the Applicable PSD/NSR Requirements.

140) New Source Performance Standards Subparts A and J.

(a) Specific Pollutants and Units. With respect to emissions of the following pollutants from the following units, for violations of the Applicable NSPS Subparts A and J Requirements, entry of this Consent Decree shall resolve all civil liability of the Company to the United States and the State of Wyoming from the date that the claims of the United States and the Plaintiff-Intervenor first accrued through the following Post-Lodging Compliance Dates:

Unit	Pollutant	Date
FCCU Catalyst Regenerator	CO, PM and SO_2	December 31, 2010
Heaters and Boilers in Appendix A	SO_2	Dates Specified in Appendix A
H-02		Date of Entry
H-10	SO_2	Date of Entry

Emergency Flare Pit	SO_2	December 31, 2010

(b) Reservation of Rights: Release for NSPS Violations Occurring After the Date of Lodging Can be Rendered Void. Notwithstanding the resolution of liability in Paragraph 140(a), the release of liability by the United States and the State of Wyoming to the Company for violations of any Applicable NSPS Subparts A and J Requirements that occurred between the Date of Lodging and the Post-Lodging Compliance Dates shall be rendered void if the Company materially fails to comply with the obligations and requirements of Paragraphs 23 and 35; provided however, that the release in Paragraph 140(a) shall not be rendered void if the Company remedies such material failure and pays any stipulated penalties due as a result of such material failure.

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

141) LDAR and Benzene Waste NESHAP.

(a) Resolution of Liability. Entry of this Consent Decree shall resolve all civil liability of the Company to the United States and the State of Wyoming for violations of the following statutory and regulatory requirements that: (1) commenced and ceased prior to the Date of Entry of the Consent Decree; or (2) commenced prior to the Date of Entry of the Consent Decree and continued past the Date of Entry, provided that the events giving rise to such post-entry

violations have been identified by the Company as required by Paragraphs 65-66 of Section V.K. for LDAR and Paragraphs 43-45 of Section V.J. for benzene:

(i) LDAR. for all equipment in light liquid service and gas and/or vapor service, the LDAR requirements promulgated pursuant to Sections 111 and 112 of the Clean Air Act, and codified at 40 C.F.R. Part 60, Subparts VV and GGG and 40 C.F.R. Part 61, Subparts J and V.

(ii) 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); and (c).

(iii) any federally or state enforceable applicable state or local laws or regulations that implement, adopt, or incorporate the specific federal regulatory requirements identified in Paragraphs 141(a)(i-ii), including WAQSR 5 § 2(b) & 3(b).

(b) Reservation of Rights. Notwithstanding the resolution of liability in Paragraph 141(a), nothing in this Consent Decree precludes the United States and/or the State of Wyoming from seeking from the Company:

(i) injunctive and/or other equitable relief for violations of Benzene Waste NESHAP and/or LDAR that: (A) commenced prior to the Date of Entry of the Consent Decree and continued after the Date of Entry if the Company fails to identify and address such violations as required by Paragraphs 141(a)(i-ii); or (B) commenced after the Date of Entry of the Consent Decree; or

(ii) civil penalties for violations of the Benzene Waste NESHAP and/or LDAR first occurring on or after the Date of Entry of the Consent Decree.

142) Resolution of Liability for Certain Other Matters.

(a) Liability under EPCRA/CERCLA for Pre-Entry Hydrocarbon Gas Flaring Incidents. Entry of this Consent Decree shall resolve all civil liability of the Company to the United States and the State of Wyoming for violations of Section 304 of EPCRA, 42 U.S.C. § 11004, or Section 103 of CERCLA, 42 U.S.C. § 9603, for incidents identified in the flaring history required by Paragraph 37.

(b) The parties have discussed and the Company has denied any civil liability to the United States for a release of catalyst that occurred from the Refinery's FCCU beginning on March 24, 2002 ("Catalyst Release"). Entry of this Consent Decree shall resolve all civil liability of the Company to the United States for the claims released by the State of Wyoming in a Consent Decree entered in Docket No. 161-454 (February 18, 2003).

143) State of Wyoming Release of Claims

(a) Entry of this Consent Decree shall resolve all civil liability of the Company to the State of Wyoming for the violations alleged in its complaint up to the Date of Lodging, except as provided in Paragraphs 143(b) and (c).

(b) Entry of this Consent Decree shall resolve all civil penalty liability of the Company to the State of Wyoming for violations of 6 WAQSR § 2, the state minor source air quality permitting requirements, resulting from changes in the method of operation or modifications affecting the FCCU, heaters and boilers at

the refinery up to the Date of Lodging. The State reserves the right to require the Company to implement any legally required injunctive relief for the FCCU and heaters and boilers.

(c) Entry of this Consent Decree shall resolve all civil penalty liability of the Company to the State of Wyoming for violations identified in the Review of Flaring Incidents reported to WDEQ pursuant to Paragraph 37. The State reserves the right to require the Company to implement any legally required injunctive relief for such Flaring Incidents.

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

145) Claim/Issue Preclusion. In any subsequent administrative or judicial proceeding initiated by the United States or the State of Wyoming for injunctive relief, penalties, or other relief relating to the Company for violations of the PSD/NSR, NSPS, NESHAP, and/or LDAR requirements, not identified in the Complaint or this Section XVI of the Consent Decree

(a) The Company shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting. Nor may the Company assert, or maintain, any other defenses based upon any contention that the claims raised by the United States or the State of Wyoming in the subsequent proceeding were or should have been brought in the instant case. Nothing in the preceding sentences is intended

to affect the ability of the Company to assert that the claims are deemed resolved by virtue of this Section XVI of the Consent Decree.

(b) The United States and the State Wyoming 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 the Company of any interpretation or guidance issued by EPA related to the matters addressed in this Consent Decree.

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

XVII. GENERAL PROVISIONS

147) Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve the Company of its obligations to comply with all applicable federal, state and local laws and regulations. Subject to Section XVI, nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States or the State of Wyoming to seek or obtain other remedies or sanctions available under other federal, state or local statutes or regulations, by virtue of the Company's violation of the Consent Decree or of the statutes and regulations upon which the Consent Decree is based, or for the Company's violations of any applicable provision of law, other than the specific matters resolved herein. This shall include the right of the United States or the State of Wyoming to invoke the authority of the Court to order the Company's compliance with this Consent Decree in a subsequent

contempt action. Nothing in this Consent Decree shall be construed to prohibit or prevent the United States or the State of Wyoming from developing, implementing or enforcing more stringent standards or requirements through rulemaking or permitting or as otherwise authorized or required under federal, state, regional or local laws and regulations.

148) Post-Permit Violations. Nothing in this Consent Decree shall be construed to prevent or limit the right of the United States, or the State of Wyoming, to seek injunctive or monetary relief for violations of permits issued as a result of the procedure required under this Decree; provided however, that with respect to monetary relief, the United States and the State of Wyoming must elect between filing a new action for such monetary relief or seeking stipulated penalties under this Consent Decree, if stipulated penalties also are available for the alleged violation(s). The United States and the State of Wyoming may not recover both.

149) Failure of Compliance. The United States and the State of Wyoming do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the Company's complete compliance with the Consent Decree will result in compliance with the provisions of the CAA or the Wyoming Environmental Quality Act. Notwithstanding the review or approval by EPA and/or the WDEQ of any plans, reports, policies or procedures formulated pursuant to the Consent Decree, the Company shall remain solely responsible for compliance with the terms of the Consent Decree, all applicable permits, and all applicable federal, state and local laws and regulations, except as provided in Section XIV (Force Majeure).

150) Service of Process. The Company hereby agrees to accept service of process by mail with respect to all matters arising under or relating to the 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 at Paragraph 155 (Notice) are authorized to accept service of process with respect to all matters arising under or relating to the Consent Decree.

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

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

153) Public Documents. All information and documents submitted by the Company to the Applicable Federal and State Agencies pursuant to this Consent Decree shall be subject to public inspection in accordance with the respective statutes and regulations that are applicable to EPA and the WDEQ, unless subject to legal privileges or protection or identified and supported as business confidential in accordance with the respective state or federal statutes or regulations.

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

155) Notice. Unless otherwise provided herein, notifications to or communications between the Parties shall be deemed submitted on the date they are postmarked and sent by U.S. Mail, postage pre-paid, except for notices under Section XIV (Force Majeure) and Section XV (Retention of Jurisdiction/Dispute Resolution) which shall be sent by overnight mail or by certified or registered mail, return receipt requested. Each report, study, notification or other communication of the Company shall be submitted as specified in this Consent Decree, with copies to EPA Headquarters and EPA Region 8 and WDEQ. Except as otherwise provided herein, all reports, notifications, certifications, or other communications required or allowed under this Consent Decree to be submitted or delivered to the United States, EPA, the State of Wyoming and the Company 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. 90-5-2-1-08001

As to EPA:

U.S. Environmental Protection Agency
Director, Air Enforcement Division
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2242-A
Washington, DC 20460

with hard copy to

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

And an electronic copy to

csullivan@matrixneworld.com and

foley.patrick@epa.gov

EPA Region 8:

Director, Air and Toxics Technical Enforcement Program
U.S. EPA Region 8
Mail Code ENF-AT
1595 Wynkoop Street
Denver, CO 80202-1129

The State of Wyoming

Administrator, Air Quality Division
122 West 25th Street
Cheyenne WY 82002

With a copy to:

Air Quality Division District Supervisor
1866 South Sheridan Avenue
Sheridan, WY 82801

As to the Company

Robert Neufeld
Vice President – Environment and Governmental Relations
1600 Broadway
Suite 2300
Denver, CO 80202-4923

C. Patrick Havener
President
Wyoming Refining Company
P.O. Box 820
Newcastle, Wyoming 82701

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

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

156) Approvals. All EPA approvals or comments required under this Decree shall come from EPA Region 8.

157) 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.

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

XVIII. TERMINATION

159) Termination.

(a) This Consent Decree shall terminate upon motion by the United States, the State of Wyoming or the Company pursuant to Paragraph 159(b) The Company must have satisfied all of the following requirements of this Consent Decree:

(i) installation of controls as specified in Section V of this Consent Decree;

(ii) achieving compliance with all provisions contained in this Consent Decree;

(iii) paying all penalties and other monetary obligations due under the terms of the Consent Decree; no penalties or other monetary obligations due hereunder can be outstanding or owed to the United States, or the State of Wyoming;

(iv) RESERVED

(v) the receipt by the Company of permits incorporating the Surviving Requirements as required by Section V.L.

(vi) EPA's receipt of the annual progress report following the conclusion of the operation by the Company for at least one year of all units in substantial and material compliance with the emission limits established herein; and

(vii) The Company has certified compliance with Paragraph 159(a)(i-vi), above, to the United States and the State of Wyoming in writing.

(b) Certification of Completion. The Company may certify completion of one or more parts of the Consent Decree provided all of the related requirements of Section V have been satisfied as follows:

(i) Sections V.A-V.E, Fluid Catalytic Cracking Unit;

(ii) Sections V.F-V.G, Process heaters and boilers;

(iii) Sections V.H-V.I, Flaring Devices;

(iv) Section V.J, Benzene NESHAP;

(v) Section V.K, Leak Detection and Repair; and

(vi) Sections V.L-V.M, Permitting

Within 90 days after the Company concludes that one or more parts of the Section V requirements have been completed, the Company may submit a written report to the Parties listed in Paragraph 155 (Notice) describing the activities undertaken and certifying that the applicable Paragraphs have been completed in full satisfaction of the requirements of this Consent Decree, and that the Company is in substantial and material compliance with all of the other requirements of the Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of the Company:

> 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.

Within 90 days after receipt of above the certification of completion, EPA, after reasonable opportunity to review and comment by the State, may notify the Company whether the requirements set forth in the applicable Paragraphs have been completed in accordance with this Consent Decree. The Parties recognize that ongoing obligations under such Paragraphs remain and necessarily continue (e.g., reporting, recordkeeping, training, auditing requirements), and that the Company's certification is that it is in current compliance with all such obligations. If EPA concludes that the requirements have not been fully complied with, the EPA shall notify the

Company as to the activities that must be undertaken to complete the applicable Paragraphs of the Consent Decree. The Company shall perform all activities described in the notice, subject to its right to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution). If EPA concludes that the requirements of the applicable Paragraphs have been completed in accordance with this Consent Decree, EPA will so certify in writing to the Company. EPA's certification shall constitute the Certification of Completion of the applicable Paragraphs for purposes of this Consent Decree. Nothing in Paragraph 159(b) shall preclude the United States or the State of Wyoming from seeking stipulated penalties for a violation of any of the requirements of the Consent Decree occurring after the submission of the certification of completion by WRC. In addition, nothing in Paragraph 159(b) shall permit the Company to fail to implement any ongoing obligations under the Consent decree regardless of whether a Certification of Completion has been issued with respect to Paragraph 159(b)(i)-(vi) of the Consent Decree.

160) Unless, within 120 days of receipt of the certification required by Paragraph 159(a)(vii), either the United States or WDEQ objects in writing with specific reasons, the Court may upon motion by the Company order that this Consent Decree be terminated. If either the United States or WDEQ objects to the certification by the Company then the matter shall be submitted to the Court for resolution under Section XV (Retention of Jurisdiction/Dispute Resolution) of this Consent Decree. In such case, the Company shall bear the burden of proving that this Consent Decree should be terminated.

XIX. SIGNATORIES

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

Dated and entered this _____ day of _____, 2009.

_____
UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Hermes Consolidated, Inc. dba Wyoming Refining Company, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date: February 2, 2009

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: February 4, 2009

DAVID M. ROCHLIN
Special Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
c/o U.S. EPA (Mail Code ENF-L)
1595 Wynkoop Street
Denver, CO 80202

Date: February 10, 2009

CAROL A. STATKUS
Assistant United States Attorney
United States Attorneys Office for the District of Wyoming

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Hermes Consolidated, Inc. dba Wyoming Refining Company, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 1/30/09

CATHERINE R. McCABE
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

Date: 1/26/09

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

Date: 1/26/09

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

Date: 1-26-09

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

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Hermes Consolidated, Inc. dba Wyoming Refining Company, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF-INTERVENOR THE STATE OF WYOMING

Date: Jan 5, 2009

DAVID FINLEY, Administrator
Wyoming Department of Environmental Quality
Air Quality Division

Date: 1/06/09

JOHN CORRA, Director
Wyoming Department of Environmental Quality

Date: December 23, 2008

Approval as to Form
NANCY E. VEHR
Senior Assistant Attorney General
Wyoming Attorney General's Office

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Hermes Consolidated, Inc. dba Wyoming Refining Company.

FOR DEFENDANT HERMES CONSOLIDATED, INC.

Date: 1/8/09

C. PATRICK HAVENER
President
Hermes Consolidated, Inc. dba Wyoming Refining Company

LEANN M. JOHNSON-KOCH, Esquire
DLA Piper US LLP
500 8th Street, NW
Washington, DC 20004
(202) 799-4380
Counsel to Hermes Consolidated, Inc. dba Wyoming Refining Company

Appendix A
Heaters and Boilers

Heaters and Boilers	NSPS, Subpart J Applicability to fuel gas combustion devices
H-11, H-12, H-13, H-14, H-15, H-16, H-19, H-20, H-21, and H-22	Date of Lodging
H-01, H-03, H-06, H-07, and H-09	December 31, 2013

Appendix B

Emission Credit Generation
Permitting Proceedings Prior To Entry Of The Consent Decree

Permit No. MD-1500A, installed ultra-low NOx burners on H-01and H-03 and shutdown H-02 generating 11.3 tons of NOx reductions