

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, )  
Plaintiff, )  
)  
the LOUISVILLE METRO AIR )  
POLLUTION CONTROL DISTRICT, )  
the STATE OF NEW JERSEY, )  
Plaintiff-Intervenors, )  
)  
V. )  
)  
OXY VINYLs, LP )  
)  
Defendant. )  
\_\_\_\_\_ )

Civil Action No.

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America (hereinafter "Plaintiff" or "the United States"), on behalf of the United States Environmental Protection Agency ("EPA") has filed a Complaint alleging that Oxy Vinyls, LP ("Oxy Vinyls"), has violated the following environmental statutes and their implementing regulations at one or more of its polyvinyl chloride manufacturing facilities: the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., and the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11001 et seq.;

WHEREAS, by agreeing to entry of this Consent Decree, Oxy Vinyls makes no admission of law or fact with respect to any of the allegations set forth in the Consent Decree or the Complaints filed herewith and denies any violation of any law or regulation identified herein;

WHEREAS, Oxy Vinyls approached EPA offering to enter into discussions with the goal of achieving significant reductions in the emissions of vinyl chloride at the following Oxy Vinyls' polyvinyl chloride facilities: Pasadena, Texas ("Pasadena Facility"); Deer Park, Texas ("Deer Park Facility"); Pedricktown, New Jersey ("Pedricktown Facility"); and Louisville, Kentucky ("Louisville Facility") (together "the PVC Facilities");

WHEREAS, the purpose of this Consent Decree is to achieve significant reductions in vinyl chloride emissions that will be environmentally beneficial, ensure compliance with applicable environmental laws and regulations, and resolve alleged violations at the PVC Facilities;

WHEREAS, Oxy Vinyls, EPA, the State of New Jersey ("New Jersey") on behalf of the New Jersey Department of Environmental Protection ("NJDEP"), and the Louisville Metro Air Pollution Control District ("LMAPCD") entered into discussions in late 2004 regarding reducing emissions of vinyl chloride and ensuring compliance with federal, state and local environmental laws at the PVC Facilities;

WHEREAS, EPA conducted an inspection of the Louisville Facility in March 2004 and representatives of EPA visited the Pasadena, Deer Park, Louisville and Pedricktown Facilities, representatives of New Jersey visited the Pedricktown Facility, and representatives of LMAPCD visited the Louisville Facility during the negotiations on this Consent Decree;

WHEREAS, the LMAPCD and New Jersey have filed Complaints in Intervention alleging similar violations under applicable state and local law and have joined this settlement as signatories to this Consent Decree;

WHEREAS, the Parties agree that the injunctive relief and environmental projects (or measures) identified in this Consent Decree will reduce vinyl chloride emissions from the PVC Facilities by approximately 40,000 pounds annually relative to 2003 product mix at nameplate capacity;

WHEREAS, by entering into this Consent Decree Oxy Vinyls has demonstrated a commitment to proactively resolve environmental concerns related to the PVC Facilities;

WHEREAS, Oxy Vinyls has proactively completed an emissions reduction project at the Deer Park, Texas facility that is expected to achieve five hundred (500) pounds per year of vinyl chloride emission reductions, relative to 2003 product mix at nameplate capacity;

WHEREAS, Oxy Vinyls had voluntarily completed an emissions reduction project on Stripper #1 at its Pasadena Facility, which is expected to achieve vinyl chloride emission reductions;

WHEREAS, Oxy Vinyls has proactively completed a pilot study at its Pedricktown Facility to study the feasibility of reducing emissions through the Pedricktown Equipment Openings SEP, at a cost of approximately \$70,000, a study which demonstrated that emissions reductions of approximately one hundred (100) pounds per year may be possible at the Pedricktown Facility through implementation of the Pedricktown Equipment Openings SEP;

WHEREAS, consistent with this proactive environmental commitment, and notwithstanding its belief that certain of the United States' and Plaintiff-Intervenors' claims lacked a basis in law or fact, representatives of Oxy Vinyls discussed with the United States and Plaintiff-Intervenors how to achieve, without resort to litigation, a responsible, environmentally beneficial, and cost-effective resolution of the United States' and Plaintiff-Intervenors' claims at the PVC Facilities as set forth in the Complaint and Complaints in Intervention;

WHEREAS, the Parties acknowledge that this process, which was initiated by Oxy Vinyls, will resolve potential compliance issues while simultaneously advancing the goals of the CAA, RCRA, EPCRA, the New Jersey Air Pollution Control Act, N.J.S.A.26C:2C-1 et seq., and the Louisville Metro Air Pollution Control District Regulations;

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

WHEREAS, Oxy Vinyls has waived all applicable federal or state requirements of statutory notice of the alleged violations;

WHEREAS, it is the intent of the Parties to resolve through this Consent Decree the matters set forth in Section XIV of the Consent Decree ("Effect of Settlement");

WHEREAS, notwithstanding the foregoing reservations, Oxy Vinyls agrees that: a) settlement of the matters set forth in the Complaints (as set forth in Section XIV, Effect of Settlement) in accordance with this Consent Decree is in the best interests of the Parties and the public; and b) entry of the Consent Decree without litigation is the most appropriate means of resolving this matter;

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

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

I. JURISDICTION AND VENUE

1. The United States' Complaint ("Complaint") states a claim upon which relief can be granted against Oxy Vinyls under Sections 113 of the Clean Air Act, 42 U.S.C. § 7413; Section 3008 of RCRA, 42 U.S.C. § 6928; and Sections 312 and 313 of EPCRA, 42 U.S.C. §§ 11022 and 11023. The Complaints in Intervention filed by LMAPCD and New Jersey similarly state claims upon which relief can be granted against Oxy Vinyls relating to the Louisville Facility and the Pedricktown Facility, respectively. This Court has jurisdiction of the subject matter herein and over the Parties consenting hereto pursuant to 28 U.S.C. § 1345. Venue is proper under 28 U.S.C. § 1391(b) and (c). For purposes of this Consent Decree, Oxy Vinyls consents to and will not contest the jurisdiction of this Court over this matter.

## II. APPLICABILITY

2. The provisions of this Consent Decree apply to and are binding upon the United States, LMAPCD, New Jersey and Oxy Vinyls as well as Oxy Vinyls' officers, employees, agents, successors, and assigns. Except as set forth in this Paragraph and Paragraph 82a ("Effect of Shutdown") no transfer of ownership or operation, or decision to close or terminate operations at any of the PVC Facilities shall relieve Oxy Vinyls of its obligations under this Consent Decree. In the event Oxy Vinyls proposes to sell or transfer any of its right, title, or interest in real property or operations subject to this Consent Decree, it shall advise in writing such proposed purchaser or successor-in-interest of the existence of this Consent Decree, and shall send written notification by certified mail, return receipt requested, to the United States, EPA, New Jersey and LMAPCD pursuant to Section VI (Notices) before such sale or transfer, if possible, but no later than the closing date of such sale or transfer. In the event Oxy Vinyls sells or transfers any of its right, title or interest in any portion of real property or operations subject to this Consent Decree prior to termination of the Consent Decree, the conveyance shall not release Oxy Vinyls from any obligation imposed by this Consent Decree for that PVC Facility unless the party to whom the right, title or interest has been transferred agrees pursuant to a written agreement enforceable by the United States, and in addition to the United States, New Jersey in the case of the Pedricktown Facility, and LMAPCD in the case of the Louisville Facility, as third-party beneficiaries of such agreement to fulfill the obligations of this Consent Decree for that portion of the PVC Facility.

2a. Oxy Vinyls shall provide a copy of the applicable provisions of this Consent Decree and Consent Decree attachment to all vendors retained to perform Work under Section IV (Pedricktown LDAR Relief) or V (RCRA Pasadena Sampling Plan), or the SEPs or New Jersey State-Only



Environmental Project under Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) of the Consent Decree upon execution of any contract relating to such Work or SEPs or New Jersey State-Only Environmental Project. Copies of the relevant portions of the Consent Decree do not need to be supplied to firms retained solely to supply materials or equipment to satisfy requirements of this Consent Decree.

3. References to “Parties” in this Consent Decree include the United States, Oxy Vinyls, New Jersey and the LMAPCD. Where appropriate, the LMAPCD or NJDEP will oversee the regulatory permits and approvals in accordance with the provisions of this Consent Decree.

4. Notwithstanding any retention of contractors, subcontractors or agents to perform any obligations required under this Consent Decree, including regarding the RCRA Pasadena Sampling Plan (Section V), Pedricktown LDAR Relief (Section IV), and Supplemental Environmental Projects (“SEPs”) (Section VII), and except as set forth in Paragraph 2, Oxy Vinyls shall be responsible for ensuring that all such obligations are performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, Oxy Vinyls shall not assert as a defense the failure of its employees, servants, agents or contractors to take actions necessary to comply with this Consent Decree, unless Oxy Vinyls establishes that such a failure resulted from a Force Majeure event as defined in Section XII (Force Majeure) of this Consent Decree.

### III. DEFINITIONS

5. Except as otherwise provided in this Consent Decree, definitions for the terms presented herein shall be incorporated from the following statutes and their corresponding regulations: Clean

Air Act, 42 U.S.C. § 7401 et seq.; Resource Conservation and Recovery Act of 1980 ("RCRA"), as amended, 42 U.S.C. § 6901 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq.; New Jersey Air Pollution Control Act, N.J.S.A.26C:2C-1 et seq., and the Louisville Metro Air Pollution Control District Regulations;

6. The following definitions apply for the purposes of this Consent Decree:

- a. "Entry of the Consent Decree" shall mean the date the Consent Decree is entered by the Court after opportunity for public comment;
- b. "Project Coordinator" shall mean (1) EPA Region 6 Engineer Craig Lutz, when referring to the RCRA Pasadena Sampling Plan; (2) EPA Region 6 Environmental Scientist Jennifer Gibbs, when referring to the Pasadena Stripper Tray SEP; (3) EPA Region 2 Branch Chief Ken Eng, when referring to the Pedricktown Equipment Openings SEP; (4) EPA Region 4 Chief, Air Enforcement & EPCRA Branch, when referring to the Louisville Railcar Unloading SEP; and (5) NJDEP Southern Regional Office Chief Richelle Wormley, when referring to the Camden Waterfront South/Dust Sampling Project (Section VII);
- c. "Complaint" shall mean the complaint filed by the United States in this action. "Complaints in Intervention" shall mean the complaints in intervention filed by the LMAPCD and New Jersey in this action. "Complaints" shall mean the Complaint and the Complaints in Intervention together;

- d. "Consent Decree" or "Decree" shall mean this Consent Decree and Attachment 1 (Scope of Work) attached hereto (listed in Section XVIII);
- e. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- f. "Oxy Vinyls" shall mean Oxy Vinyls, LP;
- g. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- h. "the PVC Facilities" shall mean Oxy Vinyls' PVC manufacturing facilities located at Deer Park, Texas; Pasadena, Texas; Louisville, Kentucky; and Pedricktown, New Jersey; and shall include all land, buildings, equipment, machinery, fixtures, documents, data, chemicals and wastes located within the boundaries of the real property owned or operated by Oxy Vinyls at the above-referenced locations;
- i. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral;
- j. "Parties" shall mean the United States, the State of New Jersey on behalf of NJDEP, the LMAPCD and Oxy Vinyls;
- k. "Section" shall mean a portion of this Consent Decree identified by a roman numeral;

- l. "United States" shall mean the United States of America, acting on behalf of EPA;
- m. "PVC" shall mean polyvinyl chloride;
- n. "SEP" shall mean a "Supplemental Environmental Project" performed pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) and Attachment 1 (Scope of Work);
- o. "Work" shall mean performance of the requirements set forth in Section V (RCRA Pasadena Sampling Plan) and Section IV (Pedricktown LDAR Relief);
- p. "LMAPCD" shall mean the Louisville Metro Air Pollution Control District;
- q. "New Jersey" shall mean the State of New Jersey on behalf of NJDEP. "NJDEP" shall mean the New Jersey Department of Environmental Protection;
- r. "Pedricktown LDAR Relief" shall mean the leak detection and repair requirements relating to the Pedricktown Facility pursuant to Section IV of this Consent Decree (Pedricktown LDAR Relief);
- t. "Pedricktown Title V Permit" shall mean the portions of the permit no. 65530-BOP050001 applicable to the Pedricktown Facility, as it may from time to time be amended or renewed, or subsequent approved permits;
- u. "The State-Only Claims" shall mean the claims alleged by the State of New Jersey in its Complaint in Intervention that are not also alleged by the United States in its Complaint;

- v. “Calendar quarter” shall mean the three month period ending on March 31, June 30, September 30, and December 31; and
- w. “New Jersey State-Only Environmental Project” shall mean the Camden Waterfront South/Dust Control Project described in Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project).

#### IV. PEDRICKTOWN LDAR RELIEF

7. The requirements of this Section IV (Pedricktown LDAR Relief) shall be enforceable under this Consent Decree unless and until these requirements are incorporated into the non-Title V permits applicable to the Pedricktown Facility and then incorporated into the Pedricktown Title V Permit, at which point these requirements will become enforceable pursuant to such permits.

8. Oxy Vinyls shall be required to conduct Leak Detection and Repair (LDAR) monitoring/tests at the Pedricktown Facility in accord with the New Jersey Administrative Code 7:27-16:18 – Control and Protection of Air Pollution by Volatile Organic Compounds – Leak Detection and Repair.

9. In anticipation of this Consent Decree, Oxy Vinyls began such quarterly LDAR monitoring in October 2005. Initial monitoring shall be conducted on a quarterly basis in accordance with NJAC 7:27-16.18(h), with further monitoring obligations determined as set forth in the regulation.

10. Reserved.

## V. RCRA PASADENA SAMPLING PLAN

11. Oxy Vinyls shall submit a vinyl chloride sampling and analysis plan for its centrifuge wastewater stream at the Pasadena, Texas facility ("Sampling Plan"). The Sampling Plan shall be submitted to the EPA Region 6 Project Coordinator for review and approval pursuant to this Section and Section VI (Notices) within ninety (90) days of Entry of the Consent Decree. The purpose of the Sampling Plan will be to demonstrate whether the vinyl chloride levels in the centrifuge wastewater constitute a hazardous waste pursuant to RCRA and its implementing regulations, when land disposed in the following surface impoundments: Pond 1, Pond 4 and/or Pond 5 at the Pasadena Facility. The Sampling Plan shall provide for two (2) vinyl chloride level samples per week for one (1) year at a point at which the wastewater is placed into the surface impoundment or a site representative of these conditions.

12. Further, the Sampling Plan shall conform to EPA's requirements for a Quality Assurance Project Plan (EPA QA-R5, March 2001) and be developed in accordance with RCRA, its implementing regulations, and applicable EPA guidance documents. Consistent with the elements for a Quality Assurance Project Plan, the Sampling Plan will also include provisions for data and reports to be provided to EPA within specified timeframes, including but not limited to the following: (a) beginning upon Entry of the Consent Decree, Oxy Vinyls shall submit quarterly progress reports thirty (30) days after the end of each calendar quarter for review and approval to the Project Coordinator pursuant to Section VIII (General Recordkeeping and Reporting); (b) Oxy Vinyls shall submit a draft Final Report for approval to the Project Coordinator within ninety (90) days following completion of the RCRA sampling performed pursuant to this Section; (c) Oxy

Vinyls shall submit a Final Report to the Project Coordinator within twenty (20) days of receiving any comments on the draft Final Report.

13. Oxy Vinyls shall furnish all personnel, materials, and services necessary for, or incidental to, performing the Sampling Plan.

14. After receipt of the proposed Sampling Plan described in Paragraph 11 above, the Project Coordinator will notify Oxy Vinyls, in writing, regarding EPA's approval or disapproval of the Sampling Plan. If EPA approves the Sampling Plan, the Project Coordinator will notify Oxy Vinyls, in writing, of approval of the Sampling Plan. If EPA disapproves the Sampling Plan, the Project Coordinator will notify Oxy Vinyls in writing as to the deficiency(ies) in the Sampling Plan. Upon receipt of any such notice of deficiency, Oxy Vinyls will have twenty (20) days to correct any deficiencies and submit, in writing, the revised Sampling Plan to EPA.

15. Once the Sampling Plan has been approved by EPA, Oxy Vinyls shall begin implementation of the Sampling Plan within twenty (20) days of notification of such approval. Oxy Vinyls shall notify the Project Coordinator of the date it will begin implementing the Sampling Plan.

16. Any failure to comply with the EPA-approved Sampling Plan shall be subject to stipulated penalties pursuant to Section X (Stipulated Penalties) of this Consent Decree. Oral advice or approvals given by EPA representatives will not constitute approval of the proposed Sampling Plan, nor relieve Oxy Vinyls of its obligations under this Section.

17. EPA's approval of the Sampling Plan or Final Report referenced in Paragraphs 12 and 14 above shall not be construed as a waiver or limitation of any rights, remedies, powers and/or

authorities which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.

18. Any disagreement between Oxy Vinyls and EPA regarding the Sampling Plan or Final Report shall be subject to the provisions of Section XIII (Dispute Resolution).

19. Any submittal under this Section V or Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) must be acceptable. "Acceptable" shall mean that the quality of submittals or completed work is sufficient to warrant EPA review, as applicable, in order to determine whether the submittal or work meets the terms and conditions of this Consent Decree, including Attachment 1 (Scope of Work), approved work plans and/or EPA's written comments and guidance documents. Acceptability of submittals or work, however, does not necessarily imply that they will receive EPA approval. Approval by EPA of submittals or work establishes that those submittals were prepared, or work was completed, in a manner acceptable to EPA.

## VI. NOTICES

20. Unless otherwise provided herein, notifications to or communications with the United States, EPA, New Jersey, LMAPCD or Oxy Vinyls shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested. Except as otherwise provided herein, when written notification to or communication with the United States, EPA, New Jersey, LMAPCD or Oxy Vinyls is required by the terms of this Consent Decree, it 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

DOJ Case No. 90-5-2-1-08333As to EPA, with copies to the appropriate Regional Office:

Director, Special Litigation and Projects Division

Office of Civil Enforcement

Mail Code 2248A

U.S. Environmental Protection Agency

Ariel Rios Building

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

EPA Regional Offices (as appropriate):

EPA Region 2:

Ken Eng

Chief, Air Compliance Branch

U.S. Environmental Protection Agency, Region 2

290 Broadway

New York, NY 10007-1866

EPA Region 4:

EPA Region 4 Chief, Air Enforcement & EPCRA Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

EPA Region 6:

Jennifer Gibbs (for Pasadena Stripper Tray SEP) or Craig Lutz (for RCRA Pasadena Sampling Plan) and Patricia Welton, Esq.  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

As to Oxy Vinyls, LP:

General Counsel  
Oxy Vinyls, L.P.  
5005 LBJ Freeway  
Suite Number 2200  
Dallas, Texas 75244

As to the Louisville Metro Air Pollution District:

Engineering/Enforcement Manager  
LMAPCD  
850 Barret Avenue  
Louisville, KY 40204

As to New Jersey:

Division of Air Compliance and Enforcement  
New Jersey Department of Environmental Protection  
P.O. Box 422  
Trenton, NJ 08625

and

Southern Regional Air Compliance and Enforcement  
New Jersey Department of Environmental Protection  
2 Riverside Drive, Suite 201  
Camden, NJ 08103

21. All EPA approvals or comments required under this Decree shall come from the EPA Regional office serving as the Project Coordinator for the Work, SEP, or requirements at issue in the submittal. Notwithstanding the above, all approvals or comments required under the Consent Decree relating to the Camden Waterfront South/Dust Control Project (Section VII) shall come from NJDEP.

22. Any Party may change any of its own Project Coordinators, notice recipients or the address for providing notices to it by all other Parties with a notice setting forth such Project Coordinator, new notice recipient or address.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS AND NEW JERSEY STATE-ONLY ENVIRONMENTAL PROJECT

23. The Parties agree that the projects required in this Section are intended to secure significant environmental and/or public health protection and improvement:

24. Oxy Vinyls shall implement the following Supplemental Environmental Projects ("SEPs") and the New Jersey State-Only Environmental Project, in accordance with this Section and Attachment 1 (Scope of Work), attached hereto and incorporated herein by reference:

- a. Pasadena Stripper Tray SEP. By no later than twenty-four (24) months after Entry of the Consent Decree, Oxy Vinyls shall complete one half of the equipment installation for implementation of the Pasadena Stripper Tray SEP. And by no later than forty-eight (48) months after Entry of the Consent Decree, Oxy Vinyls shall complete installation of the entire Pasadena Stripper Tray SEP, at a cost of no less than \$964,000. One year after completing installation of the Pasadena Stripper Tray SEP and successful startup of all slurry stripper columns, but in no event later than sixty-two (62) months after Entry of the Consent Decree, Oxy Vinyls' Pasadena Facility shall meet a residual vinyl chloride monomer (RVCM) limit of 10 ppm (weighted 12 month rolling average across all seven columns at the Pasadena Facility). The RVCM limit shall be calculated in accordance with the Vinyl Chloride NESHAP, 40 C.F.R. § 61.64(e).
- b. Louisville Railcar Unloading SEP. By no later than twelve (12) months after Entry of the Consent Decree, Oxy Vinyls shall complete implementation of the Louisville Railcar Unloading SEP, at a cost of no less than \$250,000.
- c. Pedricktown Equipment Openings SEP. By no later than twelve (12) months after Entry of the Consent Decree, Oxy Vinyls shall complete implementation of Phase I of the Pedricktown Equipment Openings SEP. As set forth in more detail in the attached Scope of Work, under Phase I of the Pedricktown Equipment Openings SEP, Oxy Vinyls will modify one (1) reactor at the Pedricktown Facility in accord with the Scope of Work attached hereto (Attachment 1). Costs expended on the pilot study have totaled \$70,000. Costs on Phase I will total no less than \$10,000. If the initial modifications successfully reduce the frequency of reactor and chip

catcher openings in accord with the Scope of Work (Attachment 1), Oxy Vinyls shall implement Phase II of the Pedricktown Equipment Openings SEP. If Phase II of the Pedricktown Equipment Openings SEP is implemented pursuant to Attachment 1 (Scope of Work), Phase II of the Pedricktown Equipment Openings SEP shall be completed within twenty-four (24) months of Entry of the Consent Decree, or within twelve (12) months of notification from EPA to proceed with Phase II pursuant to the Scope of Work (Attachment 1), whichever is earlier, at an additional cost of no less than \$20,000.

- d. Camden Waterfront South/Dust Control SEP. By no later than ninety (90) days after Entry of the Consent Decree, Oxy Vinyls shall pay the University of Medicine and Dentistry of New Jersey ("UMDNJU") \$125,000 for UMDNJ to design and conduct a study to determine the source of the dust and particulate deposition in and around residential locations in the Camden Waterfront South neighborhood in Camden, New Jersey and fingerprint the samples through laboratory analysis ("Camden Waterfront South/Dust Control Project").

25. Oxy Vinyls hereby certifies that, as of the date of lodging of this Consent Decree, it is not required to perform or develop any of the SEPs, or any portion thereof, by any federal, state, or local law or regulation, nor is Oxy Vinyls required to perform or develop any of the SEPs, or any portion thereof, as a part of any other agreement, grant, or as injunctive relief in any other case. Oxy Vinyls further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for any of the SEPs.

26. SEP Completion Report. Oxy Vinyls shall submit a SEP Completion Report for each SEP required by this Consent Decree to the appropriate EPA Project Coordinator and, for the Louisville Railcar Unloading SEP, also to LMAPCD, and for the Pedricktown Equipment Openings SEP, also to New Jersey; in accord with the Section VI (Notices) when the performance standards set forth in Attachment 1 and the Scope of Work have been met. The SEP Completion Report shall contain the following information:

- (i) A detailed description of each SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree; and
- (v) A description of the environmental and public health benefits resulting from implementation of each SEP (with a quantification of the benefits and pollutant reductions, if feasible).

27. Oxy Vinyls agrees that failure to submit the SEP Completion Report or any Periodic Reports pursuant to Paragraph 30 and the Scope of Work (Attachment 1) shall be deemed a violation of this Consent Decree and Oxy Vinyls shall become liable for stipulated penalties pursuant to Section X (Stipulated Penalties).

28. In itemizing its costs in each SEP Completion Report, Oxy Vinyls shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

29. EPA Review and Approval of SEP Completion Report

a. After receipt of each of the SEP Completion Reports described above, the Project Coordinator will notify Oxy Vinyls, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself; or (ii) indicate that EPA concludes that the project has been completed satisfactorily; or (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Section X (Stipulated Penalties) herein.

b. If EPA elects to exercise option (i) above, i.e., if a SEP Completion Report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Oxy Vinyls the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph, or notify the Project Coordinator in writing of Oxy Vinyls' intention to correct the deficiencies identified, within ten (10) days of receipt of such notification. In the event that Oxy Vinyls objects to the Project Coordinator's notification of deficiencies under this Paragraph or notified the Project Coordinator of its intention to correct the deficiencies, EPA and Oxy Vinyls shall have an additional sixty (60) days from the receipt by the Project Coordinator of Oxy Vinyls' notification to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this sixty (60) day period, the matter shall be governed by the Dispute Resolution provisions of this Consent Decree.

c. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Oxy Vinyls to EPA in accordance with Section X (Stipulated Penalties) herein.

30. Periodic Reports. Oxy Vinyls shall submit any additional reports required by the Scope of Work to EPA in accordance with the schedule and requirements recited therein. Oxy Vinyls may consolidate the reports required by the Scope of Work with other reports required by this Consent Decree.

31. Oxy Vinyls shall submit all notices and reports required by this Section in accordance with Section VI (Notices).

32. Upon completion of installation of equipment for each SEP, Oxy Vinyls shall continuously use or operate the system or equipment comprising each of the SEPs in accord with Section XVII (Effective Date and Termination) and Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) of this Consent Decree and the Scope of Work (Attachment 1), except during periods of malfunction of the SEP system or equipment or manufacturing unit shutdown, provided that during such periods Oxy Vinyls shall implement good air pollution control practices to minimize emissions. This Paragraph 32 does not apply to the permanent shutdown of any PVC Facility; Paragraph 82a shall apply in that instance.

32a. Incorporating Consent Decree Requirements Into Permits. As soon as practicable, but in no event later than sixty (60) days after installation of each SEP, each PVC Facility will submit an appropriate application to each respective applicable state/local agency to incorporate the facility-specific requirements, e.g., the 10 ppm RVCM limit for the Pasadena Facility, the



operation of the rail car vapor unloading vacuum system required under this Consent Decree for the Louisville Facility, and the requirements of Section IV (Pedricktown LDAR Relief) for the Pedricktown Facility, into federally enforceable non-Title V permits or minor or major new source review permits that will ensure that the requirements survive the termination of this Consent Decree. Following submission of the appropriate application, Oxy Vinyls will cooperate with the applicable state/local agency by promptly submitting to the applicable state/local agency all information that the applicable state/local agency seeks following its receipt of the application materials. Upon issuance of such permit or in conjunction with such permitting, Oxy Vinyls will file any applications necessary to incorporate the requirements of that permit into the applicable Title V permit of the Louisville Facility, Pedricktown Facility, or Pasadena Facility, as applicable. Oxy Vinyls does not waive its right to appeal more stringent emission limits or standards than those required by this Consent Decree.

32b. Mechanism for Title V Incorporation. The Parties agree that the incorporation of any requirement of this Consent Decree into the Title V permits for Oxy Vinyls' PVC Facilities will be in accordance with the applicable state or local Title V rules, including applicable "administrative amendment" provisions of such rules.

33. For all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Decree, Oxy Vinyls shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on

my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

34. In any public statement, oral or written, in print, film, or other media, made by Oxy Vinyls making reference to any of the SEPs, Oxy Vinyls shall clearly indicate that the project is being undertaken as part of a settlement of an enforcement action for alleged environmental violations.

35. This Consent Decree shall not relieve Oxy Vinyls of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Oxy Vinyls in connection with the SEPs undertaken pursuant to this Consent Decree.

36. Oxy Vinyls hereby agrees not to claim any funds expended in the performance of the SEPs as a deductible business expense for purposes of Federal taxes. In addition, Oxy Vinyls hereby agrees that, within thirty (30) days of the date it submits its Federal income tax reports for the calendar year in which any one of the above-identified SEPs is completed, it will submit to EPA a certification that any funds expended in the performance of that SEP have not been deducted from Federal taxes.

37. General Prohibition on Use of Emission Reductions for Emission Credits. Oxy Vinyls shall not generate or use any emission reductions that result from any SEPs conducted or controls utilized to comply with this Consent Decree as netting reductions or emissions offsets in

any Prevention of Significant Deterioration (“PSD”) major non-attainment and minor New Source Review (“NSR”) permit or permit proceeding unless otherwise authorized under Paragraph 37a.

37a. Outside the Scope of the General Prohibition. Nothing in this Section VII (Supplemental Environmental Projects and and New Jersey State-Only Environmental Project) is intended to prohibit Oxy Vinyls from seeking to, or EPA or Plaintiff-Intervenors from denying Oxy Vinyls’ request to: (1) utilize or generate emissions credits from any PVC Facility to the extent that the proposed credits or reductions represent the difference between the emissions limitations set forth in or required by this Consent Decree and the more stringent emissions limitations Oxy Vinyls may elect to accept in a permitting process; or (2) utilize emissions reductions achieved pursuant to this Consent Decree for a particular PVC Facility’s compliance with any rules or regulations designed to address regional haze or the non-attainment status of any area (excluding PSD and Non-Attainment New Source Review rules, but including, for example, VOC RACT rules) that apply to the particular PVC Facility. Notwithstanding the preceding sentence, Oxy Vinyls shall not trade or sell any emissions reductions resulting from this Consent Decree.

38. Failure to implement the SEPs as required by this Section or failure to provide EPA with a SEP Periodic Report or SEP Completion Report shall subject Oxy Vinyls to stipulated penalties as set forth in Section X (Stipulated Penalties).

## VIII. GENERAL RECORDKEEPING AND REPORTING

39. Quarterly Reports. Beginning with Oxy Vinyls' first full calendar quarter after Entry of the Consent Decree, Oxy Vinyls shall submit a quarterly progress report on each SEP and the RCRA Pasadena Sampling Plan to the EPA Project Coordinator within thirty (30) days after the end of each and shall continue to submit quarterly project reports until Oxy Vinyls submits a SEP Completion Report for each SEP pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) or the Final Report for the RCRA Pasadena Sampling Plan. Attachment 1 (Scope of Work) sets forth the content requirements for the quarterly reports applicable to the Pasadena Stripper Tray SEP, the Louisville Railcar Unloading SEP, and the Pedricktown Equipment Openings SEP.

- a. For the RCRA Pasadena Sampling Plan, following the Entry of the Consent Decree, and for one calendar year after beginning implementation of this RCRA Pasadena Sampling Plan pursuant to Section V (RCRA Pasadena Sampling Plan), Oxy Vinyls shall provide the Project Coordinator with quarterly progress reports.

The progress reports shall include the following information:

- i) A description of the activities completed during the reporting period pursuant to Section V (RCRA Pasadena Sampling Plan);
- (ii) Summaries of all findings;
- (iii) Summaries of all EPA-approved changes made to the RCRA Sampling Plan during the reporting period;
- (iv) Summaries of all problems or potential problems encountered during the reporting period;
- (v) Actions being taken to rectify problems encountered;

(vi) Changes in Oxy Vinyls' project coordinator, principal contractor, laboratory, and/or consultant during the reporting period;

(vii) Projected work for the next reporting period; and

(viii) Other relevant documentation, including, but not limited to copies of laboratory/monitoring data received and/or generated during the reporting period.

40. The calendar quarterly report shall be certified by the corporate officer responsible for environmental management and compliance for Oxy Vinyls, 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 fines and imprisonment."

41. Failure to report as required by this Section shall subject Oxy Vinyls to stipulated penalties as set forth in Section X (Stipulated Penalties).

#### IX. CIVIL PENALTY

42. Within thirty (30) calendar days of Entry of this Consent Decree, Oxy Vinyls shall pay a total civil penalty of \$140,000 to LMAPCD and the United States. Of this amount, Oxy Vinyls shall pay to the United States a civil penalty in the amount of \$70,000. Oxy Vinyls shall pay the balance of this civil penalty amount, \$70,000, to the LMAPCD in settlement of the LMAPCD's claims related to allegations at the Louisville Facility.

a. The monies owed to the United States shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the DOJ Case Number 90-5-2-1-08333, and the civil action case name and case number of the Northern District of Texas. The costs of such EFT shall be Oxy Vinyls' responsibility. Payment shall be made in accordance with instructions provided to Oxy Vinyls by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Texas. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. Oxy Vinyls shall provide notice of payment, referencing the DOJ Case Number 90-5-2-1-08333, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Section VI (Notice).

b. The monies owed to Plaintiff-Intervenor, the LMAPCD, shall be made payable to Louisville Metro Air Pollution District, and sent to:

Engineering/Enforcement Director  
LMAPCD  
850 Barret Avenue  
Louisville, KY 40204

42b. In addition to the civil penalty set forth in Paragraph 42 above, within thirty (30) calendar days of entry of this Consent Decree, Oxy Vinyls shall pay a civil penalty of \$200,000 to New Jersey for the State-Only Claims. The monies owed to New Jersey shall be made payable to the New Jersey Department of Treasury and sent to:

Administrator of Air Compliance and Enforcement  
New Jersey Department of Environmental Protection  
P.O. Box 422  
Trenton, NJ 08625

43. Upon entry of this Decree, this Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The United States, NJDEP and LMAPCD shall each be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

44. No amount of the civil penalty to be paid by Oxy Vinyls shall be used to reduce its federal or state tax obligations.

#### X. STIPULATED PENALTIES

45. Oxy Vinyls shall pay stipulated penalties to the United States for each failure by Oxy Vinyls to comply with the terms of this Consent Decree, provided, however, that the United States may also elect to bring an appropriate action seeking enforcement of specific terms of this Consent Decree. Oxy Vinyls shall pay stipulated penalties to New Jersey for each failure by Oxy Vinyls to comply with the terms of Section IV (Pedricktown LDAR Relief), Section VII relating to the Camden Waterfront South/Dust Control Project (and Attachment 1), and payment of the civil penalty to New Jersey as provided in Section IX (Civil Penalty); provided, however, that New Jersey may also elect to bring an appropriate action seeking enforcement of such specific terms of this Consent Decree. Oxy Vinyls shall pay stipulated penalties to LMAPCD for failure by Oxy Vinyls to pay the civil penalty to LMAPCD as provided in Section IX (Civil Penalty); provided, however, that LMAPCD may also elect to bring an appropriate action seeking enforcement of specific terms of this Consent Decree. Unless there has been a written notice

from the Project Coordinator changing a compliance date, a written modification from the Project Coordinator of an approved workplan condition, or excusable delay as defined in Section XII (Force Majeure), if Oxy Vinyls fails to comply with the terms and conditions set forth in this Consent Decree in the time or manner specified herein, Oxy Vinyls shall pay stipulated penalties as set forth below. Compliance by Oxy Vinyls shall include completion of an activity under this Consent Decree or a plan approved under this Consent Decree or completion of any other requirement of this Consent Decree in an acceptable manner and within the specified time schedules in and approved under this Consent Decree.

46. The following stipulated penalties apply for the enumerated failures to comply with this Consent Decree for each day of such non-compliance:

a. Section IX - Requirement to pay a Civil Penalty

- (i) For failure to pay the civil penalty as specified in Section IX (Civil Penalty) of this Consent Decree, Oxy Vinyls shall pay an additional \$5,000 for each day that the payment is delayed plus interest on the amount overdue at the rate specified in 31 U.S.C. § 3717.

b. Section V - RCRA Pasadena Sampling Plan

- (i) For failure to meet the ninety day deadline to submit the proposed Sampling Plan pursuant to Section V (RCRA Pasadena Sampling Plan):

1st through 30th day after deadline - \$2,500 per day for each violation

31st through 60th day after deadline - \$5,000 per day for each violation



- (ii) For failure to meet any deadline set forth in the approved Sampling Plan:

1st through 30th day after deadline - \$1,500 per day for each violation

31st through 60th day after deadline - \$3,000 per day for each violation

- c. Section VII - Supplemental Environmental Projects or New Jersey State-Only Environmental Project

In the event that Oxy Vinyls fails to comply with any of the terms or provisions of this Consent Decree relating to the performance of any of the SEPs or New Jersey State-Only Environmental Project described in Section VII above and/or to the extent that the actual expenditures for any of the SEPs or New Jersey State-Only Environmental Project do not equal or exceed the cost of that SEP or New Jersey State-Only Environmental Project described in Section VII above, Oxy Vinyls shall be liable for stipulated penalties according to the provisions set forth below:

- (i) If any of the SEPs or New Jersey State-Only Environmental Project is satisfactorily completed, but Oxy Vinyls expends less than the total amount agreed upon for that SEP, Oxy Vinyls shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by Oxy Vinyls and the amount set forth in Section VII for that SEP;

(ii) If Oxy Vinyls has completed the SEP, but the SEP is not satisfactory, Oxy Vinyls shall pay \$75,000 in addition to any penalty required in (i) above for the Pasadena Stripper Tray SEP, \$12,500 for the Louisville Railcar Unloading SEP, in addition to any penalty required in (i) above, and \$12,500 for the Pedricktown Equipment Openings SEP, in addition to any penalty required in (i) above;

(iii) If Oxy Vinyls halts or abandons work on any of the SEPs prior to its completion, in addition a stipulated penalty equal to the difference between the total amount agreed upon for that SEP and the actual amount expended on the SEP, and any penalties owing under (iv), below, Oxy Vinyls shall pay a stipulated penalty as follows: \$400,000 for the Pasadena Stripper Tray SEP, \$100,000 for the Louisville Railcar Unloading SEP, and \$12,500 for the Pedricktown Equipment Openings SEP;

(iv) If Oxy Vinyls fails to comply with the schedule set forth in Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) and Attachment 1 (Scope of Work) for implementing the SEPs, Oxy Vinyls shall pay the following Stipulated Penalties for each such failure to meet an applicable milestone:

1st through 30th day after deadline - \$1,500 per day for each violation

31st through 60th day after deadline - \$2,500 per day for each violation

Beyond 60th day - \$4,000 per day for each violation

- d. For failure to meet any deadline set forth in Section VIII (General Recordkeeping and Reporting):

1st through 30th day after deadline - \$1,000 per day for each violation

31st through 60th day after deadline - \$2,500 per day for each violation

Beyond 60th day - \$4,000 per day for each violation

- e. For failure to conduct LDAR monitoring/tests at the Pedricktown Facility as required in Section IV (Pedricktown LDAR Relief): \$200 per component, per month, not to exceed \$10,000 per month per process unit.

47. Penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the date of completion of performance or the date of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. Penalties shall accrue regardless of whether EPA, New Jersey or the LMAPCD has notified Oxy Vinyls of a violation.

48. All penalties owed to the United States, New Jersey, and the LMAPCD under this Section shall be due and payable within thirty (30) days of Oxy Vinyls' receipt from EPA, New Jersey or LMAPCD of a written demand for payment of the penalties, unless Oxy Vinyls invokes the dispute resolution procedures under Section XIII (Dispute Resolution). Such a written demand will identify the particular violation(s) to which the stipulated penalty relates, the

stipulated penalty amount that the United States (or New Jersey or the LMAPCD, as applicable) is demanding for each violation (as can best be estimated), the calculation method underlying the demand and the grounds upon which the demand is based. The United States, New Jersey and/or the LMAPCD may, in the exercise of their unreviewable discretion, waive stipulated penalties or reduce the amount of stipulated penalties it seeks.

49. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first day after Oxy Vinyls' receipt of EPA's, New Jersey's or the LMAPCD's demand letter. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. Section 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) or more days.

50. Should Oxy Vinyls dispute its obligation to pay part or all or any of a stipulated penalty, it shall place the disputed amount demanded by the United States, LMAPCD, or New Jersey, as applicable in a commercial escrow account pending resolution of the matter and by invoking the Dispute Resolution provisions of Section XIII (Dispute Resolution) within the time provided in Paragraph 48 for payment of stipulated penalties. If the dispute is thereafter resolved in Oxy Vinyls' favor, the escrowed amount plus accrued interest shall be returned to Oxy Vinyls, otherwise the United States, LMAPCD and/or New Jersey, as applicable, shall be entitled to the escrowed amount that was determined to be due by the Court plus the interest that has accrued on such amount, with the balance, if any, returned to Oxy Vinyls.

51. The United States, New Jersey and the LMAPCD reserve the right to pursue any other remedies to which they are entitled, including, but not limited to, additional injunctive

relief for Oxy Vinyls' violations of this Consent Decree. Nothing in this Consent Decree shall prevent the United States, New Jersey and/or the LMAPCD from pursuing an appropriate action to enforce this Consent Decree and requesting that the Court order specific performance of the terms of the Consent Decree.

52. Where civil penalties under a statute of the United States are available due to Oxy Vinyls' violation of this Consent Decree, the United States reserves the right to seek such civil penalties. The United States will not seek stipulated penalties and civil penalties for the same violation of the Consent Decree.

52a. Where civil penalties under a statute or regulation enforceable by the LMAPCD are available due to Oxy Vinyls' violation of this Consent Decree, LMAPCD reserves the right to seek such civil penalties. LMAPCD will not seek stipulated penalties and civil penalties for the same violation of the Consent Decree.

52b. Where civil penalties under a statute or regulation enforceable by NJDEP are available due to Oxy Vinyls' violation of this Consent Decree, NJDEP reserves the right to seek such civil penalties. NJDEP will not seek stipulated penalties and civil penalties for the same violation of the Consent Decree.

#### XI. RIGHT OF ENTRY

53. Any authorized representative of EPA, and/or an authorized representative of LMAPCD for the Louisville Facility only, and/or an authorized representative of NJDEP for the Pedricktown Facility only, including independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of Oxy Vinyls' facilities identified herein 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 Oxy Vinyls as required by the Consent Decree. Reasonable time periods for monitoring and inspection shall be considered in light of existing operational and equipment status, including scheduled production shutdowns. The United States, NJDEP and LMAPCD and their authorized representatives shall make every effort to comply with facility safety directives and to cooperate with Oxy Vinyls in establishing reasonable requests for copying and other use of Oxy Vinyls facilities and personnel. Nothing in this Consent Decree shall limit the authority of EPA, NJDEP or LMAPCD to conduct tests and inspections under Section 114 of the CAA, 42 U.S.C. § 7414 or any other applicable statutory or regulatory provision.

## XII. FORCE MAJEURE

54. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Oxy Vinyls shall notify the United States and the relevant Project Coordinator; and, with respect to the Pedricktown Equipment Openings SEP, NJDEP; and, with respect to the Louisville Railcar Unloading SEP, LMAPCD, pursuant to Section VI (Notices) in writing as soon as practicable, but in no event later than ten (10) business days of when Oxy Vinyls first knew of the event or should have known of the event by the exercise of due diligence. In this notice Oxy Vinyls shall specifically reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by Oxy Vinyls to prevent or minimize the delay, and the schedule by which those measures will be implemented.

Oxy Vinyls shall adopt all necessary measures to avoid or minimize such delays.

55. Failure by Oxy Vinyls to comply with the notice requirements of this Section, as provided in Section VI (Notices), shall render any claim of Force Majeure voidable by the United States as to the specific event for which Oxy Vinyls has failed to comply with such notice requirement. If so voided, such claim is of no effect as to the particular event involved.

56. The United States shall notify Oxy Vinyls in writing regarding Oxy Vinyls' claim of a delay or impediment to performance within thirty (30) days of receipt of the Force Majeure notice provided under Section XII (Force Majeure). If the United States agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Oxy Vinyls, including any entity controlled by Oxy Vinyls, and that Oxy Vinyls could not have prevented the delay by the exercise of due diligence, Oxy Vinyls and the United States 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 may, at the option of the United States and Oxy Vinyls, be filed as a modification to this Consent Decree pursuant to the modification procedures established in this Consent Decree. Oxy Vinyls shall not be liable for stipulated penalties for the period of any such delay.

57. If the United States does not accept Oxy Vinyls' claim of a delay or impediment to performance, Oxy Vinyls must submit the matter to this Court for resolution to avoid payment of stipulated penalties by filing a petition for determination with this Court. Once Oxy Vinyls has submitted this matter to this Court, the United States shall have twenty (20) business days to file its response to said petition. If Oxy Vinyls submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by

circumstances beyond the control of Oxy Vinyls, including any entity controlled by Oxy Vinyls, and that Oxy Vinyls could not have prevented the delay by the exercise of due diligence, Oxy Vinyls shall be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances.

58. Oxy Vinyls 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 controlled by it, and that Oxy Vinyls could not have prevented the delay by the exercise of due diligence. Oxy Vinyls 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 does not necessarily, result in an extension of a subsequent compliance date or dates. Closure of any of the PVC Facilities shall not, in and of itself, constitute a Force Majeure event.

59. Unanticipated or increased costs or expenses associated with the performance of Oxy Vinyls' obligations under this Consent Decree shall not constitute circumstances beyond the control of Oxy Vinyls, or serve as a basis for an extension of time under this Section. However, failure of a permitting authority to issue a necessary permit in a timely fashion is an event of Force Majeure where the failure of the permitting authority to act is beyond the control of Oxy Vinyls and Oxy Vinyls has taken all steps available to it to obtain the necessary permit including but not limited to:

- a. Submitting a complete permit application;
- b. Responding to requests for additional information by the permitting



authority in a timely fashion;

- c. Accepting lawful permit terms and conditions; and
- d. Prosecuting appeals of any unlawful terms and conditions imposed by the permitting authority in an expeditious fashion.

60. 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 Oxy Vinyls delivering a notice of Force Majeure, or Oxy Vinyls' and the United States' inability to reach agreement.

61. As part of the resolution of any matter submitted to this Court under this Section, Oxy Vinyls and the United States, by agreement, or this Court, by order, may in appropriate circumstances extend or modify the schedule for completion of work or SEPs under this 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. Oxy Vinyls shall be liable for stipulated penalties for its failure thereafter to complete the work or SEPs in accordance with the extended or modified schedule.

### XIII. DISPUTE RESOLUTION

62. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, except as otherwise provided in Section XII (Force Majeure), provided that the Party making such application has made a good faith attempt to resolve the matter with the other Party.

63. 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. 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 schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

64. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond sixty (60) calendar days from the date of the first meeting between representatives of the United States and Oxy Vinyls, unless the Parties' representatives agree to shorten or extend this period.

65. In the event that the United States and Oxy Vinyls are unable to reach agreement during such informal negotiation period, the United States shall provide Oxy Vinyls with a written summary of its position regarding the dispute. The position advanced by the United States shall be considered binding unless, within forty-five (45) calendar days of Oxy Vinyls' receipt of the written summary of the United States' position, Oxy Vinyls files with this Court a petition which describes the nature of the dispute. The United States shall respond to the petition within forty-five (45) calendar days of filing.

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

67. Notwithstanding any other provision of this Consent Decree, in dispute resolution, this Court shall not draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this Section or the Parties' inability to reach agreement. In resolving the dispute between the Parties, the position of the United States shall be upheld unless Oxy Vinyls demonstrates that it is not based on substantial evidence appearing in the United States' administrative record on the matter.

68. 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 or SEPs under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. Oxy Vinyls shall be liable for stipulated penalties for its failure thereafter to complete the Work or SEPs in accordance with the extended or modified schedule.

#### XIV. EFFECT OF SETTLEMENT

69. Upon payment by Oxy Vinyls of the Civil Penalty and interest, late fees and other penalties, if any, as provided in Section IX (Civil Penalty), performance of the SEPs pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) and Attachment 1 (Scope of Work), successful implementation of Pedricktown LDAR Relief pursuant to Section IV ("Pedricktown LDAR Relief"), implementation of leak routine detection program at each of two process lines at the Pedricktown Facility as provided in Paragraph 81, and the Sampling Plan pursuant to Section V (RCRA Pasadena Sampling Plan), the United States covenants not to take civil judicial or administrative action against Oxy Vinyls

seeking civil penalties for the specific claims alleged in the Complaint filed by the United States in this action through the date of lodging of this Consent Decree. Provided, however, that nothing herein shall preclude the United States from taking any action necessary to prevent or abate any condition which presents an imminent and substantial endangerment to the public health or welfare, or the environment.

70. Upon payment by Oxy Vinyls of the Civil Penalty and interest, late fees and other penalties, if any, as provided in Section IX (Civil Penalty) and performance of the Louisville Railcar Unloading SEP pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) and Attachment 1 (Scope of Work), the LMAPCD covenants not to take civil judicial or administrative action against Oxy Vinyls seeking civil penalties for the specific claims, all of which precede the date of lodging, alleged in the Complaint in Intervention filed by the LMAPCD in this action. Provided, however, that nothing herein shall preclude the LMAPCD from taking any action necessary to prevent or abate any condition which presents an imminent and substantial endangerment to the public health or welfare, or the environment.

70a. Upon payment by Oxy Vinyls of the Civil Penalty and interest, late fees and other penalties, if any, as provided in Section IX (Civil Penalty), performance of the Pedricktown Equipment Openings SEP and the Camden Waterfront South/Dust Control Project pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) and Attachment 1 (Scope of Work), and successful implementation of Pedricktown LDAR Relief pursuant to Section IV ("Pedricktown LDAR Relief"), New Jersey covenants not to take civil judicial or administrative action against Oxy Vinyls seeking civil penalties for the

specific claims, all of which precede the date of lodging, alleged in the Complaint in Intervention filed by New Jersey in this action. Provided, however, that nothing herein shall preclude New Jersey from taking any action necessary to prevent or abate any condition which presents an imminent and substantial endangerment to the public health or welfare, or the environment.

71. Reservation of Rights. Except as expressly provided in Paragraphs 69, 70 and 70a of Section XIV this Consent Decree (Effect of Settlement), the entry of this Consent Decree shall not limit or otherwise preclude the United States, New Jersey or LMAPCD from taking criminal or additional civil judicial or administrative enforcement action against Oxy Vinyls or any third parties with regard to the PVC Facilities pursuant to any federal, state, or local law. This Consent Decree is neither a permit nor a modification of any existing permit under any federal, state or local laws or regulations, and shall not be interpreted to be such; compliance with its terms does not guarantee compliance with any applicable federal, state or local laws or regulations. Nothing in this Consent Decree shall be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This Consent Decree does not limit or affect the rights of Oxy Vinyls or the United States, New Jersey or LMAPCD, as against any third party, nor does it limit the rights of such third parties against Oxy Vinyls. This Consent Decree shall not constitute an admission by Oxy Vinyls of, or adjudication of, any issue of fact or law relating to the claims of the United States, New Jersey and LMAPCD, with the exception of those relating to venue and the jurisdiction of the Court.

## XV. GENERAL PROVISIONS

72. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Oxy Vinyls of its obligation to comply with all applicable federal, state and local laws and regulations. Subject to Paragraphs 69, 70 and 70a., nothing contained in this Consent Decree shall be construed to prevent, alter or limit the United States', New Jersey's or LMAPCD's rights to seek or obtain other remedies or sanctions available under other federal, state or local statutes or regulations, by virtue of Oxy Vinyls' violation of this Consent Decree or of the statutes and regulations upon which this Consent Decree is based, or for Oxy Vinyls' violations of any applicable provision of law, other than the specific matters resolved herein. This shall include the United States', New Jersey's and LMAPCD's right to invoke the authority of the Court to order Oxy Vinyls' compliance with this Consent Decree.

73. Effect of EPA Guidance. For purposes of this Consent Decree, references to specific guidance documents or guidance generally are not intended to change the applicability, legal force or effect of such guidance.

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

75. Public Documents. All information and documents submitted by Oxy Vinyls to the United States, New Jersey or LMAPCD pursuant to this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported as business confidential by Oxy Vinyls in accordance with 40 C.F.R. Part 2. In the event that Oxy Vinyls asserts a claim of business confidentiality with respect to any SEP Periodic or SEP Completion Report submitted pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) or the Sampling Plan or Final Report submitted

pursuant to Section V (RCRA Pasadena Sampling Plan), Oxy Vinyls will provide EPA, LMAPCD and New Jersey, as applicable, with a redacted version of the report which does not contain any claimed business confidential information and which can be distributed to the public.

76. 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.

77. The undersigned representative of each Party to this Consent Decree certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

78. Modifications. Except as otherwise allowed by law, there shall be no modification of this Consent Decree without written approval by the United States and Oxy Vinyls, and, if required, approval of such modification by the Court.

79. Continuing Jurisdiction. The Court retains jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

80. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree and its attachment, which is attached to and incorporated by reference into this Consent Decree.

81. Oxy Vinyls shall implement a routine leak detection program at each of its two process lines at the Pedricktown Facility in compliance with 40 C.F.R. § 61.65(b)(8)(ii).

82. Effect of Shutdown. Permanent shutdown of the PVC manufacturing operations at any one of the PVC Facilities following approval of the SEP completion report by EPA of the SEP applicable to that Facility (and, in the case of Pasadena, the RCRA Pasadena Sampling Plan) shall be deemed to satisfy all requirements of this Consent Decree applicable to that PVC Facility. In the case of permanent shutdown of the PVC manufacturing operations of any one of the PVC Facilities before approval by EPA of the SEP Completion Report for the applicable SEP (and, in the case of Pasadena, the RCRA Pasadena Sampling Plan) Oxy Vinyls shall be liable for stipulated penalties for failure to complete the applicable SEP under Paragraph 46(c)(iii) or Paragraph 46(b) (RCRA Pasadena Sampling Plan).

#### XVI. PUBLIC COMMENT

83. Final approval of this Consent Decree by the United States shall be consistent with the public notice and comment requirements of 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the public comments establish that entry of this Consent Decree would be inappropriate, improper or inadequate. After reviewing the public comments, if any, the United States shall advise the Court and Oxy Vinyls by motion whether it seeks entry of this Consent Decree. Oxy Vinyls agrees to the entry of this Consent Decree without further notice.



84. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a Final Judgment of the Court as to the United States, New Jersey, LMAPCD and Oxy Vinyls.

#### XVII. EFFECTIVE DATE AND TERMINATION

85. This Consent Decree shall be effective upon the date of its entry by the Court.

86. This Consent Decree shall be subject to termination upon motion by any Party after Oxy Vinyls satisfies all requirements of this Consent Decree. The requirements for termination include (1) payment of all penalties for which demand has been made, including stipulated penalties, that may be due to the United States, NJDEP and/or the LMAPCD under this Consent Decree; (2) completion of the Sampling Plan pursuant to Section V (RCRA Pasadena Sampling Plan); (3) installation of the Louisville Railcar Unloading SEP pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) and Attachment 1 (Scope of Work), and operation of that SEP for three (3) years or until a total of three hundred (300) pounds of vinyl chloride emissions reductions (relative to 2004 railcar unloading events) have been achieved based upon applicable emissions factors, whichever is later; (4) installation of the Pasadena Stripper Tray SEP pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) and Attachment 1 (Scope of Work), and demonstration to the satisfaction of EPA Region 6 that Oxy Vinyls has, subject to Paragraph 32, operated that SEP for three (3) years while continuously meeting the RVCM limit of 10 ppm (weighted 12 month rolling average across all seven stripper columns) set forth in Section VII and Attachment 1; (5) compliance with the requirements of Section IV

(Pedricktown LDAR Relief) until the requirements of Section IV have been incorporated into the Pedricktown non-Title V permits and Pedricktown Title V Permit in accord with Paragraph 7 of this Consent Decree; (6) payment of \$125,000 for the Camden Waterfront South/Dust Control Project pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) and Attachment 1 (Scope of Work); (7) installation of the Pedricktown Equipment Openings SEP pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) and Attachment 1 (Scope of Work), and operation of that SEP for three (3) years; and (8) compliance with the requirements of Paragraph 32a.

87. If Oxy Vinyls believes that the above requirements for termination of this Consent Decree have been met, then Oxy Vinyls shall so certify to the United States, and unless the United States objects in writing with specific reasons within sixty (60) days of receipt of the certification, the Court shall order that this Consent Decree be terminated on Oxy Vinyls' motion. If the United States so objects to Oxy Vinyls' certification, then the matter shall be submitted to the Court for resolution under Section XIII (Dispute Resolution) of this Consent Decree. In such case, Oxy Vinyls shall bear the burden of proving that this Consent Decree should be terminated.


**XVIII. ATTACHMENT**

88. Attachment 1 (Scope of Work) attached to this Consent Decree is incorporated herein.

So entered in accordance with the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
United States District Court Judge  
for the Northern District of Texas

FOR PLAINTIFF, UNITED STATES OF AMERICA:



Sue Ellen Wooldridge  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
10th & Pennsylvania Avenue, N.W.  
Washington, DC 20530  
California Bar No. 131244

Date May 30, 2006



Catherine Banerjee Rojko  
Senior Counsel  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044  
202.514.5315  
202.514.0097 (fax)  
District of Columbia Bar No. 415927

Date May 23, 2006

Richard B. Roper  
United States Attorney  
Katherine Savers McGovern  
Assistant United States Attorney  
1100 Commerce Street, Suite 300  
Dallas, Texas 75242  
214.659.8600  
214.767.2916 (fax)

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

*Granta Y. Nakayama*

JUN 6 2006

Date \_\_\_\_\_

Granta Y. Nakayama  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

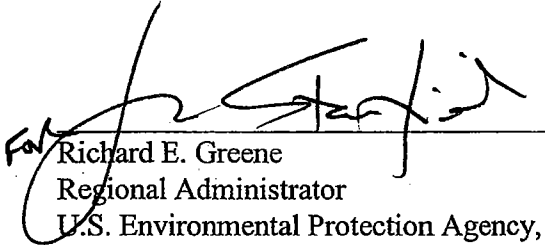
*Robert A. Kaplan*

Date \_\_\_\_\_

*5/24/06*

Robert Kaplan  
Director, Special Litigation and Projects Division  
Office of Civil Enforcement  
Mail Code 2248A  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Massachusetts Bar No. 559569

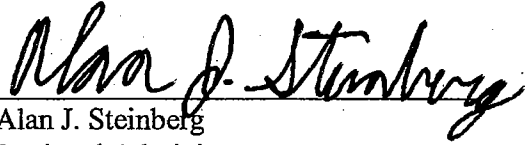
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

A handwritten signature in black ink, appearing to read 'Richard E. Greene', is written over a horizontal line. The signature is stylized and somewhat cursive.

Richard E. Greene  
Regional Administrator  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202

Date 5/25/01

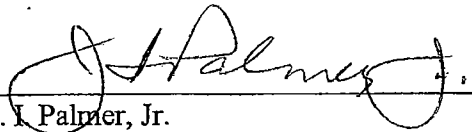
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



Alan J. Steinberg  
Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007-1866

Date 5-23-2006

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

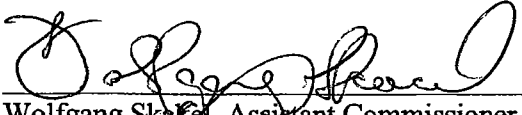


J. I. Palmer, Jr.  
Regional Administrator  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

Date JUN - 1 2006



FOR THE STATE OF NEW JERSEY:

  
\_\_\_\_\_  
Wolfgang Skale, Assistant Commissioner  
Compliance and Enforcement

Date 5/11/06

FOR THE LOUISVILLE METRO AIR POLLUTION CONTROL DISTRICT:

*Jesse M Goldsmith*  
Jesse Goldsmith  
Engineering/Enforcement Manager  
LMAPCD  
850 Barret Avenue  
Louisville, KY 40204

Date May 25, 2006

FOR OXY VINYLs, LP:

Scott A. King

Date May 12, 2006

Name: Scott A. King

Title: Vice President, General Counsel and Secretary

**Attachment 1**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, )  
Plaintiff, )  
 )  
the LOUISVILLE METRO AIR )  
POLLUTION CONTROL DISTRICT, )  
the STATE OF NEW JERSEY, )  
Plaintiff-Intervenors, )  
 )  
V. )  
 )  
OXY VINYLS, LP )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No.

**SCOPE OF WORK**

**I. PURPOSE/INTRODUCTION**

Consistent with and as provided in the May 1, 1998 "Final Supplemental Environmental Projects Policy," the three Supplemental Environmental Projects ("SEPs") described herein are environmentally beneficial projects which Oxy Vinyls has agreed to undertake in settlement of the above-captioned enforcement action, but which Oxy Vinyls is not otherwise legally required to perform.

Oxy Vinyls shall undertake the following three SEPs and one New Jersey State-Only Environmental Project ("Project") pursuant to Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) of the Consent Decree and this Scope of Work, which the Parties agree are intended to secure significant environmental or public health protection and improvement: (1) Pasadena Stripper Tray SEP; (2) Louisville Railcar Unloading SEP; (3) Pedricktown Equipment Openings SEP; and (4) Camden Waterfront South/Dust Control Project. Operation of the Pasadena Stripper Tray SEP is estimated to achieve emissions reductions of approximately 39,820 pounds per year of vinyl chloride at the Pasadena Facility relative to 2003 product mix at nameplate capacity.

## **II. BUSINESS CONFIDENTIALITY**

Pursuant to 40 C.F.R. § 2.203, Oxy Vinyls may submit a claim of confidentiality for any document or information submitted pursuant to this Scope of Work or under the attached Consent Decree. Failure to make a confidentiality claim, including the submission of a redacted copy of the document in question, at the time the document is submitted shall constitute a waiver of such claim. Oxy Vinyls shall not assert a claim of confidentiality with respect to any sampling, monitoring or analytical data.

## **III. DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS AND NEW JERSEY STATE-ONLY ENVIRONMENTAL PROJECT**

### **A. PASADENA STRIPPER TRAY SEP**

#### **1. SEP DESCRIPTION**

The Pasadena Facility has seven PVC slurry stripping columns. Each column is equipped with a series of trays that remove vinyl chloride monomer ("VCM") from PVC slurry. The remaining VCM is removed from the slurry during the drying process. Under this Pasadena Stripper Tray SEP, Oxy Vinyls shall install re-designed trays and tray supports in the Numbers 2, 3, 4, 5, 6, and 7 slurry-stripping columns. (Column Number 1 is already equipped with re-designed trays.) The existing trays, which are assembled in cartridge bundles that slide into the columns, will be removed and disposed of appropriately in accord with applicable federal and state environmental laws and regulations. The new tray design will allow for increased slurry residence time and therefore improved VCM removal capability. Emissions reductions are tied to the recovery of VCM in the PVC production process. VCM removed from the dryer is eventually released into the ambient atmosphere. The changes to the slurry strippers required under the Pasadena Stripper Tray SEP shall improve the recovery of VCM and significantly reduce VCM emissions. As more VCM is recovered in the production process, less VCM will be emitted. The Pasadena Stripper Tray SEP will not require installation of pollution abatement equipment, or generate additional pollutants. Rather, the Pasadena Stripper Tray SEP will provide for enhanced VCM recovery and, as such, will prevent pollution and provide for the recovery and subsequent use of a valuable feed stock.

#### **2. PERFORMANCE STANDARDS**

##### **a. Time for performance**

By no later than twenty-four (24) months after Entry of the Consent Decree, Oxy Vinyls shall complete one half of the equipment installation for implementation of the Pasadena Stripper

Tray SEP. And by no later than forty-eight (48) months after Entry of this Consent Decree, Oxy Vinyls shall complete installation of the entire Pasadena Stripper Tray SEP.

#### **b. Operation of Pasadena Stripper Tray SEP/Emission Reductions**

Oxy Vinyls shall meet a residual vinyl chloride monomer (RVCM) limit of 10 ppm (weighted 12 month rolling average across all seven stripper columns) at the Pasadena Facility one year after the completion of tray installation and successful start-up of all slurry stripper columns, but in no event later than sixty-two (62) months after Entry of the Consent Decree. The RVCM limit shall be calculated in accordance with the Vinyl Chloride NESHAP, 40 C.F.R. § 61.64(e), Method 107. Oxy Vinyls shall install and operate the Pasadena Stripper Tray SEP for three (3) years following completion of installation, pursuant to Section XVII of the Consent Decree (Effective Date and Termination), and shall demonstrate to the satisfaction of EPA Region 6 that it has, subject to Paragraph 32 of the Consent Decree, operated the SEP for three (3) years while continuously meeting the RVCM limit of 10 ppm (weighted 12 month rolling average across all seven columns) set forth in Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) of the Consent Decree and this Scope of Work. Oxy Vinyls shall apply to incorporate the requirements of this SEP into permits as set forth in Paragraph 32a of the Consent Decree.

### **3. EXPENDITURES**

The expenditures for this SEP shall total no less than \$964,000.

### **4. DRAFT IMPLEMENTATION PLAN/SCHEDULE FOR IMPLEMENTATION**

Within thirty (30) days of Entry of the Consent Decree, Oxy Vinyls shall submit a draft implementation plan for the Pasadena Stripper Tray SEP. The draft implementation plan/schedule for implementation shall include, but not be limited to the following:

- a. The goals of the SEP;
- b. The estimated amount of emissions reductions that will be achieved by the SEP;
- c. A description of the construction and operation of the SEP;
- d. Specify projected expenditures of the SEP including the following:
  - i. contractor costs
  - ii. capital costs

iii. operational costs

- e. Specify cost savings associated with the SEP from the emissions reductions achieved; and
- f. Schedule for implementing the SEP, including milestones.

## 5. PERIODIC REPORTS

Oxy Vinyls shall submit to EPA quarterly status reports regarding its performance of this SEP. Beginning upon Entry of the Consent Decree, these reports must be received by EPA no later than thirty (30) days after the end of each calendar quarter. Such quarterly reports shall continue to be submitted until Oxy Vinyls submits a SEP Completion Report for this SEP pursuant to Section VII of the Consent Decree. Each status report shall contain the following information at a minimum:

- a) a narrative description of the work completed in the past calendar quarter and the actions taken by Oxy Vinyls towards implementing the SEP;
- b) a running total of expenditures to date as incurred by Oxy Vinyls and as valued under the Expenditures section above;
- c) a proposed schedule and description of all activities projected for the next quarterly reporting period;
- d) a description of any problems and/or delays encountered or anticipated directly or indirectly resulting from implementation of the SEP;
- e) a description of any actions taken to prevent or mitigate such problems and (if applicable) a proposed modified completion schedule;
- f) the vinyl chloride reductions achieved and RVCM levels experienced during the reporting period; and
- g) At any time it appears that Oxy Vinyls will be unable to meet the 10 ppm RVCM limit (twelve month rolling average across all seven columns) one year after the completion of tray installation and successful start-up of all slurry stripper columns in accord with Section VII (Supplemental Environmental Projects and New Jersey State-Only Environmental Project) of the Consent Decree and section A.2.b. above, Oxy Vinyls shall submit a compliance plan within thirty (30) days setting forth how it will meet such limit.



## **B. LOUISVILLE RAILCAR UNLOADING SEP**

### **1. SEP DESCRIPTION**

Background: The Louisville Facility receives VCM via railcars. The VCM is unloaded into fixed storage via a series of unloading hoses and ancillary piping. After the unloading process is complete, a small residual amount of VCM remains in the unloading hoses. Once the hose-to-rail car connection is broken, the residual VCM is released into the atmosphere. This SEP is designed to capture residual VCM and reduce the amount released to the atmosphere.

Description: Oxy Vinyls shall install a rail car vapor unloading vacuum system at the Louisville Facility designed to recover approximately one hundred (100) pounds per year of VCM (relative to 2004 railcar unloading events) that would otherwise be released into the atmosphere from the unloading hose. Oxy Vinyls will install a compressor capable of pulling a vacuum down to 20" Hg to recover the residual amount of VCM in the unloading hoses. The vacuum compressor will be piped into the existing recovery line from the rail cars to the unloading compressors.

### **2. PERFORMANCE STANDARDS**

#### **a. Time for Performance**

Oxy Vinyls shall complete installation of the Louisville Railcar Unloading SEP within twelve (12) months after Entry of the Consent Decree.

#### **b. Emissions Reductions**

Oxy Vinyls shall operate the Louisville Railcar Unloading SEP for three (3) years after completion of installation of the SEP, or until a total of three hundred (300) pounds of vinyl chloride emissions reductions have been achieved relative to 2004 railcar unloading events, whichever is later.

### **3. EXPENDITURES**

The expenditures for this SEP shall total no less than \$250,000.

#### **4. DRAFT IMPLEMENTATION PLAN/SCHEDULE FOR IMPLEMENTATION**

Within thirty (30) days of Entry of the Consent Decree, Oxy Vinyls shall submit a draft implementation plan for the Louisville Railcar Unloading SEP. The draft implementation plan/schedule for implementation shall include, but not be limited to the following:

- a. The goals of the SEP;
- b. The estimated amount of emissions reductions that will be achieved by the SEP;
- c. A description of the construction and operation of the SEP;
- d. Specify projected expenditures of the SEP including the following:
  - i. contractor costs
  - ii. capital costs
  - iii. operational costs
- e. Specify cost savings associated with the SEP from the emissions reductions achieved; and
- f. Schedule for implementing the SEP, including milestones.

#### **5. PERIODIC REPORTS**

Oxy Vinyls shall submit to EPA quarterly status reports regarding its performance of this SEP. Beginning upon Entry of the Consent Decree, these reports must be received by EPA no later than thirty (30) days after the end of each calendar quarter. Such quarterly reports shall continue to be submitted until Oxy Vinyls submits a SEP Completion Report for this SEP pursuant to Section VII of the Consent Decree. Each status report shall contain the following information at a minimum:

- a) a narrative description of the work completed in the past calendar quarter and the actions taken by Oxy Vinyls towards implementing the SEP;
- b) a running total of expenditures to date as incurred by the Oxy Vinyls and as valued under the Expenditures section above;
- c) a proposed schedule and description of all activities projected for the next quarterly reporting period;

d) a description of any problems and/or delays encountered or anticipated directly or indirectly resulting from implementation of the SEP; and

e) a description of any actions taken to prevent or mitigate such problems and (if applicable) a proposed modified completion schedule.

## **C. PEDRICKTOWN EQUIPMENT OPENINGS SEP**

### **1. SEP DESCRIPTION**

The Pedricktown Facility produces PVC resin in a series of six (6) reactors. These reactors and associated "chip catcher" equipment must be opened to the atmosphere for cleaning. A small residual amount of VCM is emitted to the atmosphere when the reactors and chip catchers are opened. In addition, during the cleaning operation, some PVC resin is recovered from the reactors. This PVC resin has not undergone the stripping process, and emits some VCM once it is removed and stored.

Oxy Vinyls proactively completed a pilot study on two reactors at the Pedricktown Facility on the production of flexible grade resin, and determined that reactor and chip catcher openings at that reactor can be reduced. As part of this SEP, the third reactor on Line 2 will be modified. However, it is not yet certain whether reactor and chip catcher openings can be reduced for all products manufactured by the Pedricktown Facility. Therefore, the Pedricktown Equipment Openings SEP will proceed in two phases.

The completion of modifications to the one remaining reactor not yet modified on Line 2 and assessment of performance thereof will constitute Phase I of this SEP. Oxy Vinyls shall modify one reactor at the Pedricktown Facility in Phase I of the Pedricktown Equipment Openings SEP to reduce the number of reactor openings and chip catcher openings by implementing an experimental reactor design change that is intended to reduce PVC buildup in the reactor. Following modification of the remaining unmodified reactor on Line 2 of the Pedricktown Facility, a determination will be made, in accord with section 2. below, whether the number of reactor openings and associated emissions will be reduced. If so, the design change will then be implemented on the remaining three (3) reactors at the Pedricktown Facility during Phase II of the Pedricktown Equipment Openings SEP.

### **2. PERFORMANCE STANDARDS**

#### **a. Timing for Phase I**

Oxy Vinyls shall complete Phase I of the Pedricktown Equipment Openings SEP within twelve (12) months of Entry of the Consent Decree.

## **b. Determination Whether To Proceed With Phase II**

Following completion of Phase I of the Pedricktown Equipment Openings SEP, Oxy Vinyls shall, in the next Periodic Report due, include a recommendation as to whether Oxy Vinyls should proceed forward with Phase II of the Pedricktown Equipment Openings SEP. This recommendation, which shall in no way be binding upon EPA, shall be based upon, *inter alia*, the effectiveness of the design change in reducing the number of reactor or chip catcher openings and whether there were any adverse impacts to production efficiency at the Pedricktown Facility resulting from the design change. Oxy Vinyls shall implement Phase II of the Pedricktown Equipment Openings SEP unless Oxy Vinyls demonstrates to the satisfaction of EPA that (1) the design change has not resulted in a reduction of the number of reactor or chip catcher openings as compared to operations prior to Phase I; or (2) Oxy Vinyls demonstrates to the satisfaction of EPA that there were significant adverse impacts to production efficiency at the Pedricktown Facility resulting from the design change. Following EPA's receipt of the Periodic Report containing the recommendation as to whether to proceed with Phase II, EPA shall determine whether Oxy Vinyls shall proceed with Phase II of the Pedricktown Equipment Openings SEP.

## **c. Phase II**

If Phase II of the Pedricktown Equipment Openings SEP is implemented pursuant to Section VII of the Consent Decree and this Scope of Work, Phase II of the SEP shall be completed within twenty-four (24) months of Entry of the Consent Decree or within twelve (12) months of notification from EPA pursuant to b. above that Oxy Vinyls shall implement Phase II of the Pedricktown Equipment Openings SEP, whichever is earlier.

## **3. EXPENDITURES**

The expenditures for this SEP shall total at least \$10,000 for Phase I. Should Phase II be implemented, the expenditures for Phase II shall be at least an additional \$20,000.

## **4. DRAFT IMPLEMENTATION PLAN/SCHEDULE FOR IMPLEMENTATION**

Within thirty (30) days of Entry of the Consent Decree, Oxy Vinyls shall submit a draft implementation plan for the Pedricktown Equipment Openings SEP. The draft implementation plan/schedule for implementation shall include, but not be limited to the following:

- a. The goals of the SEP;
- b. The estimated amount of emissions reductions that will be achieved by the SEP;

- c. A description of the construction and operation of the SEP;
- d. Specify projected expenditures of the SEP including the following:
  - i. contractor costs
  - ii. capital costs
  - iii. operational costs
- e. Specify cost savings associated with the SEP from the emissions reductions achieved;
- f. Schedule for implementing the SEP, including milestones; and
- g. Information sufficient to measure the baseline number of reactor and chip catcher openings on the Pilot Project-related Reactor and Chip Catchers (Line 2) at the Pedricktown Facility in calendar year 2004.

## **5. PERIODIC REPORTS**

Oxy Vinyls shall submit to EPA quarterly status reports regarding its performance of this SEP. Beginning upon Entry of the Consent Decree, these reports must be received by EPA no later than thirty (30) days after the end of each calendar quarter. Such quarterly reports shall continue to be submitted until Oxy Vinyls submits a SEP Completion Report for this SEP. Each status report shall contain the following information at a minimum:

- a) a narrative description of the work completed in the past month or calendar quarter (as applicable) and the actions taken by Oxy Vinyls towards implementing the SEP;
- b) a running total of expenditures to date as incurred by the Oxy Vinyls and as valued under the Expenditures section above;
- c) a proposed schedule and description of all activities projected for the next quarterly reporting period;
- d) a description of any problems and/or delays encountered or anticipated directly or indirectly resulting from implementation of the SEP;
- e) a description of any actions taken to prevent or mitigate such problems and (if applicable) a proposed modified completion schedule; and
- f) the Periodic Report following completion of Phase I of the Pedricktown Equipment Openings SEP shall include adequate information for EPA to make a determination as to

whether to proceed with Phase II of the Pedricktown Equipment Openings SEP as set forth in C.2.b above.

**D. CAMDEN WATERFRONT SOUTH/DUST CONTROL PROJECT/NEW JERSEY STATE-ONLY ENVIRONMENTAL PROJECT**

**1. PROJECT DESCRIPTION**

By no later than ninety (90) days after Entry of this Consent Decree, Oxy Vinyls shall pay the University of Medicine and Dentistry of New Jersey ("UMDNJ") \$125,000 for UMDNJ to design and conduct a study to determine the source of the dust and particulate deposition in and around residential locations in the Camden Waterfront South neighborhood in Camden, New Jersey and fingerprint the samples through laboratory analysis ("Camden Waterfront South/Dust Control Project").

**2. PERFORMANCE STANDARDS**

**a. Time for performance and Performance Standard for New Jersey State-Only Environmental Project**

Within ninety (90) days of Entry of the Consent Decree, Oxy Vinyls shall pay UMDNUJ \$125,000 to perform this Project. Oxy Vinyls shall provide notice of such payment, referencing DOJ Case Number 90-5-2-1-08333 and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Section VI (Notices) of the Consent Decree. This Project shall be subject to oversight by the NJDEP's Division of Science and Research, P.O. Box 409, Trenton, NJ 08625-0409.

**3. EXPENDITURES**

The expenditures for this SEP shall total \$125,000.