IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA, and STATE OF TEXAS Plaintiffs,	)	
v.	)	Civil Action No. 1:21-cv-00516
	)	CONSENT DECREE
E.I. DU PONT DE NEMOURS AND COMPANY, and PERFORMANCE MATERIALS, NA, INC.	)	
Defendants.	)	

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WHEREAS, concurrent with the lodging of this Consent Decree, Plaintiffs, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the State of Texas (the "State") by and through the Texas Commission on Environmental Quality ("TCEQ"), have filed a Complaint in this action against Defendants E. I. du Pont de Nemours and Company ("DuPont") and Performance Materials NA, Inc. ("PMNA") (collectively "Defendants") for alleged environmental violations during their respective periods of ownership and operation of the Sabine River Operations Facility (also referred to as "the Facility") located in Orange, Texas.

WHEREAS, the Complaint alleges that Defendants have violated the following environmental statutes and their implementing federal and state regulations at the Facility located in Orange County, Texas: the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k; and the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387; the Texas Clean Air Act ("TCAA"), Tex. Health & Safety Code §§ 382.001-.510; the Texas Solid Waste Disposal Act ("TSWDA"), Tex. Health & Safety Code §§ 361.001-.992; and Chapters 7 and 26 of the Texas Water Code ("TWC"), Tex. Water Code ch. 7, 26.

WHEREAS, in August 2017, DuPont and The Dow Chemical Company ("TDCC") each merged with subsidiaries of DowDuPont, Inc. ("DowDuPont") and, as a result, TDCC and DuPont became subsidiaries of DowDuPont.

WHEREAS, DuPont owned and operated the Facility until February 1, 2019.

WHEREAS, on February 1, 2019, ownership and operation of the Facility was transferred from DuPont to PMNA, then a subsidiary of DuPont.

WHEREAS, on April 1, 2019, Dow, Inc. ("Dow") was spun out of DowDuPont as a standalone publicly traded company, and PMNA became a subsidiary of TDCC, itself a subsidiary of Dow.

WHEREAS, on May 4, 2020, Dow and PMNA sold ownership and operation of the Facility's waste incineration operations to Heritage Thermal of Texas, LLC ("Heritage"), including (i) a rotary kiln, afterburner chamber and associated facilities, and (ii) the Title V Operating Permit for operation of the Sabine Region Incinerator (Regulated Entity No. RN100542711), Permit No. O1896, issued on August 3, 2016, including all existing or applicable permits by rule.

WHEREAS, pursuant to the Asset Transfer Agreement dated December 8, 2019, (i) Heritage acknowledged and agreed that the transferred assets may become subject to a multimedia enforcement consent decree, (ii) Heritage and PMNA agreed to communicate, consult, and reasonably cooperate with one another in the design, engineering, procurement, construction, installation and commissioning of capital projects related to the transferred assets as and when and to the extent required pursuant to this Consent Decree, and (iii) PMNA has the right, exercisable at any time, to assume responsibility for such projects and to otherwise comply with any of the obligations in the Consent Decree related to the transferred assets, and to access the transferred assets in connection therewith.

WHEREAS, by agreeing to entry of this Consent Decree, Defendants deny and do not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(l) of RCRA, 42 U.S.C. § 6928(a)(l); and Section 309(b) of the CWA, 33 U.S.C. §§ 1319(b). Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendants conduct business in, this judicial district. This venue is also consistent with Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and Sections 309 of the CWA, 33 U.S.C. §§ 1319.

2. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendants consent to the Court's jurisdiction over this Consent Decree and any such action, and over Defendants, and Defendants consent to venue in this judicial district.

3. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the CAA, 42 U.S.C. § 7413; Sections 3004, 3005 and 3008 of RCRA, 42 U.S.C. §§ 6924, 6925 and 6928; Section 309 of the CWA, 33 U.S.C. §§ 1319 and 1321; Section 382.085 of the TCAA, Tex. Health & Safety Code §

382.085; Sections 7.101 and 26.121 of the TWC, Tex. Water Code §§ 7.101 and 26.121; and applicable state and federal regulations.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, the State, and upon Defendants and their respective successors, assigns, or other entities or persons otherwise bound to this Decree by law. Notwithstanding the transfer of certain assets to Heritage in May 2020, Defendants remain responsible for performance of their obligations under this Consent Decree that relate to the transferred assets, and Defendants will not argue that the transfer of assets to Heritage has any effect on their obligations to perform injunctive relief under this Decree.

5. At least thirty 30 Days prior to any proposed transfer of ownership or operation of all or substantially all of the assets comprising the Facility ("Transfer"), or within such shorter time as the United States and the State may agree to in writing, the transferring Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall provide written notice describing the prospective Transfer (and Defendant's confidentiality expectations), together with a copy of the relevant portions of the draft Transfer agreement, to the United States and the State in writing, in accordance with Section XVI (Notices). No Transfer, whether in compliance with the procedures of this Paragraph or otherwise, relieves the transferring Defendant of its obligation to ensure that the terms of this Consent Decree are implemented, unless (i) the transferee agrees to undertake the obligations of this Consent Decree and to be substituted for the transferor as a Party under this Decree and thus bound by the terms hereof, (ii) the United States and the State consent to relieve the transferor of its obligations, or this Court orders such substitution over the objection of the Plaintiffs through the process set forth in Paragraph 7, or a Defendant is merged into its corporate parent existing at the date of Lodging and the surviving

corporation, by operation of law, assumes all of the assets and liabilities of the Defendant, and (iii) the Court modifies this Consent Decree and the transferee becomes a Party to this Consent Decree.

6. After the submission to the United States and the State of the notice of the proposed Transfer, as required by Paragraph 5, transferor may request the Plaintiffs' consent to file a joint motion requesting the Court to approve a modification substituting the transferee for transferor as a Defendant responsible for complying with all or some of the obligations of the Consent Decree. Plaintiffs may consent to such a filing or the United States shall notify the transferring Defendant, after consultation with the State, that Plaintiffs do not agree to modify the Consent Decree to relieve the transferor of responsibility, substitute the transferee for the transferor, and make the transferee responsible for complying with all or some of the obligations of the Consent Decree, as requested.

7. If, for any reason, transferor does not secure the agreement of Plaintiffs to file a joint motion within 30 Days after requesting the Plaintiffs' consent to file a joint motion under Paragraph 6, transferor and the transferee may file, without the agreement of the United States or the State, a motion requesting the Court to approve a modification substituting the transferee for the transferor as the Party responsible for complying with some or all of the obligations of the Consent Decree. The United States or the State may file an opposition to the motion objecting to the Transfer (a) because EPA or TCEQ has determined that the transferee lacks the financial or technical ability to assume the obligations of the Decree; (b) because the proposed modification fails to effectively transfer all relevant portions of the Consent Decree's obligations to the transferee; or (c) for any other good cause. The motion to modify the Decree shall be granted unless: (i) the transferor and the transferee fail to show that the transferee has the financial and

technical ability to assume the obligations of the Decree, as requested; (ii) the transferor and the transferee fail to show that the modification language effectively transfers such obligations to the transferee; or (iii) the Court finds other good cause for denying the motion.

8. Each Defendant shall provide a copy of relevant portions of this Consent Decree to all officers, employees, and agents that are responsible for compliance with any provision of this Decree, as well as to any vendor, supplier, or contractor retained to perform work required under this Consent Decree. Each Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. A contractor's failure to perform the work in conformity with the terms of this Decree shall not excuse the Defendant’s obligations under this Decree.

9. In any action to enforce this Consent Decree, neither Defendant shall raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

10. Terms used in this Consent Decree, including the Appendices hereto, that are defined in the CAA, RCRA, CWA, TCAA, TSWDA, TWC, or in federal and state regulations promulgated thereunder, shall have the meanings assigned to them in the applicable statute or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Complaint” shall mean the complaint filed by the United States and the State in this action;

b. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto listed in Section XXV (Appendices);

c. Date of Lodging" shall mean the date on which the United States initially lodges the Consent Decree with the Court prior to commencement of the public comment period required by Section XXI (Public Participation) or this Consent Decree.

d. "Day" or "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 or State of Texas holiday, the period shall run until the close of business of the next business day;

e. "Defendants" shall mean E.I. du Pont de Nemours and Company ("DuPont") and Performance Materials NA, Inc. ("PMNA");

f. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

g. "Effective Date" shall have the definition provided in Section XVII (Effective Date);

h. "Environmental Management System" or "EMS" refers to the comprehensive, facility-wide system to ensure environmental compliance, achieve pollution prevention, and accomplish pollution reduction at the Facility;

i. "Facility" or "Sabine River Operations Facility" shall mean those portions of the Sabine River Operations Chemical Manufacturing Complex, located at 3055 FM 1006, Orange, Orange County, Texas, including real property and operating or closed units or equipment owned or operated by either Defendant and subject to the provisions of this Consent Decree, but not including units or equipment

currently operated by INVISTA s.a.r.l. and the real property underlying such units or equipment;

j. "Month" or "monthly" shall mean a calendar month;

k. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

l. "Parties" shall mean the United States of America, the State of Texas, DuPont and PMNA;

m. "Plaintiff(s)" shall mean the United States of America and the State of Texas;

n. "Section" shall mean a portion of this Decree identified by a roman numeral;

o. "TCEQ" shall mean the Texas Commission on Environmental Quality, an agency of the State of Texas, or any successor departments or agencies of TCEQ;

p. "Texas" or "the State" shall mean the State of Texas, acting on behalf of the TCEQ;

q. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. INJUNCTIVE RELIEF REQUIREMENTS FOR COMPLIANCE

11. Benzene Waste Operations National Emission Standards for Hazardous Air Pollutants. Defendants shall undertake the measures set forth in Appendix A of this Consent Decree relating to 40 C.F.R. Part 61, Subpart FF ("Benzene Waste Operations NESHAP").

12. Miscellaneous Organic Chemical Manufacturing National Emission Standards for Hazardous Air Pollutants. Defendants shall undertake the measures set forth in Appendix B of this Consent Decree relating to 40 C.F.R. Part 63, Subpart FFFF ("Miscellaneous Organic Chemical Manufacturing NESHAP," or "MON") and the applicable requirements for wastewater

streams and liquid streams in open systems with a miscellaneous organic chemical manufacturing process unit, as set forth in Subpart FFFF, Table 7, at the Facility.

13. RCRA Requirements. Defendants shall undertake the measures set forth in Appendix C of this Consent Decree relating to the RCRA and related State law at the Facility.

14. CWA Requirements. Defendants shall undertake the measures set forth in Appendix D of this Consent Decree relating to the CWA, related State law and permits at the Facility.

15. Environmental Management System ("EMS") Requirements. Defendants shall undertake the measures set forth in Appendix E of this Consent Decree.

16. Defendants shall be jointly and severally liable for the performance of injunctive relief requirements set forth in Sections IV, V, VI, VII, IX and XIII of this Consent Decree. Defendants may designate one Defendant to be lead point of contact for submission of deliverables related to such injunctive relief requirements, and each Defendant shall advise Plaintiffs of that designation.

V. COMPLIANCE EVALUATION AND AUDIT REQUIREMENTS

17. In accordance with Appendices A-D, Defendants shall hire Independent Third Parties to conduct environmental compliance evaluations or audits at the Facility. Defendants shall bear all costs associated with the Independent Third Party evaluations or audits, cooperate fully with the Independent Third Party consultant, and provide the consultant with reasonable and timely access to all records, employees, contractors, units, and facilities that the consultant deems necessary to effectively perform the duties described in this Section and in Appendices A-D.

18. The Independent Third Parties shall be informed of and be required by contract to comply with all applicable workplace safety and health procedures while onsite at the Facility.

19. Representatives of Independent Third Parties responsible for overseeing the duties set forth in this Section and in Appendices A (BWON), B (MON), C (RCRA), and D (CWA) of this Consent Decree shall:

a. have a bachelor's or higher degree in a relevant discipline and a license in professional engineering; and

b. have expertise and competence in the relevant regulatory programs under federal and state environmental laws, and at least five years of experience, including current experience and training, with the requirements of relevant laws and permits.

c. have conducted audits covering these regulatory programs within the last five (5) years.

20. To ensure independence, each Independent Third Party and its personnel, or subcontractors, that perform duties pursuant to this Consent Decree shall act impartially when performing all activities under this section. To demonstrate independence and impartiality, Defendants shall have no financial interest in the Independent Third Party and shall require in the auditing contract with the Independent Third Party, that:

a. The Independent Third Party, and its personnel or subcontractors performing the audit work, shall not have any conflict of interest that will compromise, in any way, the independence of the evaluation or audit;

b. The Independent Third Party, and its personnel or subcontractors performing the audit work, shall not have conducted past research, development, design, construction services, or consulting for either Defendant within the last 3 years prior to the auditing contract, and not have ever worked at the Facility. For

purposes of this Section, the term "consulting" shall not include performing or participating in other third-party audits or evaluations required by this Consent Decree;

c. The Independent Third Party, and its personnel or subcontractors performing the audit work, shall not provide other business or consulting services to Defendants, including advice or assistance to implement the findings or recommendations in the audit report, for a period of at least 3 years following the Independent Third Party's submittal of the final Audit report without the prior written consent of the United States in consultation with TCEQ;

d. All Independent Third Party personnel who conduct or otherwise participate in the evaluation/audit sign and date a conflict of interest statement attesting that the personnel:

   i. have met and followed the Independent Third Party requirements in this Section V, Paragraph 20; and

   ii. receive no financial benefit from the outcome of the evaluation or audit, apart from payment for the performance of such evaluation or audit services;

e. Defendants shall not hire as an employee or consultant any of the Independent Third Party's personnel, or contractors retained by the Independent Third Party, who conducted or otherwise participated in the evaluation/audit during the period of the evaluation/audit and for a period of at least 3 years following the Independent Third Party's submittal of its final audit report(s) without the prior written consent of the United States in consultation with TCEQ;

f. The Independent Third Party shall retain for five (5) years after completion of its final audit report(s), and if directed by Defendants shall produce for Defendants, and for EPA and TCEQ, copies of any of the evaluation or audit-related reports and records specified in this section; and

g. The Independent Third Party shall have in place policies and procedures to memorialize conditions (a) through (f), above, to ensure the Independent Third Party's competence, impartiality, judgment, and operational integrity when auditing under this section.

21. Selection of the Independent Third Party. Unless otherwise set forth in this Consent Decree, no later than thirty (30) days after entry of this Consent Decree, for each evaluation or audit required by this Consent Decree Defendants shall submit to the United States and TCEQ a list of three or more proposed consultants to serve as an Independent Third Party, along with the name, affiliation, and address of the proposed Independent Third Party, information demonstrating how each proposed auditor satisfies the requirements of Paragraphs 19 and 20, and a description of any previous work, contracts, or financial relationships with Defendants in the prior ten (10) years. Defendants shall state whether a proposed Independent Third Party is proposed to conduct more than one evaluation or audit or whether more than one Independent Third Party will participate on a single evaluation or audit. If, despite best reasonable efforts, Defendants cannot identify three proposed Independent Third Parties that meet all requirements of Paragraphs 19 and 20, Defendants shall so certify with an explanation of the efforts it has made to locate such Independent Third Parties, and shall submit to the United States and TCEQ a list of three or more proposed candidates to serve as an Independent Third Party, along with the information required under this Paragraph demonstrating that the

candidates can perform the duties under this Section in an independent manner, and an explanation of which requirements of Paragraphs 19 and 20 are met and which are not met by each candidate.

a. The United States, in consultation with TCEQ, shall notify Defendants regarding whether it approves the proposed Independent Third Party consultant(s) on the list(s). If the United States, after consultation with TCEQ, does not approve any of the proposed consultants on Defendants' list, then Defendants shall submit a second, and if necessary third list of proposed consultants to the United States and TCEQ within thirty (30) Days of receipt of the United States' written notice of its disapproval of proposed consultants on the list. If the United States has not approved a proposed consultant on the first, second or third lists submitted by Defendants and the Parties are unable to agree on a proposed consultant, the Parties agree to resolve the selection of Independent Third Parties through the Dispute Resolution process in Section XIII.

b. Within 60 Days after receipt of the United States' approval, in consultation with TCEQ, Defendants shall select one consultant from those approved by the United States for the particular evaluation(s) or audit(s) and shall enter into a contract with the consultant to serve as Independent Third Party and to perform all the duties required for the particular evaluation(s) or audit(s) as required by this Consent Decree. Defendants shall use all commercially reasonable efforts to ensure that the Independent Third Party complies with the requirements set forth in this Decree, including the deadlines established thereunder and in approved

schedules. Defendants' retention contract with the Independent Third Party shall include enforceable obligations paralleling applicable Consent Decree requirements and shall include remedies, including penalties, for nonperformance or delayed performance by the Independent Third Party. In the event the consultant(s) approved by the United States is no longer available or willing to accept the work described in this Consent Decree when notified of their selection by Defendants, then Defendants shall select another auditor approved by the United States and enter into the contract to perform the relevant evaluation(s) or audit(s) within sixty (60) Days.

c. If, after retention by Defendants, the selected Independent Third Party cannot satisfactorily perform the evaluation or audit, then within sixty (60) Days of learning that the Independent Third Party cannot satisfactorily perform the evaluation or audit, Defendants shall submit a list of proposed replacement Third Parties to the United States and TCEQ for approval in accordance with this Paragraph.

22. Upon receipt of written notice from the Independent Third Party, Defendants shall immediately notify EPA and TCEQ of any condition the Independent Third Party finds during an evaluation or audit that may present an imminent and substantial endangerment to public health, welfare, or the environment. Either Defendant's or both Defendants' contract with the Independent Third Party shall require the Independent Third Party to cooperate fully with any requests made by Defendants, EPA, or TCEQ in investigating the potential endangerment. Defendants shall cooperate fully with any requests made by EPA or TCEQ in investigating the potential endangerment. Nothing in this paragraph shall relieve Defendants of any other

obligation imposed by any applicable federal, state, tribal, or local law or order requiring notification or response to the potential endangerment. The notification requirement of this paragraph is in addition to and shall not substitute for any such obligation.

23. General Evaluation or Audit Report Requirements. In addition to the specific requirements for each third party evaluation or audit set forth under this Consent Decree, either Defendant's or both Defendants' contract with the Independent Third Party shall require the Independent Third Party to include, as part of its final report after completion of the evaluation or audit, the following:

a. the name and address of the Facility reviewed and the dates of the evaluation or audit;

b. a description of the information reviewed and the on-site activities conducted by the Independent Third Party to perform the audit in accordance with this Consent Decree and the applicable Appendix;

c. a detailed description of each suspected area of noncompliance (AON) found at the Facility, including the suspected days of noncompliance, if known, with the legal requirement;

d. supporting data and information documenting each suspected AON, such as analytical data, schematic diagrams and photographs, environmental permits, monitoring data, and invoices of installed equipment;

e. a recommendation on what corrective measures need to be taken to address each suspected AON;

f. a description of any problems or difficulties, if any, in performing the evaluation or audit and the measures taken to address such problems or difficulties at the Facility; and

g. a certification by the Independent Third Party that the evaluation or audit has been fully completed in accordance with the relevant provisions of this Consent Decree.

24. Defendants shall provide a copy of any final evaluation or audit report to EPA or TCEQ as set forth in the Appendices.

VI. APPROVAL OF DELIVERABLES

25. Defendants shall submit each plan, report, or other submission required by this Consent Decree to Plaintiffs whenever and in the manner such a document is required to be submitted for review or approval pursuant to this Consent Decree. Except as provided otherwise in Appendix C (RCRA), EPA shall be the approving agency for deliverables under this Decree. Upon review, EPA, after consultation with TCEQ (or the reverse as provided in Appendix C), shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

26. If the submission is approved pursuant to Paragraph 25, Defendants shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 25(b) or (c), Defendants shall, upon written direction from EPA, after consultation with TCEQ (or the reverse as provided in Appendix C), take all actions required by the approved plan, report, or other item that EPA, after consultation with TCEQ (or the reverse as provided in Appendix C), determines are

technically severable from any disapproved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section XII (Dispute Resolution).

27. If the submission is disapproved in whole or in part pursuant to Paragraph 25(c) or (d), Defendants shall, within sixty (60) days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

28. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with TCEQ (or the reverse as provided in Appendix C), may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself/themselves correct any deficiencies, subject to Defendants' right to invoke Dispute Resolution under Section XII and the right of the United States and the State to seek stipulated penalties as provided in the preceding Paragraphs and Section X.

29. Any stipulated penalties applicable to the original submission, as provided in Section X, shall accrue during the sixty (60) day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved again in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

VII. PERMITS

30. Where any compliance obligation under this Consent Decree requires Defendants to secure a federal, state or local permit or approval, Defendants shall submit timely and complete applications, including responses to requests for additional information, to the

appropriate authorities, and take all other actions necessary to obtain all such permits or approvals.

31. Defendants may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any compliance obligation under this Consent Decree resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, provided that Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals. Any failure by Defendants to submit a timely permit application shall bar any use by Defendants of Section XI (Force Majeure) of this Consent Decree, to the extent a Force Majeure claim is based on that permit delay.

VIII. CIVIL PENALTY

32. Within thirty (30) Days after the Effective Date of this Consent Decree, DuPont shall pay a civil penalty to the United States and to the State, as provided below. Failure to timely pay the civil penalty required herein shall render DuPont liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States or the State in securing payment. Notwithstanding any other provision of this Consent Decree, PMNA is not responsible for payment of the civil penalty to the United States or to the State.

33. Payment to the United States. DuPont shall pay to the United States a civil penalty amount of $1,675,000, together with interest accruing from the Effective Date, at the rate specified in 28 U.S.C. § 1961. If any portion of the civil penalty due to the United States is not paid when due, DuPont shall pay interest on the amount past due accruing from the Date of Lodging of the Consent Decree through the date of payment at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. DuPont shall pay the civil penalty and any associated interest,

by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to DuPont, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Texas, after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which DuPont shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Thomas A. Warnock
Associate General Counsel
E. I. du Pont de Nemours and Company
974 Centre Road, Chestnut Run Plaza 735/1307
Wilmington DE 19805-0735
thomas.a.warnock@corteva.com

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

34. At the time of payment to the United States, DuPont shall send notice that payment has been made, together with a copy of the EFT authorization form and the EFT transaction record to (i) EPA by email to [cinwd_acctsreceivable@epa.gov] and via regular mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

and (ii) to the Department of Justice via email or regular mail in accordance with Section XV; and (iii) to EPA in accordance with Section XV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and State of Texas v. E. I. du Pont*

de Nemours & Company, et al., and shall reference the civil action number, CDCS Number, and DOJ case number 90-7-1-10173.

35. No later than Thirty (30) Days after the Effective Date, DuPont shall pay the total amount of $1,675,000 which includes a civil penalty of $ 1,425,000 and attorneys' fees of $250,000 to the State of Texas, together with interest accruing on those amounts from the Effective Date, at the rate specified in 28 U.S.C. § 1961. If any portion of the civil penalty due to the State is not paid when due, DuPont shall pay interest on the amount past due accruing from the Date of Lodging of the Consent Decree through the date of payment at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. DuPont shall pay the civil penalty and attorneys' fees, and any associated interest, by Wire Transfer or Automated Clearing House (ACH) Transfer to the Office of the Attorney General, State of Texas, in accordance with written instructions to be provided to DuPont, following entry of the Consent Decree, by the Office of the Attorney General.

36. At the time of the payment to the State of Texas, DuPont shall send notice that payment has been made, together with a copy of the Wire Transfer or ACH authorization form and transaction record, to the Office of the Attorney General by email to Thomas.Edwards@oag.texas.gov and Jake.Brown@oag.texas.gov, and via regular mail to the Environmental Protection Division, Office of the Attorney General, in accordance with Section XV. Such notice shall state that the payment is for the civil penalty, attorneys' fees, and interest owed pursuant to the Consent Decree in *United States and State of Texas v. E. I. du Pont de Nemours & Company, et al*. and shall reference the civil action number and AG No. CX8017616930.

37. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section VIII (Civil Penalty) in calculating their federal, State, or local income taxes.

IX. REPORTING REQUIREMENTS

38. In addition to any other express reporting requirement in this Consent Decree, on each February 28 and August 31 following the Effective Date of this Consent Decree until termination of this Decree pursuant to Section XX (Termination), Defendants shall submit to EPA and TCEQ a semi-annual progress report that shall describe Defendants' actions taken and to be taken to comply with this Consent Decree. The progress report due February 28 shall provide information for the preceding period from July 1 through December 31. The progress report due August 31 shall provide information for the preceding period from January 1 through June 30. The first progress report shall provide information for the period from the Effective Date until December 31 or June 30, whichever occurs first. If Defendants indicate in a progress report that an obligation under this Consent Decree has been completed and EPA, in consultation with TCEQ (or the reverse as provided in Appendix C), agrees that the obligation has been completed, Defendants are not required to include the completed obligation in future progress reports. Each progress report shall include:

a. a description of each requirement of this Consent Decree (or any submission made thereunder) that was completed during the reporting period, including the date such requirement was completed;

b. all information required to be reported in the progress report under Appendices A through E of this Consent Decree (which may reference specific information previously submitted to EPA and TCEQ pursuant to this Consent Decree without re-submitting same);

c. a summary of the emissions data, including a separate identification of any exceedance(s) of Consent Decree emission limitations or standards for the Facility set forth or established pursuant to Sections IV-VII of this Consent Decree [Appendices A-E] for that period; and

d. a description of any problems anticipated with respect to meeting the requirements of Sections IV-VII of this Consent Decree, together with implemented or proposed solutions.

39. In any periodic progress report submitted pursuant to this Section, Defendants may incorporate by reference information previously submitted under Title V permitting requirements, provided that Defendants attach the Title V permit report and provide a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic progress report.

40. If any Defendant violates, or has reason to believe that it will violate, any requirement of this Consent Decree, Defendant shall notify the United States and the State of such violation or anticipated violation and its duration or anticipated likely duration, in writing, within fifteen (15) business days of first becoming aware of the violation or anticipated violation, with an explanation of the cause or likely cause of the violation and any measures taken, or to be taken, to prevent or minimize such violation. If the cause of a violation or anticipated violation cannot be fully explained at the time the report is due, such Defendant shall so state in the report. Such Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within fifteen (15) Days of becoming aware of the cause of the violation. Nothing in this Paragraph or the following

Paragraph relieves Defendants of their obligation to provide the notice required by Section XI (Force Majeure) of this Consent Decree.

41. Whenever any violation of this Consent Decree or any other event affecting Defendant(s)' performance under this Consent Decree, poses an imminent and substantial endangerment to the public health, welfare or the environment, Defendant(s) shall notify EPA and TCEQ orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant(s) first knew of the violation or event. This notification procedure is in addition to the requirements set forth in the preceding Paragraph.

42. All reports shall be submitted to the persons designated in Section XVI (Notices) of this Consent Decree. Nothing in this paragraph shall relieve Defendants of any other obligation imposed by any applicable federal, state, tribal, or local law or order requiring notification or response to the potential endangerment. The notification requirement of this paragraph is in addition to and shall not substitute for any such obligation.

43. Each report or notice submitted by Defendants under this Section shall be signed by a responsible corporate official with the requisite authority of the submitting Defendant and shall include the following certification:

> 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 this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered, evaluated, and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, that the information submitted, to the best of my knowledge and belief, is true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

44. The reporting requirements of this Consent Decree do not relieve Defendants of any additional reporting obligations required by the CAA, RCRA, CWA, TCAA, TWC or TSWDA, or their implementing regulations, or of any other federal, state, or local law, regulation, permit, or other requirement. The reporting requirements of this Section are in addition to any other reports, plans, or submissions required by other Sections of this Consent Decree.

45. Any information provided pursuant to this Consent Decree may be used by the United States or State in any proceeding to enforce the provisions of this Consent Decree, subject, where applicable, to the procedures referenced in Paragraph 78, and as otherwise permitted by law.

X. STIPULATED PENALTIES

46. Defendants shall be liable for stipulated penalties to the United States and to the State for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

47. Late Payment of Civil Penalty. If DuPont fails to pay the civil penalty required to be paid under Section VIII (Civil Penalty) of this Decree when due, DuPont shall pay a stipulated penalty of $5,000 per Day for each Day that the payment is late. DuPont is solely responsible for stipulated penalties for late payment of the Civil Penalty owed under Section VIII (Civil Penalty).

48. Compliance Requirements. The following stipulated penalties shall accrue for each violation of the requirements identified in Section IV (Injunctive Relief Requirements for Compliance) and Section V (Compliance Evaluation and Audit Requirements) of this Consent Decree:

Benzene Waste Operations NESHAP (Appendix A):

Violation	Stipulated Penalty
For failure to timely retain an Independent Third Party in accordance with requirements of Section V and Appendix A, Paragraph 3	$7,500 per month (or fraction thereof) per violation of requirements
For failure to timely conduct the BWON Compliance Review and Verification in accordance with the requirements of Section V and Appendix A, Paragraph 3	$7,500 per month (or fraction thereof) per violation of requirements
For each failure to timely correct non-compliance found by the BWON Compliance Review and Verification in accordance with the requirements of Appendix A, Paragraph 4	Period of Noncompliance — Penalty per day per Violation Days 1-15 — $ 2,500 Days 16-30 — $ 5,000 Days 31 and beyond — $10,000
For each failure to comply with any requirement of Appendix A, Paragraph 5 related to the installation, use, monitoring, and replacement of carbon canisters	$500 per incidence of non-compliance, per day
For failure to establish an annual review program to identify new benzene waste streams as required by Appendix A, Paragraph 6	$2,500 per month (or fraction thereof)
For failure to perform laboratory audits as required by Appendix A, Paragraph 7	$5,000 per month (or fraction thereof), per audit
For failure to implement the training requirements as set forth in Appendix A, Paragraph 9	$10,000 per quarter (or fraction thereof)
For failure to conduct sampling in accordance with Appendix A, Paragraph 10.a and the approved sampling plan	$2,000 per sampling location not sampled; $1,000 per incidence of any other type of non-compliance

For failure to timely submit a BWON Corrective Measures Plan if and when required pursuant to Appendix A, Paragraph 10.c or failure to timely retain an Independent Third Party if and when required pursuant to Paragraph 11	$10,000 per month (or fraction thereof)
For each failure to conduct monthly visual inspections as required by Appendix A, Paragraph 12.a	$500 per drain not inspected
If Defendants use Subpart FF conservation vents, for each failure to monitor these vents as required by Appendix A, Paragraph 12.e	$500 per vent not inspected
For each failure to conduct monitoring of or repair of oil-water separators as required by Appendix A, Paragraph 12.f	$1,000 per month, per unit
For each failure to hard pipe benzene waste streams into the bowl of a drain riser of the water-sealed drain system as required by Appendix A, Paragraph 12.g	$1,000 per week per stream not piped
For each failure to identify and mark all process area drains to ensure that they are segregated from stormwater drains as required by Appendix A, Paragraph 12.h	$1,000 per week per drain not identified or marked
For each failure to substantially comply with any recordkeeping, submission, or reporting requirement in Appendix A, Paragraph 14 not specifically identified above in this Table	<u>Period of Noncompliance</u> — <u>Penalty per day per Violation</u> Days 1-30 — $ 100 Days 31-60 — $ 250 Days 61 and later — $ 500

Miscellaneous Organic Chemical Manufacturing NESHAP (Appendix B):

Violation	Stipulated Penalty
For failure to timely retain an Independent Third Party as required under Section V and Appendix B, Paragraph 2	$7,500 per month (or fraction thereof) per violation of requirements
For failure to timely conduct the MON Compliance Review and Evaluation in accordance with the requirements of Section V and Appendix B, Paragraph 2	$7,500 per month (or fraction thereof) per violation of requirements

For each failure to timely correct non-compliance found during the Compliance Review and Evaluation in accordance with the MON Corrective Action Plan requirements in Appendix B, Paragraph 3	Period of Noncompliance / Penalty per day per Violation Days 1-15 — $ 2,500 Days 16-30 — $ 5,000 Days 31 and beyond — $10,000
For each failure to comply with any requirement of Appendix B, Paragraph 4 related to the installation, use, monitoring, and replacement of carbon canisters	$500 per incidence of non-compliance, per day
For failure to establish an annual review program to identify new wastewater streams as required by Appendix B, Paragraph 5	$2,500 per month (or fraction thereof)
For failure to perform laboratory audits as required by Appendix B, Paragraph 6	$5,000 per month (or fraction thereof), per audit
For failure to implement the training requirements as set forth in Appendix B, Paragraph 7	$10,000 per quarter (or fraction thereof)
For each failure to substantially comply with any recordkeeping, submission, or reporting requirement in Appendix B, Paragraph 8 not specifically identified above in this Table	Period of noncompliance / Penalty per day per Violation Days 1-30 — $ 100 Days 31-60 — $ 250 Days 61 and later — $ 500

RCRA (Appendix C):

Violation	Stipulated Penalty
For each failure to timely comply with the requirements set forth in Appendix C unless otherwise addressed below	Period of Noncompliance / Penalty Per Day Per Violation Days 1-15 — $ 1,000 Days 16-30 — $ 1,500 Days 31 and beyond — $ 2,000
Evaluation Requirements: For failure to retain an Independent Third Party as required pursuant to Section V and Appendix C,	Period of Noncompliance / Penalty Per Day Per Violation

Paragraph 1, and or failure to conduct the Independent Third-Party evaluation in accordance with the requirements of Section V, and Appendix C, Paragraph 1(a) – (c)	Days 1-15 Days 16-30 Days 31 and beyond	$ 1,000 $ 1,500 $ 2,000
For each failure to correct noncompliance disclosed in the Independent Third Party's Hazardous Waste Compliance Evaluation in accordance with the Compliance Evaluation Response Plan requirements set forth in Appendix C, Paragraph 1(e):	<u>Period of Noncompliance</u> Days 1-15 Days 16-30 Days 31 and beyond	<u>Penalty per day per Violation</u> $ 2,500 $ 5,000 $10,000

CWA (Appendix D):

Violation	Stipulated Penalty	
For each violation of any of the requirements set forth in Appendix D, Subparagraph 1a, d, e, f and g	<u>Period of Noncompliance</u> Days 1-15 Days 16-30 Days 31 and later	<u>Penalty Per Day Per Violation</u> $ 1,000 $ 2,500 $ 4,500
For failure to retain an Independent Third Party as required pursuant to Section V and Appendix D, Paragraph 1(b), to conduct the Treatment System Evaluation	<u>Period of Noncompliance</u> Days 1-14 Days 15-30 Days 31 and beyond	<u>Penalty Per Day Per Violation</u> $ 1,000 $ 1,500 $ 2,000
For failure to conduct the Treatment System Evaluation in accordance with requirements of Section V, and Appendix D, Paragraph 1(b)	<u>Period of Noncompliance</u> Days 1-14 Days 15-30 Days 31 and beyond	<u>Penalty Per Day Per Violation</u> $ 1,000 $ 1,500 $ 2,000
For each failure to timely correct noncompliance identified by the Independent Third Party in the Compliance Review and Evaluation Report in accordance with the CWA Corrective Action Plan requirements of Appendix D, Paragraph 1(c)	<u>Period of Noncompliance</u> Days 1-15 Days 16-30 Days 31 and beyond	<u>Penalty per day per Violation</u> $ 2,500 $ 5,000 $10,000
Permitting Requirements: For each violation of any requirement to submit a complete	<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>

application for permit revisions or amendments as required and on the schedule specified in Appendix D	Days 1-14 $ 1,000 Days 15-30 $ 1,500 Days 31 and beyond $ 2,000

49. Audit Disclosed Violations or Noncompliance. No stipulated penalties shall accrue under this Consent Decree for violations of, or noncompliance with, applicable requirements of the CAA, RCRA, or CWA, or their implementing regulations, or authorized State programs, initially identified in an Independent Third Party evaluation or audit undertaken pursuant to Appendices A, B, C or D (except to the extent that such violation(s) or noncompliance identified by the Independent Third Party independently constitute(s) a failure to timely complete an affirmative injunctive relief requirement of the Consent Decree otherwise subject to stipulated penalties that would apply), but Plaintiffs reserve their rights to bring an administrative or judicial action based on such violations or noncompliance, as set forth in Paragraph 81. Stipulated penalties shall accrue as set forth in the tables above for Defendants' failures to correct those violations or noncompliance identified by the Independent Third Party in accordance with the schedules established in Appendices A, B, C or D.

50. Defendants are jointly and severally liable for stipulated penalties for violations of Injunctive Relief requirements of Sections IV, V, VI, IX and XIII.

51. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section (IX (Reporting Requirements) of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th Day
$2,000	15th through 30th Day
$3,500	31st Day and beyond

52. Any Other Non-Compliance with the Consent Decree. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement of this Consent Decree not otherwise enumerated above:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th Day
$2,500	15th through 30th Day
$4,500	31st Day and beyond

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

54. Defendants shall pay any stipulated penalty within thirty (30) Days of receiving the United States' or State's written demand in accordance with the procedures set forth in Section X (Civil Penalty).

55. The United States, or the State, or both, may seek stipulated penalties under this Section by sending a joint written demand to Defendants, or by either Plaintiff sending a written synopsis of the demand to Defendants, with a copy simultaneously sent to the other Plaintiff. Where only one Plaintiff demands stipulated penalties for a violation, and the other Plaintiff does not join in the demand within 14 Days of receiving the demand, Defendants shall pay the full stipulated penalties due for that violation to the Plaintiff making the demand, and the other Plaintiff cannot later seek stipulated penalties for the same violation. Where both Plaintiffs seek stipulated penalties for the same violation of this Consent Decree, Plaintiffs may thereafter, in coordination and consultation, jointly agree to waive stipulated penalties or reduce the amount of

stipulated penalties sought, in their unreviewable exercise of discretion, and the final penalty amount owed shall be paid 50 percent to the United States and 50 percent to the State.

56. Stipulated penalties shall continue to accrue as provided in Paragraph 53 during any Dispute Resolution, but need not be paid until the following:

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

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owed, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph 56.c, below.

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

57. Defendants shall pay stipulated penalties owing to the United States or the State, or both in the manner set forth and with the confirmation notices required by Paragraphs 32-35, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. The transmittal letter shall provide enough specificity to readily ascertain the violation(s), including the dates thereof, for which the stipulated penalties are being paid.

58. Defendants shall not deduct any penalties under this Decree pursuant to this Section X (Stipulated Penalties) in calculating its federal, State, or local income tax.

59. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing from the date payment became due. Such interest shall be paid to the United States and the State separately, based upon the stipulated penalties owed to each of them. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

60. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' or the State's exclusive remedy for violations of the Consent Decree. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the United States and the State expressly reserve the right to seek any other relief they deem appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an administrative or judicial action against Defendants for statutory penalties, administrative penalties, additional injunctive relief, mitigation or offset measures, or contempt. The issuance of a notice of violation, notice of enforcement or other enforcement document by EPA or TCEQ does not constitute a waiver of stipulated penalties. However, the amount of any statutory penalty or administrative penalty assessed by a Plaintiff for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed for the same violation or violations and paid pursuant to this Consent Decree. Any reduction or waiver of stipulated penalties by either Plaintiff does not preclude either Plaintiff from pursuing other remedies as delineated herein.

XI. FORCE MAJEURE

61. For purposes of this Consent Decree, a "Force Majeure Event" shall mean any event arising from causes beyond the control of Defendants, their contractors, or any entity controlled by Defendants, that delays or prevents the performance of any obligation under this Consent Decree, despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants use "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure Event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

62. Notice of Force Majeure Events. If any event or series of related events occurs or fails to occur that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure Event, Defendants shall provide notice orally or by electronic or facsimile transmission to EPA and TCEQ within four (4) days of when a Defendant first knew that the event or series of related events might cause a delay. Within seven (7) business days after Defendants' notice to EPA and TCEQ, Defendants shall provide in writing to EPA and TCEQ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment; and any additional information that Defendants deem appropriate. Defendants shall include with

any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or any of Defendants' contractors, knew or should have known. EPA may, in its unreviewable discretion (after consultation with TCEQ), excuse in writing Defendants' failure to submit timely notices under this Paragraph.

63. Plaintiffs' Response. If EPA, after a reasonable opportunity for review and comment by TCEQ, agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure Event will be extended by EPA, after a reasonable opportunity for review and comment by TCEQ, for such amount of time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure Event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure Event.

64. If EPA, after a reasonable opportunity for review and comment by TCEQ, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure Event, EPA will notify Defendants in writing of its decision.

65. Disagreement. If Defendants dispute EPA's determination as to Defendants' assertion of a Force Majeure Event, Defendant(s) may seek a resolution of the dispute under the procedures in Section XII (Dispute Resolution). If Defendants elect to invoke the dispute

resolution procedures set forth in Section XII (Dispute Resolution), they shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure Event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 61 and 62, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

66. Extended Schedule. As part of the resolution of any matter submitted to this Court under Section XII (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the United States, the State, and Defendants by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work or obligations under this Consent Decree in accordance with Section XIX (Modification) to account for the delay in the work and/or obligations that occurred as a result of any delay agreed to by the United States and the State or approved by the Court. Defendants shall be liable for stipulated penalties pursuant to Section X (Stipulated Penalties) for their failure thereafter to complete the work or obligations in accordance with the extended or modified schedule (provided that the Defendants shall not be precluded from asserting that a further Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule).

XII. DISPUTE RESOLUTION

67. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Any Defendant’s failure to seek resolution of a

known dispute under this Section in a timely manner shall preclude Defendants from raising any such known dispute as a defense to an action by the United States or the State to enforce any obligation of Defendants arising under this Decree.

68. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when any Defendant sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the United States and the State receive such Defendant's written Notice of Dispute, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then EPA, after consultation with TCEQ, shall provide Defendant with a written summary of its position regarding the dispute. The written position provided by EPA shall be considered binding unless Defendant invokes formal dispute resolution procedures as set forth below.

69. Formal Dispute Resolution. Any Defendant shall invoke formal dispute resolution procedures, within forty-five (45) days after EPA provides such Defendant with a written summary of its position regarding the dispute, by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting such Defendant's position and any supporting documentation relied upon by such Defendant.

70. The United States, and the State if it elects, shall serve its Statement of Position within forty-five (45) Days of receipt of such Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United

States. The United States' Statement of Position shall be binding on such Defendant, unless such Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

71. Such Defendant may seek judicial review of the dispute by filing with the Court and serving, in accordance with Section XVI (Notices), on the Plaintiffs a motion requesting judicial resolution of the dispute. The motion must be filed within forty-five (45) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of such Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. The United States or the State, or both, may respond to such Defendant's petition within the period allowed under the Local Rules of Court. Such Defendant may file a reply memorandum if permitted by the Local Rules.

72. Standard of Review. Except as otherwise provided in this Decree, in any dispute brought under Paragraph [68] of this Consent Decree, such Defendant shall bear the burden of proving that its actions were in compliance with this Consent Decree; or, if the dispute concerns the interpretation of this Consent Decree, such Defendant shall bear the burden of demonstrating that its interpretation should prevail under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law. The Parties agree that any rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable.

73. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 53. If such Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. INFORMATION COLLECTION AND RETENTION

74. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, for any purpose in connection with this Consent Decree, at all reasonable times, upon presentation of agency or other authorized credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

c. obtain samples or other monitoring data and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants relevant to compliance with this Consent Decree;

d. obtain documentary evidence, including photographs and similar data relevant to compliance with this Consent Decree; and

e. assess Defendants' compliance with this Consent Decree.

75. Upon request, Defendants shall provide EPA and TCEQ, or their authorized representatives, splits of any samples taken by Defendants pursuant to this Consent Decree.

Upon request, EPA and TCEQ shall provide Defendants splits and analytical results of any samples taken by EPA or TCEQ pursuant to this Consent Decree.

76. Until three years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, that relate to Defendants' performance of their obligations under this Consent Decree. This information- retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendants shall provide copies of any documents, records, or other information required to be retained under this Paragraph.

77. At least ninety (90) days prior to the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States and the State of their intent to dispose of any documents, records, or other information subject to the requirements of the preceding Paragraph once the information-retention period concludes. Upon written request by the United States or the State prior to the conclusion of the information-retention period, Defendants shall deliver any such documents, records, or other information to EPA or TCEQ. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information;

and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

78. All documents submitted to the United States or the State by Defendants pursuant to this Consent Decree shall be subject to applicable law providing for the public disclosure of governmental records. Defendants may assert that information required to be provided under this Decree is protected as Confidential Business Information (CBI) under 40 C.F.R. Part 2, or as an exception under the Texas Public Information Act, Tex. Gov't Code ch. 552, including trade secrets under Tex. Gov't Code § 552.110 and privacy or property information under Tex. Gov't Code § 552.305. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2 and Tex. Gov't Code ch. 552.

79. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulation, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

80. This Consent Decree resolves the civil claims of the Plaintiffs for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

81. This resolution of the Plaintiffs' civil claims set forth in the Complaint is expressly conditioned upon complete and satisfactory performance of the requirements set forth in this Consent Decree, including the Appendices hereto. The Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the Plaintiffs to obtain penalties or injunctive

relief under the CAA, RCRA, CWA, or their implementing regulations, or under other federal or State laws, regulations, or permit conditions, except those claims expressly specified in Paragraph 80. Plaintiffs reserve the right to obtain statutory penalties for violations of, or noncompliance with, the CAA, RCRA or CWA, or their implementing regulations, or authorized State programs, initially identified in an Independent Third-Party evaluation or audit performed under Appendixes A, B, C or D. The Plaintiffs further retain all authority and reserve all rights to take any and all actions authorized by law to protect human health and the environment, including all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Facility, whether related to the violations addressed in this Consent Decree or otherwise.

82. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, civil penalties, other appropriate relief relating to the Facility subject to this Consent Decree or Defendant's violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 80 of this Section.

83. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such law, regulation, or permit, except as set forth herein.

The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, RCRA, or CWA, or with any other provisions of federal, State, or local laws, regulations, or permits.

84. This Consent Decree does not limit or affect the rights of Defendants or of the Plaintiffs against any third parties not a Party to this Consent Decree, nor does it limit the rights of third parties not a Party to this Consent Decree, against the Defendants, except as otherwise provided by law.

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

XV. COSTS

86. The Parties shall bear their own costs of this action, including attorneys' fees, except that the State shall recover its attorneys' fees as provided in paragraph 34, above, and the Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XVI. NOTICES

87. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Decree, they shall be made electronically or by certified mail, unless otherwise requested, and addressed as set forth below. Notices to TCEQ should be sent to TCEQ only, but notices to the State shall be sent to TCEQ and the Attorney General.

To the United States:

by email:

eescdcopy.enrd@usdoj.gov
Re: DJ # 90-7-1-10173

by mail:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DJ No. 90-7-1-10173

and to EPA as provided below

To EPA:

by mail:

For submissions under Appendices A, B and E:

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 2422A
William Jefferson Clinton Building South
Room 1119
Washington, D.C. 20460

For submissions under Appendix C:

Director, Waste Chemical Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Enforcement Protection Agency
1200 Pennsylvania, N.W.
Mail Code 2249A
William Jefferson Clinton Building South
Washington, D.C. 20460

U.S. Environmental Protection Agency, Region 6
ECDSR Attn: Bill Mansfield
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Laurie King, Chief
RCRA Corrective Action Section (6LCR-RC)
Land, Chemical & Redevelopment Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

For submissions under Appendix D:

Section Chief – Analysis and Assessment Section
U.S. Environmental Protection Agency, Region 6
Compliance Assurance & Enforcement
Mail Code R6-ECDWA
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

and electronic copies to:

For Appendices A and B: parrish.robert@epa.gov
For Appendix C: king.laurie@epa.gov
mansfield.william@epa.gov
stephanos.ann@epa.gov

For Appendix D: herrera.estaban@epa.gov
For Appendix E: stephanos.ann@epa.gov

To the State and to TCEQ as applicable:

To the State:

Environmental Protection Division
(Attn: Thomas Edwards)
Office of the Attorney General (MC-066)
P.O. Box 12548
Austin TX 78711-2548

Or delivered to:
Wm. P. Clements State Office Bldg.
300 W. 15th St., Fl. 10
Austin TX 78701-1649

To the TCEQ:

Deputy Director
Litigation Division, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

and electronic copy to:

clayton.smith@tceq.texas.gov

and for submissions under Appendix C (RCRA), also to:

Industrial and Hazardous Waste Permits Section
Waste Permits Division, MC 130
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

VCP/CA Section
Remediation Division, MC 127
(Attn: James Formby)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

and electronic copies to:
IHWPER@tceq.texas.gov
James.Formby@tceq.texas.gov

For submissions under Appendix D:

Industrial Permits
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

To DuPont:

Office of the General Counsel
E. I. du Pont de Nemours and Company
974 Centre Road, Chestnut Run Plaza 735/1307
Wilmington DE 19805-0735

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Senior Counsel
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98 San Jacinto Blvd., Suite 1500
Austin, TX 78701

Elliott P. Laws
Partner
Crowell & Moring LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004

Rodman C. Johnson
Member
Enoch Kever PLLC
7600 N. Capital of Texas Hwy, Building B, Suite 200
Austin, TX 78731

and electronic copies to:

danny.worrell@bakerbotts.com
elaws@crowell.com
rjohnson@enochkever.com

To Performance Materials NA, Inc.:

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Site Director, Sabine River Operations
Performance Materials NA, Inc.
P.O. Box 1089
Orange, TX 77631-1089

Carlos J. Moreno
Counsel, U.S. Operations, Regulatory & NA
The Dow Chemical Company
332 SH 332 E (4A016)
Lake Jackson, TX 77566

Matthew G. Paulson
Bracewell LLP
111 Congress Ave., Suite 2300
Austin, TX 78701

Jason B. Hutt
Bracewell LLP
2001 M Street NW, Suite 900
Washington, DC 20036

88. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Unless otherwise provided in this Consent Decree or by mutual agreement of the Parties, notices submitted pursuant to this Section shall be deemed submitted upon mailing for submissions in writing, or upon written acknowledgment of receipt of transmission for electronic submissions. If the due date for a submission falls on a Saturday, Sunday, or federal or State of Texas legal holiday, the submission will be deemed timely if it is submitted by the next business day. All notifications, communications, and submissions made by electronic means shall be electronically signed and certified.

XVII. EFFECTIVE DATE

89. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket. In the event the United States or the State withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVIII. RETENTION OF JURISDICTION

90. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders

modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

91. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Non-material changes to the Decree shall include, but are not limited to, schedule changes of six months or less, or resulting from force majeure.

92. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 69, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

93. Termination: Conditions Precedent. Prior to termination, Defendants must have completed all of the following requirements of this Consent Decree:

a. Payment of all civil penalties, stipulated penalties and other monetary obligations; and

b. Satisfactory compliance with all provisions of Sections IV-VII, IX and XIII of this Decree and related Appendices.

94. Certification of Partial Completion of Section IV (Injunctive Relief Requirements for Compliance).

a. Prior to moving for termination, Defendants may certify completion of one or more of the following compliance provisions of Section IV (Injunctive Relief

Requirements for Compliance) of the Consent Decree, provided that all of the related requirements have been satisfied:

i. Paragraph 11. Benzene Waste Operations National Emission Standards for Hazardous Air Pollutants;

ii. Paragraph 12. Miscellaneous Organic Chemical Manufacturing National Emission Standards for Hazardous Air Pollutants;

iii. Paragraph 13. RCRA Requirements;

iv. Paragraph 14. CWA Requirements; and

v. Paragraph 15. Environmental Management System ("EMS") Requirements.

b. After Defendants conclude that any Paragraphs of Section IV (Injunctive Relief Requirements for Compliance) identified in this Paragraph 94.a. have been completed, Defendants may submit a written report to the Parties listed in Section XVI (Notices) describing the activities undertaken and certifying that the applicable injunctive relief has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the certification language in Paragraph 43 signed by a responsible corporate official of each Defendant.

c. Upon receipt of Defendants' certification, EPA, after consultation with TCEQ, shall notify Defendants whether the requirements set forth in the applicable Paragraph(s) have been completed in accordance with this Consent Decree. The Parties recognize that ongoing obligations under such Paragraphs remain and continue (e.g., training and laboratory auditing requirements) and that Defendants' certification is to current compliance with all such obligations. If

EPA, after consultation with TCEQ, concludes that the requirements of an applicable Paragraph have been completed in accordance with this Consent Decree, EPA will so certify in writing to Defendants and that certification by EPA shall constitute a partial certification of completion for the applicable Paragraph requirements for purposes of this Consent Decree (subject to the ongoing obligations that necessarily continue (e.g., training and laboratory auditing requirements)). Consistent with Paragraph 38, Defendants are not required to include the completed obligation in future progress reports. If EPA, after consultation with TCEQ, concludes that such requirements have not been fully complied with, EPA shall notify Defendants as to the activities that must be undertaken to complete requirements of the applicable Paragraph(s) of the Consent Decree, and Defendants shall perform all activities described in the notice, subject to their right to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution).

d. Nothing in this Paragraph 94 shall preclude the United States and the State from seeking stipulated penalties for a violation of the Consent Decree regardless of whether a partial certification of completion has been issued under Paragraph 94.c. In addition, nothing in Paragraph 94.c. shall permit Defendants to fail to implement any ongoing obligations under the Consent Decree regardless of whether a partial certification of completion has been issued.

95. At such time as Defendants believe that they have satisfied the conditions for termination of the Consent Decree set forth in Paragraph 93, Defendants may submit a request for termination of the Consent Decree to the Plaintiffs by certifying such compliance in

accordance with the certification language in Paragraph 43. In the Request for Termination, Defendants must demonstrate that they have satisfied the conditions for termination set forth in Paragraph 93. The Request for Termination shall include all necessary supporting documentation including reference to any partial certifications of completions previously provided by EPA.

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

97. If the Plaintiffs do not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section XII (Dispute Resolution) of this Decree. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 68 of Section XII (Dispute Resolution) of this Decree, until sixty (60) Days after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

98. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7 and Tex. Water Code § 7.110. The United States and the State each reserve the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XXII. SIGNATORIES/SERVICE

99. Each undersigned representative of Defendants, the State of Texas, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

100. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Decree.

XXIII. INTEGRATION

101. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXIV. FINAL JUDGMENT

102. 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, the State of Texas, and Defendants.

XXV. APPENDICES

103. The following appendices are attached to and part of this Consent Decree and contain compliance requirements. In the event of any conflict between the text of this Consent Decree and any Appendix, the text of this Consent Decree shall control:

Appendix A (Benzene Waste Operations NESHAP);
Appendix B (Miscellaneous Organic Chemical Manufacturing NESHAP);
Appendix C (RCRA Requirements);
Appendix D (CWA Requirements); and
Appendix E (Environmental Management System Requirements).

XXVI. 26 U.S.C. § 162(f)(2)(A)(ii) IDENTIFICATION

104. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2)(iii)(A), performance of Sections II (applicability), Paragraph 8, IV (Injunctive Relief Requirements for Compliance), Paragraphs 11-15 and related Appendices A, B, C, D, and E, Section V (Compliance Evaluation and Audit Requirements), Paragraphs 17-18 and 21-24, Section VI (Approval of Deliverables), Paragraphs 25-26, Section VII (Permits), Paragraphs 30-31, Section IX (Reporting Requirements), Paragraphs 38-40, 42-43, and Section XIII (Information Collection and Retention), Paragraphs 74-77, is restitution or required to come into compliance with law.

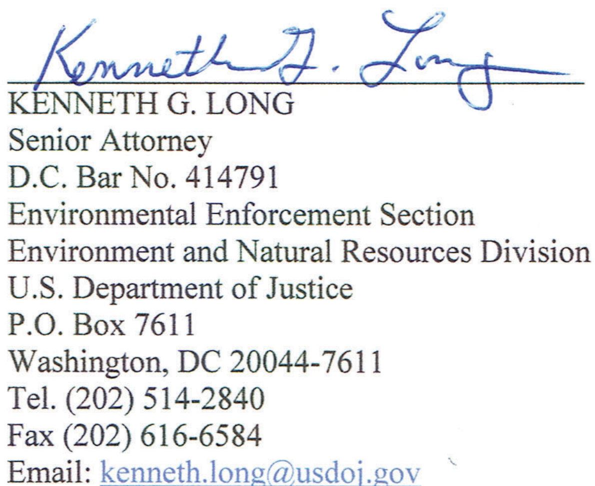
Dated and entered this ______ day of _______________, 2021.

____
UNITED STATES DISTRICT JUDGE
Eastern District of Texas

FOR PLAINTIFF UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Dated: 10/05/2021



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NICHOLAS J. GANJEI
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Eastern District of Texas

/s/ James Gillingham
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(903) 590-1400
(903) 590-1436 (fax)
Texas State Bar # 24065295

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

LAWRENCE STARFIELD Digitally signed by LAWRENCE STARFIELD Date: 2021.06.28 21:32:15 -04'00'

Date: __________

LAWRENCE E. STARFIELD
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

ANN STEPHANOS Digitally signed by ANN STEPHANOS Date: 2021.06.24 22:10:25 -04'00'

Date: __________

ANN STEPHANOS
Attorney-Advisor
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

FOR PLAINTIFF THE STATE OF TEXAS, ON BEHALF OF
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK
Chief, Environmental Protection Division

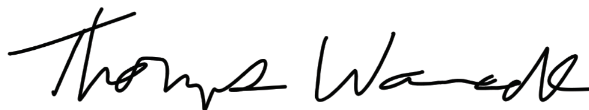
____

THOMAS H. EDWARDS
Assistant Attorney General
Tex. Bar No. 06461800
Thomas.Edwards@oag.texas.gov

Office of the Attorney General
Environmental Protection Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0911

ATTORNEYS FOR THE STATE OF TEXAS

FOR DEFENDANT E. I. DU PONT DE NEMOURS AND COMPANY:



DATE: 9/24/2021

Thomas A. Warnock
Associate General Counsel
E. I. du Pont de Nemours and Company
974 Centre Road
Chestnut Run Plaza 735/1307
Wilmington DE 19805-0735
thomas.a.warnock@corteva.com

FOR DEFENDANT PERFORMANCE MATERIALS NA, INC.:

DATE: ___________

____

Amy Schilling
Site Leader Director, Sabine River Operations
Performance Materials NA, Inc.
P.O. Box 1089
Orange, TX 77631-1089

FOR DEFENDANT E. I. DU PONT DE NEMOURS AND COMPANY:

DATE:__________

Thomas A. Warnock
Associate General Counsel
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974 Centre Road
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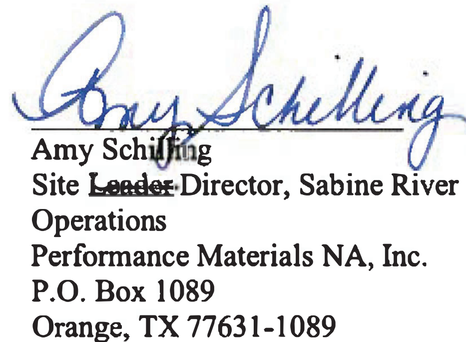
Wilmington DE 19805-0735
thomas.a.warnock@corteva.com

FOR DEFENDANT PERFORMANCE MATERIALS NA, INC.:

DATE: 9/24/21



Amy Schilling
Site ~~Leader~~ Director, Sabine River Operations
Performance Materials NA, Inc.
P.O. Box 1089
Orange, TX 77631-1089

Final

APPENDIX A

BENZENE WASTE OPERATIONS NESHAP
Sabine River Operations Facility

1. Defendants shall perform the measures set forth in this Appendix relating to 40 C.F.R. Part 61, Subpart FF ("BWON," "Benzene Waste Operations NESHAP," or "Subpart FF") to minimize fugitive benzene emissions at the Facility.

2. Subpart FF compliance status. As of the Effective Date, the Facility has a total annual benzene ("TAB") quantity amount that is above 10 Megagrams ("Mg"). Upon the Effective Date, and except as provided for herein, Defendants will comply with 40 C.F.R. § 61.342(c), utilizing the exemptions set forth in 40 C.F.R. §§ 61.342(c)(2) and (c)(3) (hereinafter referred to as the "2 Mg Compliance Option").

3. One-Time Review and Verification of the Facility's TAB and Compliance Status

   a. Phase One of the Review and Verification Process. In accordance with the selection provisions set forth in Section V (Compliance Evaluation and Audit Requirements) of this Consent Decree, Defendants shall use an Independent Third Party to complete a one-time review and verification of the Facility's TAB and its compliance with the 2 Mg Compliance Option ("BWON Compliance Review and Verification"). The BWON Compliance Review and Verification shall be completed in accordance with an approved schedule and the criteria below. The Independent Third Party retention contract shall require the Independent Third Party to prepare a proposed schedule for conducting the BWON Compliance Review and Verification Evaluation, after consultation with Defendants concerning, among other factors, resource demands from concurrent or overlapping audits that could impede the audits' or Evaluation's prompt completion, and submit a proposed schedule for completion to EPA for review and approval, in consultation with the State, within sixty (60) days after the Independent Third Party is retained by Defendants pursuant to Section V of this Consent Decree. The review and verification process for the Facility shall include, and Defendants' contract with the Independent Third Party shall require:

      i. An identification of each waste stream that is required to be included in the Facility's TAB (*e.g.*, slop oil, tank water draws, spent caustic, other sample wastes, maintenance wastes, and turnaround wastes);

      ii. The affixing of a weather-resistant marking (such as a tag or permanent sign) to the physical location of each TAB waste stream (at a location representative of the waste stream characteristic reported in the TAB report) discharged to or managed with an individual drain;

      iii. A review of the Facility's process diagrams and TAB reports to determine whether waste streams are accurately identified;

iv. A review and identification of the existing calculations and measurements used to determine the flows of each waste stream for the purpose of ensuring the accuracy of the annual waste quantity for each waste stream;

v. An assessment of the benzene concentration in each waste stream consistent with the requirements of 40 C.F.R. §§ 61.355(c)(1), (2) and (3), except that uncontrolled waste streams containing benzene must be assessed by sampling the waste streams in accordance with 40 C.F.R. § 61.355(c)(3);

vi. An assessment of whether or not the waste stream is controlled and managed consistent with the applicable requirements of Subpart FF;

vii. A review and identification of all existing control device bypass lines to ensure that flow indicators have been installed consistent with 40 C.F.R. § 61.349 (a)(1)(ii);

viii. An assessment of whether the Facility's recordkeeping and reporting are consistent with the applicable requirements of Subpart FF; and

ix. An assessment of any existing noncompliance with the applicable requirements of Subpart FF.

b. Defendants' contract with the Independent Third Party shall require that, within sixty (60) days of completion of the BWON Compliance Review and Verification, the Independent Third Party shall submit a draft of its BWON Compliance Review and Verification Report to Defendants setting forth the results of Phase One, including the items identified in Paragraphs 3.a.i. through 3.a.ix. Defendants shall have forty-five (45) days to review and provide written comments to the Independent Third Party on its draft BWON Compliance Review and Verification Report. The Independent Third Party is not obligated to make any changes to the Report it does not find to be objectively substantiated. The Independent Third Party's final BWON Compliance Review and Verification Report, along with separate documents containing copies of the written comments made by Defendants and the Independent Third Party's responses to any of Defendants' written comments and explanations of resulting modifications, if any, made to the final Report, shall be provided to Defendants, EPA and TCEQ within forty-five (45) days after the deadline for Defendants to submit written comments.

c. Subject to the provisions of Section XIX (Modification) of this Consent Decree, at the Independent Third Party's request, Defendants may seek an extension(s) to the deadlines in Paragraph 3(b) of this Appendix. The extension request(s) shall be in writing, shall include an explanation, and shall be submitted to EPA and TCEQ at least thirty (30) days prior to the deadline. If EPA, in consultation with TCEQ, does not approve or deny the request at least five (5) days prior to the deadline, the deadline shall be extended by ten (10) days.

d. Phase Two of the Review and Verification Process. Based on EPA's review of the BWON Compliance Review and Verification Report, within one hundred fifty (150) days after receipt of the final BWON Compliance Review and Verification Report, EPA may select up to twenty (20) additional waste streams at the Facility for additional sampling or re-sampling for benzene concentration. Upon written notice from EPA of additional waste streams to be sampled, Defendants shall (themselves or using a third party) conduct such required sampling under representative conditions and submit the results to EPA within ninety (90) days of receipt of EPA's request, if any. Defendants shall use the results of this additional sampling to reevaluate the TAB and the uncontrolled benzene quantity and, to the extent warranted by such results, issue an addendum to the BWON Compliance Review and Verification Report. To the extent that EPA requires Defendants to re-sample a waste stream as part of the Phase Two review that the Independent Third Party chose to sample as part of the Phase One review, Defendants may average the results of the two sampling events so long as the difference in benzene concentration is less than twenty (20) percent. If the difference is greater than twenty (20) percent, Defendants shall include this waste stream in its BWON Sampling Plan for monthly sampling as set forth in Paragraph 10.a.i. in order to more accurately identify the benzene concentration of the waste stream. If Phase Two sampling is required by EPA, and such sampling results warrant an update, Defendants shall submit an addendum to the BWON Compliance Review and Verification Report within ninety (90) days of receiving the results of the required Phase Two sampling.

4. Implementation of Actions Necessary to Correct Non-Compliance

a. Amended TAB Reports. If the results of the BWON Compliance Review and Verification Report, or any addendum to such Report required by Paragraph 3.d., indicate that the Facility's most recently filed TAB report required by 40 C.F.R. § 61.357(d) is inaccurate or does not satisfy the requirements of Subpart FF, Defendants shall submit, within sixty (60) days after receipt of the BWON Compliance Review and Verification Report, and, as applicable, any addendum to such Report required by Paragraph 3.d., an amended TAB report to EPA and TCEQ. In the event that Defendants have submitted an amended TAB report to EPA prior to the Effective Date of this Decree, Defendants shall submit a copy of that amended TAB report with the BWON Compliance Review and Verification Report.

b. BWON Corrective Action Plan. If the results of the BWON Compliance Review and Verification Report indicate that operations at the Facility are not in compliance with the 2 Mg Compliance Option, Defendants shall submit to EPA for review and approval, in consultation with TCEQ, pursuant to Section VI of this Consent Decree (Approval of Deliverables), within one hundred twenty (120) days after receipt of the BWON Compliance Review and Verification Report, a BWON Corrective Action Plan ("BWON CAP") that identifies with specificity the compliance strategy and schedule that Defendants shall implement to ensure that the Facility complies with Subpart FF as soon as practicable. Within thirty (30) days after receipt of EPA's

approval of the BWON CAP, Defendants shall commence implementation of the approved BWON CAP according to the schedule provided in the BWON CAP.

i. If EPA requires Phase 2 Sampling of additional waste streams under Paragraph 3.d. and Defendants submit an addendum to the BWON Compliance Review and Verification Report, then Defendants shall, if necessary, submit an amendment to the BWON CAP to EPA for review and approval, in consultation with TCEQ, within ninety (90) days after submission of that addendum. Within thirty (30) days after receipt of EPA's approval of the amendment to the BWON CAP, Defendants shall commence implementation of the amended BWON CAP according to the schedule provided in the amended BWON CAP. The BWON CAP remains in effect until the amended BWON CAP is approved and implemented.

c. Certification of Compliance. Within thirty (30) days after completing all corrective actions, if any, required pursuant to the BWON CAP set forth in Paragraph 4.b., Defendants shall submit a report to EPA and TCEQ certifying that the Facility complies with the 2 Mg Compliance Option.

5. Carbon Canisters. Defendants shall comply with the requirements of this Paragraph 5 at the Facility locations where one or more carbon canisters are or are planned to be installed and utilized as a control device under the Benzene Waste Operations NESHAP. To the extent that any applicable state or local rule, regulation, or permit contains more stringent requirements than those set forth in this Paragraph 5, compliance with those more stringent requirements may satisfy the requirements of this Paragraph 5 instead.

a. Within three hundred and sixty-five (365 days) after the Effective Date, Defendants shall complete installation of primary and secondary carbon canisters at locations currently utilizing single canisters and shall operate them in series. Within thirty (30) days after installation has been completed, Defendants shall submit a report notifying EPA and TCEQ that installation has been completed. The report shall include:

i. A list of all locations at the Facility where carbon canister systems are used as control devices under the Benzene Waste Operations NESHAP;

ii. An indication, for each location, whether there was a pre-existing secondary carbon canister or whether a secondary carbon canister was installed under this Paragraph;

iii. The installation date of each such secondary canister installed under this Paragraph and the date that each secondary canister was put into operation; and

iv. A determination, for each location using carbon canister systems, whether volatile organic compounds ("VOC") or benzene will be used to monitor for "breakthrough" as required by Paragraph 5.c., below.

b. For dual carbon canister systems, "breakthrough" between the primary and secondary canister is defined as any reading equal to or greater than 50 ppm VOC or 5 ppm benzene (depending upon the constituent that Defendants decide to monitor) when monitoring on a monthly or weekly frequency. At their option, Defendants may utilize a concentration for breakthrough that is lower than 50 ppm VOC or 5 ppm benzene.

c. For dual carbon canister systems Defendants shall monitor for breakthrough between the primary and secondary carbon canisters on a monthly basis at times when there is actual flow to the carbon canister or in accordance with the frequency specified in 40 C.F.R. § 61.354(d), whichever is more frequent. This requirement shall commence: (i) within thirty (30) days after the Effective Date, where dual carbon canisters are currently installed and put into service prior to the Effective Date; and (ii) within thirty (30) days after installation of any new dual carbon canister system subsequent to the Effective Date. In the event there is no flow to the canister, Defendants shall document the lack of flow and resume monitoring in the event that flow resumes to the canister system.

d. If Defendants monitor a canister system for benzene on a monthly basis and detect greater than 1 ppm and less than 5 ppm benzene between the primary and secondary canisters, then Defendants shall begin monitoring for a breakthrough between the primary and secondary carbon canisters on a weekly basis, or change out the canister. If Defendants monitor a canister system for VOCs on a monthly basis and detect greater than 10 ppm and less than 50 ppm VOCs between the primary and secondary canisters, then Defendants shall begin monitoring for a breakthrough between the primary and secondary carbon canisters on a weekly basis, or change out the canister.

e. After installation of primary and secondary carbon canisters, as described in Paragraph 5.a., when breakthrough is detected as described in Paragraph 5.b., Defendants shall comply with either Paragraph 5.e.i. or 5.e.ii.:

i. Replace the original primary carbon canister (or route the flow to an appropriate alternative control device) immediately. The original secondary carbon canister (or a fresh canister) will become the new primary carbon canister and a fresh carbon canister will become the secondary canister. For purposes of this Paragraph, "immediately" shall mean within eight (8) hours of the detection of a breakthrough for canisters of 55 gallons or less, and within twenty-four (24) hours of the detection of a breakthrough for canisters greater than 55 gallons. If Defendants choose to define breakthrough for primary carbon canister replacement at lower than 5 ppm benzene, or lower than 50 ppm VOC, Defendants may replace primary canisters of 55 gallons or less within twenty-four (24) hours of detecting breakthrough.

ii. In lieu of replacing the primary canister immediately, Defendants may elect to monitor the outlet of the secondary canister beginning on the day the breakthrough between the primary and secondary canister is detected and each

calendar day thereafter. This daily monitoring shall continue until the primary canister is replaced. If the constituent being monitored (either benzene or VOC) is detected above background (an increase of ≥ 1 ppm benzene or ≥ 5 ppm VOCs) at the outlet of the secondary canister during this period of daily monitoring, both canisters must be replaced within eight (8) hours of the detection at the outlet of the secondary canister.

f. Temporary applications. For short-term operations such as with temporary storage tanks or as temporary control devices, each such period being not longer than forty-five (45) days, Defendants may utilize properly-sized single canisters. For canisters 55 gallons or less operated as part of a single canister system, “breakthrough” is defined as any reading of VOC above background or benzene above 1 ppm (whichever is monitored). For canisters greater than 55 gallons operated as part of a single canister system, “breakthrough” is defined as any reading of VOC greater than or equal to 50 ppm or benzene greater than or equal to 10 ppm (whichever is monitored). Beginning no later than the Effective Date, Defendants shall monitor for breakthrough from a single carbon canister system once every calendar day that there is actual flow to the carbon canister. Defendants shall replace the single carbon canister with a fresh carbon canister, discontinue flow, or route the stream to an alternate, appropriate device immediately when breakthrough is detected. For purposes of this Paragraph 5.f., “immediately” shall mean within eight (8) hours. Such a spent canister may not be placed back into Benzene Waste Operations NESHAP vapor control service until it has been appropriately regenerated. As an alternative, Defendants may utilize dual carbon canisters for temporary applications, in which case Paragraphs 5.b.-5.e. shall apply.

g. Defendants shall maintain a readily available supply of fresh carbon canisters at all times at the Facility or shall otherwise ensure that such canisters are readily available to implement the requirements of this Paragraph 5.

6. Annual review. Within one hundred twenty (120) days after the Effective Date, Defendants shall modify, to the extent necessary, the Facility’s environmental management system to provide for review of process information for the Facility once each calendar year, including but not limited to construction projects, to ensure that all new benzene waste streams are included in the waste stream inventory during the term of this Consent Decree. Defendants shall provide information on such activities in the appropriate semi-annual progress reports required under this Consent Decree.

7. Laboratory Audits. Defendants shall conduct audits of all laboratories that perform Defendants’ BWON analyses of the Facility’s Benzene Waste Operations NESHAP samples to ensure that proper analytical and quality assurance/quality control procedures are followed for such samples. Defendants shall provide information on such activities in the appropriate semi-annual progress reports required under this Consent Decree.

a. Within one hundred eighty (180) days after the Effective Date, Defendants shall complete initial audits of half of such laboratories; they shall complete audits for the

remaining laboratories within three hundred sixty-five (365) days of the Effective Date. Defendants shall also audit any new laboratory to be used by Defendants for analyses of benzene samples from the Facility prior to use of the new laboratory. If Defendants have completed an audit of any laboratory within six (6) months prior to the Effective Date, initial audits of those laboratories pursuant to this Paragraph 7.a. shall not be required.

b. During the term of this Consent Decree, Defendants shall conduct subsequent laboratory audits such that each laboratory that Defendants use to perform BWON analyses is audited once every two (2) calendar years.

c. Defendants may conduct audits themselves, retain third parties to conduct these audits, or use audits conducted by others as their own, but the responsibility to ensure compliance with this this Paragraph is solely Defendants'.

8. Benzene Spills. For any benzene spill occurring at the Facility after the Effective Date, Defendants shall review the spill to determine if any benzene waste, as defined by Subpart FF, was generated as a result. For each spill involving the release of more than ten (10) pounds of benzene in any twenty-four (24) hour period, Defendants shall:

a. Include the benzene waste generated by the spill in the Facility's TAB, as required by 40 C.F.R. § 61.342; and

b. As appropriate, account for such benzene waste in the uncontrolled benzene quantity calculations in accordance with the 2 Mg Compliance Option as required by Subpart FF, 40 C.F.R. §61.342(c).

9. Training.

a. Within sixty (60) days after Effective Date, Defendants shall modify, to the extent necessary, and implement their training program to include an at least annual (*i.e.*, at least once every twelve (12) months) training for all employees who conduct benzene waste sampling, monitoring, or reporting for Benzene Waste Operations NESHAP compliance purposes. Such training shall be implemented and shall also include information on procedures for compliance with relevant sections of 40 C.F.R. Part 302.

b. Within one hundred twenty (120) days after the Effective Date, Defendants shall complete the development, or review and revision, of standard operating procedures for all control devices and treatment processes used to comply with the Benzene Waste Operations NESHAP at the Facility, including procedures for compliance with relevant portions of 40 C.F.R. Part 302. Within one hundred eighty (180) days after the Effective Date, Defendants shall complete an initial training program regarding these procedures for all operators assigned to the relevant equipment, if such training has not already been provided. Comparable training shall also be provided to any persons who subsequently become operators prior to their assumption of this duty.

"Refresher" training in these procedures shall be performed on at least a three-year cycle (*i.e.* at least once every thirty-six (36) months) during the term of the Consent Decree.

c. Defendants shall require any contractors hired to perform any of the requirements of this Appendix to provide evidence that employees are properly trained to implement all requirements that they are hired to perform.

d. Defendants shall provide information on activities under this Paragraph in the semi-annual progress reports required under this Consent Decree.

10. Sampling. Defendants shall conduct sampling as described by this Paragraph at the Facility for the purpose of calculating benzene quantities in uncontrolled waste streams.

a. Sampling Protocols.

i. Within ninety (90) days after submission of the BWON Compliance Review and Verification Report, Defendants shall submit to EPA for review and approval, in consultation with TCEQ, pursuant to Section VI (Approval of Deliverables) of this Consent Decree, a sampling plan that is designed to identify the benzene quantity in uncontrolled benzene waste streams. The plan ("BWON Sampling Plan") shall include, but need not be limited to:

1. Proposed sampling locations and methods for flow calculations of uncontrolled benzene waste streams;

2. Monthly sampling of any waste streams re-sampled under Paragraph 3.d. which differed by more than twenty (20) percent in benzene concentration;

3. Monthly sampling of all uncontrolled waste streams that count toward the 2 Mg/yr calculation and that contain greater than 0.05 Mg/yr of benzene; and

4. Quarterly sampling of all uncontrolled waste streams that qualify for the 10 ppmw exemption (40 C.F.R. § 61.342(c)(2)) and that contain greater than 0.1 Mg/yr of benzene.

ii. If EPA requires Phase 2 Sampling of additional waste streams under Paragraph 3.d. and Defendants submit an addendum to the BWON Compliance Review and Verification Report, then Defendants shall, if necessary to address the addendum, submit an amendment to the BWON Sampling Plan to EPA for review and approval, in consultation with TCEQ, within ninety (90) days after submission of that addendum. Within thirty (30) days after receipt of EPA's approval of the amendment to the BWON Sampling Plan, Defendants shall commence implementation of the amended BWON Sampling Plan according to the schedule provided in the amended BWON Sampling Plan. The BWON

Sampling Plan remains in effect until the amended BWON Sampling Plan is approved.

iii. For sources of uncontrolled benzene waste streams that are non-routine or otherwise difficult to collect, Defendants shall use best efforts to obtain a representative number of samples and, if unable to obtain sufficient samples, explain why and provide written support to verify that assumptions made in calculating the TAB are reasonable and appropriate. For purposes of this sampling, a sufficient number is deemed to be at least three samples. The BWON Sampling Plan may identify commingled, exempt waste streams for sampling, provided Defendants demonstrate that the benzene quantity of those commingled streams will not be underestimated.

iv. Defendants shall commence sampling under the BWON Sampling Plan during the first month of the first full calendar quarter after Defendants receive EPA approval of the Plan. Defendants shall take and analyze at least three representative samples from each approved sampling location. Defendants shall use the average of these three samples as the benzene concentration for the stream at the approved location. Based on the monthly sampling results and the approved flow calculations, Defendants shall calculate the sum of its benzene quantity in uncontrolled waste streams for the three months contained within the respective quarter.

v. Within fifteen (15) business days after the close of each calendar quarter following commencement of sampling, Defendants shall calculate a quarterly uncontrolled benzene quantity and shall estimate a projected calendar year uncontrolled benzene quantity based on the monthly sampling results and the approved flow calculations. Defendants shall submit the uncontrolled benzene quantity in the Progress Reports due under Section IX (Reporting Requirements) of this Consent Decree. If the projected calendar year calculations demonstrate an uncontrolled benzene quantity of greater than 1.5 Mg/yr, Defendants shall provide this information to EPA within thirty (30) days of the end of the calendar quarter.

vi. After at least eight (8) quarters of sampling under the BWON Sampling Plan under this Paragraph 10, Defendants may submit a report to EPA and TCEQ that requests a change in the sampling frequency specified by Paragraph 10.a.i., including the cessation of such sampling. If EPA determines, after an opportunity for consultation with Defendants and TCEQ, that the information presented in the report supports a change in the sampling frequency for the Facility, then the sampling frequency requirement under Paragraph 10.a.i. shall be modified or terminated by written agreement of the Parties. An agreed change to the sampling frequency requirement is not a material modification to this Consent Decree.

vii. If changes in processes, operations, or other factors (including Phase 2 Sampling and an addendum to the BWON Compliance review and Evaluation

Report under Paragraph 3.b.) lead Defendants to conclude that the approved BWON Sampling Plan may no longer provide an accurate measure of the Facility's benzene quantity in uncontrolled benzene waste streams, Defendants shall submit a revised BWON Sampling Plan to EPA and TCEQ for review and approval pursuant to Section VI (Approval of Deliverables) of this Consent Decree within thirty (30) days after discovery of an issue under this Paragraph, and shall commence implementation of the revised Plan after submission thereof unless and until EPA disapproves of the revised Plan.

b. For purposes of calculating the average benzene concentrations under the 2 Mg Compliance Option, Defendants shall include all sampling results in the calculation unless Defendants provide an explanation as to why any sampling results should be excluded.

c. Corrective Measures.

i. BWON Sampling Report. If the calculations in Paragraph 10.a.iv. indicate that the quarterly uncontrolled benzene quantity exceeds 0.5 Mg or the projected calendar year uncontrolled benzene quantity exceeds 2.0 Mg at the Facility, then within thirty (30) days after the end of that calendar quarter, Defendants shall submit a written report ("BWON Sampling Report") to EPA and TCEQ that evaluates all relevant information and identifies whether any action should be taken to reduce benzene quantities in its waste streams for the remainder of the calendar year.

ii. BWON Corrective Measures Plan. If Defendants determine that additional actions are necessary to ensure compliance with the 2 Mg Compliance Option at the Facility, Defendants shall include in their BWON Sampling Report a BWON Corrective Measures Plan that identifies with specificity the compliance strategy and schedule that Defendants shall implement to ensure that the Facility complies with the 2 Mg Compliance Option as soon as practicable. The BWON Corrective Measures Plan shall identify:

1. The cause of the potentially elevated benzene quantities;

2. All corrective actions that Defendants have taken or plan to take to ensure that the cause will not recur; and

3. An appropriate strategy and schedule that Defendants shall implement to ensure that the Facility remains in compliance with the 2 Mg Compliance Option.

iii. If a spill event is the main cause of the potentially elevated benzene quantities, any corrective action shall focus on the spill event and on future measures to minimize and address spills.

iv. Defendants shall implement the BWON Corrective Measures Plan according to the schedule provided in such plan and submit a report to EPA and TCEQ upon completion of its implementation.

11. Third Party TAB Study and Compliance Review. Within sixty (60) days after the end of a second consecutive quarter in which at least one of the conditions in Paragraph 10.c.i. continues to exist and Defendants are unable to identify the cause(s) or appropriate corrective measures to ensure compliance with the 2 Mg Compliance Option, Defendants shall retain an Independent Third Party to undertake a comprehensive TAB study and compliance review at the Facility. Within ninety (90) days after Defendants receive the results of the study, Defendants shall submit such results, along with a plan and schedule for remedying any deficiencies identified, to EPA and TCEQ pursuant to Section VI (Approval of Deliverables) of this Consent Decree. Defendants shall implement the plan unless and until EPA disapproves.

12. Miscellaneous Measures. Within six (6) months after Effective Date, Defendants shall:

a. Conduct monthly visual inspection of and, if appropriate, refill all Subpart FF water traps within the Facility's Subpart FF affected individual drain systems;

b. Revise the Facility's inspection checklists for the API separator in the ethylene process area and the dissolved gas flotation (DGF) unit to include a diagram of all identified fugitive emission points on the respective unit (seals, penetrations, gasketed openings, etc.) with boxes to check confirming inspection of each point;

c. Ensure the cover of the API oil-water separator in the Facility's ethylene process area is in compliance with 40 C.F.R. §§ 61.347(a) and (b) and conduct monthly monitoring of the API oil-water separator fugitive emission points for twenty-four (24) consecutive months using Method 21 to determine whether design of the API oil-water separator is adequate to ensure continued compliance with Subpart FF. If fugitive VOC emissions are detected at or above 500 ppm as part of this monitoring, and the API oil-water separator is determined to be the source of this leak, Defendants shall repair the affected openings and gasket system on the API oil-water separator as soon as practicable consistent with the "first effort" requirements of 40 C.F.R. § 61.347(c). If first efforts to repair are not successful, then Defendants shall complete final repair within 60 days after detection, unless Defendants document in writing to EPA that repair is technically impossible without complete or partial facility or unit shutdown in accordance with 40 C.F.R. § 61.350. Defendants shall continue monthly monitoring and repair until the later of (a) the remainder of the initial twenty-four (24) month period without emissions detected at or above 500 ppm, or (b) twelve (12) consecutive months without emissions detected at or above 500 ppm;

d. Ensure that the Facility's DGF unit is in compliance with 40 C.F.R. §§ 61.348(a) and conduct monthly monitoring of the DGF unit fugitive emission points for twenty-four (24) consecutive months using Method 21 to determine whether design of the DGF

unit is adequate to ensure continued compliance with Subpart FF. If fugitive VOC emissions are detected at or above 500 ppm as part of this monitoring, Defendants shall repair the affected DGF unit openings as soon as practicable consistent with the "first effort" requirements of 40 C.F.R. § 61.347(c). If first efforts to repair are not successful, then Defendants shall complete final repair within 60 days after detection, unless Defendants document in writing to EPA that repair is technically impossible without complete or partial facility or unit shutdown in accordance with 40 C.F.R. § 61.350. Defendants shall continue monthly monitoring and repair until the later of (a) the remainder of the initial twenty-four (24) month period without emissions detected at or above 500 ppm, or (b) twelve (12) consecutive months without emissions detected at or above 500 ppm;

e. Manage the Quench Settler as an oil-water separator or a waste management unit as required by Subpart FF. Defendants shall conduct quarterly inspections, annual (i.e., at least once every twelve (12) months) monitoring, and repair of the Quench Settler consistent with the requirements set forth in 40 C.F.R. § 61.347;

f. Ensure that all benzene waste streams are hard-piped into the bowl of a drain riser for the water sealed drain assembly such that each pipe extends into and discharges below the highest point of the bowl of the drain riser. The distance from the point of discharge to the water seal shall be minimized to the extent practicable to reduce the potential for volatilization of benzene into the atmosphere. Any benzene waste stream not configured in this manner shall be considered uncontrolled;

g. Identify and mark at the drain all process area drains that are allowed to receive benzene process flow and ensure that they are segregated from stormwater drains; and

h. Install and continuously operate a flow indicator and alarm system for all control device bypasses (including but not limited to the API oil-water separator's bypass conservation vent) so that the Facility can properly monitor and report uncontrolled benzene emissions. This Paragraph 12.h. does not apply to storage tanks.

13. Defendants shall retain records containing the following information during the time period the Consent Decree remains in effect:

a. Monthly visual individual drain inspection results;

b. Conservation vent monitoring results; and

c. Quench Settler and DGF monitoring results.

14. <u>Recordkeeping and Reporting Requirements for this Appendix in Addition to Reports Required under 40 C.F.R. § 61.357 and Section IX of this Consent Decree:</u> At the times specified in the applicable provisions of this Appendix, Defendants shall submit, as and to the extent required, the following information to EPA and TCEQ:

a. BWON Compliance Review and Verification Report (under Paragraph 3.a., and as amended, under Paragraph 3.b.);

b. Amended TAB Reports (under Paragraph 4.a.);

c. BWON Corrective Action Plan (under Paragraph 4.b.);

d. Certifications of Compliance (under Paragraph 4.c.)

e. Notification that Defendants have completed the installation of primary and secondary carbon canisters at locations using single canisters within three hundred sixty-five (365) days after the Effective Date, and are operating the primary and secondary carbon canisters in series (under Paragraph 5.a. (Carbon Canisters));

f. BWON Sampling Plans (under Paragraph 10.a.), and revised BWON Sampling Plans (under Paragraph 10.a.vi.); and

g. BWON Sampling Reports and BWON Corrective Measures Plan (under Paragraph 10.c.).

h. An identification of all laboratory audits completed during the period, including a description of methods used in the audit and the results of the audit (under Paragraph 7);

i. A description of measures taken during the preceding twelve (12) month period to comply with training requirements (under Paragraph 9); and

j. A summary of the sampling results as required under Paragraph 10.

APPENDIX B

MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING NESHAP
Sabine River Operations Facility

1. Defendants shall perform the measures set forth in this Appendix relating to 40 C.F.R. Part 63, Subpart FFFF ("Subpart FFFF," "Miscellaneous Organic Chemical Manufacturing NESHAP," or "MON").

2. One-Time Review and Evaluation of the Facility's Compliance Status.

   a. In accordance with the selection provisions set forth in Section V of this Consent Decree (Compliance Evaluation and Audit Requirements), Defendants shall use an Independent Third Party to evaluate and ensure compliance with all applicable wastewater requirements of Subpart FFFF ("MON Compliance Review and Evaluation" or "Evaluation"). The MON Compliance Review and Evaluation shall be completed in accordance with an approved schedule and the criteria below. The Independent Third Party retention contract shall require the Independent Third Party to prepare a proposed schedule for conducting the MON Compliance Review and Evaluation, after consulting with Defendants concerning, among other things, resource demands from concurrent or overlapping audits that could impede the audits' or Evaluation's prompt completion, and submit the proposed schedule to EPA for review and approval, in consultation with TCEQ within sixty (60) days after the Independent Third Party is retained by Defendants pursuant to Section V of this Consent Decree. The MON Compliance Review and Evaluation process for the Facility shall include, and Defendants' contract with the Independent Third Party shall require:

   i. An identification of each process wastewater stream, maintenance wastewater stream, and liquid stream in open systems within any miscellaneous organic chemical manufacturing process unit ("MCPU");

   ii. An identification and verification of the concentrations of the Subpart FFFF Table 8 and Table 9 compounds in each wastewater stream, and the annual average flow rates of these wastewater streams for each MCPU as necessary to demonstrate compliance;

   iii. An identification and verification of the process wastewater stream group status, as described in 40 C.F.R. §§ 63.132, for each wastewater stream, using the procedures set forth in 40 C.F.R. § 63.144(b) and (c) as required by 40 C.F.R. §§ 63.2485(a) and 63.2550;

   iv. An identification of whether or not each wastewater stream is controlled consistent with the applicable requirements of Subpart FFFF; and

v. An identification of any existing noncompliance with the wastewater requirements of Subpart FFFF.

b. Defendants' contract with the Independent Third Party shall require that within sixty (60) days of completion of the MON Compliance Review and Evaluation, the Independent Third Party shall submit a draft MON Compliance Review and Evaluation Report ("Draft Report") to Defendants. Defendants shall have forty-five (45) days to review and provide written comments to the Independent Third Party on its Draft Report. The Independent Third Party is not obligated to make any changes to the Draft Report it does not find to be objectively substantiated. The Independent Third Party's final MON Compliance Review and Evaluation Report ("Final Report"), along with separate documents containing copies of the written comments made by Defendants and the Independent Third Party's responses to any of Defendants' comments and written explanations of resulting modifications, if any, made to the Final Report, shall be provided to Defendants, EPA and TCEQ within forty-five (45) days after the deadline for Defendants to submit written comments.

c. Subject to the provisions of Section XIX (Modification) of this Consent Decree, at the Independent Third Party's request, Defendants may seek an extension(s) of the deadlines in Paragraph 2(b) of this Appendix. The extension request(s) shall be in writing, shall include an explanation, and shall be submitted to EPA and TCEQ at least thirty (30) days prior to the deadline.If EPA, in consultation with TCEQ, does not approve or deny the request at least five (5) days prior to the deadline, the deadline will be extended by ten (10) days.

3. Implementation of Actions Necessary to Correct Non-Compliance.

a. MON Corrective Action Measures.

i. MON Corrective Action Plan. If the Final Report indicates that Defendants are not in compliance with the wastewater requirements, Defendants shall, within one hundred twenty (120) days after receipt of the Final Report, submit to EPA for review and approval, in consultation with TCEQ, pursuant to Section VI (Approval of Deliverables) of this Consent Decree, a MON Corrective Action Plan ("MON CAP") that identifies with specificity the compliance strategy and schedule that Defendants shall implement to ensure that the Facility complies with the MON wastewater requirements as soon as practicable. Within thirty (30) days after receipt of EPA's approval of the MON CAP, Defendants shall commence implementation of the approved MON CAP according to the schedule provided in the MON CAP.

ii. C Unit Pellet Hydrosieve. Defendants shall ensure that the C Unit Pellet Hydrosieve wastewater stream is in compliance with Subpart FFFF.

iii. Surface Impoundments. Defendants shall not manage any Group 1 wastewater streams in uncovered surface impoundments.

b. Revised NOCS. If the Final Report indicates that the NOCS required by 40 C.F.R. § 63.2520(d) is inaccurate or does not satisfy the wastewater requirements, within sixty (60) days after receipt of EPA's approval of the MON CAP, Defendants shall submit to EPA, for review and approval, in consultation with TCEQ, a schedule for conducting the compliance determinations and other measures necessary to prepare a revised NOCS. Within thirty (30) days after receipt of EPA's approval of such schedule, Defendants shall commence implementation of such measures. Within thirty (30) days after such measures have been implemented, Defendants shall submit a revised NOCS to EPA and TCEQ.

c. Certification of Compliance. Within thirty (30) days after completing all corrective actions, if any, required pursuant to the MON CAP, and submission of a revised NOCS, if necessary, Defendants shall submit a report to EPA and TCEQ certifying that the Facility is in compliance with the wastewater requirements of Subpart FFFF.

4. Carbon Canisters. Defendants represent that no carbon canisters are currently installed and utilized or planned to be installed and utilized at the Facility as a control device under Subpart FFFF. However, if Defendants install and utilize or plan to install and utilize at the Facility one or more carbon canisters as a control device under Subpart FFFF, Defendants shall comply with the requirements of this Paragraph 4. To the extent that any applicable state or local rule, regulation, or permit contains more stringent requirements than those set forth in this Paragraph 4, compliance with those more stringent requirements may satisfy the requirements of this Paragraph instead.

a. Within sixty (60) days after Defendants make a final decision to install and utilize at the Facility one or more carbon canisters as a control device under Subpart FFFF, Defendants shall notify EPA and TCEQ of this decision. Within three hundred and sixty-five (365) days after Defendants make a final decision to install and utilize at the Facility one or more carbon canisters as a control device under Subpart FFFF, Defendants shall complete installation of primary and secondary carbon canisters and shall operate them in series. Within thirty (30) days after installation has been completed, Defendants shall submit a report notifying EPA and TCEQ that installation has been completed. The report shall include:

i. A list of all locations at the Facility where carbon canister systems are used as control devices under Subpart FFFF; and

ii. The installation date of each such primary and secondary canister installed under this Paragraph and the date that each primary and secondary canister was put into operation.

b. For dual carbon canister systems, "breakthrough" between the primary and secondary canister is defined as any reading equal to or greater than 50 ppm volatile organic compounds ("VOC") when monitoring on a monthly or weekly

frequency. At their option, Defendants may utilize a concentration for "breakthrough" that is lower than 50 ppm VOC.

c. For dual carbon canister systems, Defendants shall monitor for breakthrough between the primary and secondary carbon canisters on a monthly basis at times when there is actual flow to the carbon canister or in accordance with the frequency specified in 40 C.F.R. Part 63, Subpart G, Table 13, whichever is more frequent. This requirement shall commence within thirty (30) days after installation of any new dual carbon canister system subsequent to the Effective Date. In the event there is no flow to the canister, Defendants shall document the lack of flow and resume monitoring in the event that flow resumes to the canister system.

d. After installation of primary and secondary carbon canisters, as described in Paragraph 4.a., when breakthrough is detected as described in Paragraph 4.b., Defendants shall comply with either Subparagraph 4.d.i or 4.d.ii:

   i. Replace the original primary carbon canister (or route the flow to an appropriate alternative control device) immediately. The original secondary carbon canister (or a fresh canister) will become the new primary carbon canister and a fresh carbon canister will become the secondary canister. For purposes of this Subparagraph, "immediately" shall mean within eight (8) hours of the detection of a breakthrough for canisters of 55 gallons or less, and within twenty-four (24) hours of the detection of a breakthrough for canisters greater than 55 gallons. If Defendants choose to define breakthrough for primary carbon canister replacement at a lower VOC concentration, Defendants may replace primary canisters of 55 gallons or less within twenty-four (24) hours of detecting breakthrough.

   ii. In lieu of replacing the primary canister immediately, Defendants may elect to monitor the outlet of the secondary canister beginning on the day the breakthrough between the primary and secondary canister is detected and each calendar day thereafter. This daily monitoring shall continue until the primary canister is replaced. If VOC is detected above background (an increase of ≥5 ppm VOCs) at the outlet of the secondary canister during this period of daily monitoring, both canisters must be replaced within eight (8) hours of the detection at the outlet of the secondary canister.

e. Temporary applications. For short-term operations such as with temporary storage tanks or as temporary control devices, each such period being not longer than forty-five (45) days, Defendants may utilize properly-sized single canisters. For canisters 55 gallons or less operated as part of a single canister system, "breakthrough" is defined as any reading of VOC above background (an increase of ≥ 5 ppm VOCs). For canisters greater than 55 gallons operated as part of a single canister system, "breakthrough" is defined as any reading of VOC greater

than or equal to 50 ppm. Beginning no later than the Effective Date, Defendants shall monitor for breakthrough from a single carbon canister system once every calendar day that there is actual flow to the carbon canister. Defendants shall replace the single carbon canister with a fresh carbon canister, discontinue flow, or route the stream to an alternate, appropriate device immediately when breakthrough is detected. For purposes of this Paragraph 4.e., "immediately" shall mean within eight (8) hours. Such a spent canister may not be placed back into vapor control service until it has been appropriately regenerated. As an alternative, Defendants may utilize dual carbon canisters for temporary applications, in which case Paragraphs 4.b.-4.c. shall apply.

f. If Defendants install and utilize carbon canisters at the Facility as a control device under Subpart FFFF, Defendants shall maintain a readily-available supply of fresh carbon canisters at all times at the Facility or shall otherwise ensure that such canisters are readily available to implement the requirements of this Paragraph 4.

5. Annual review. Within one hundred twenty (120) days after the Effective Date, Defendants shall modify, to the extent necessary, their environmental management system to provide for review of process information for the Facility once each calendar year, including but not limited to construction projects, to ensure that all new MON wastewater streams are included in the waste stream inventory during the term of this Consent Decree. Defendants shall provide information on such activities in the appropriate semi-annual progress reports required under this Consent Decree.

6. Laboratory Audits. Defendants shall conduct audits of all laboratories that perform MON analyses of Defendants' MON wastewater samples from the Facility to ensure that proper analytical and quality assurance/quality control procedures are followed for such samples. Defendants shall provide information on such activities in the appropriate semi-annual progress reports.

a. Within one hundred eighty (180) days after the Effective Date, Defendants shall complete initial audits of half of such laboratories; they shall complete audits for the remaining laboratories within three hundred sixty five (365) days of the Effective Date. Defendants shall also audit any new laboratory to be used for analyses of Defendants' MON wastewater samples at the Facility prior to use of the new laboratory. If Defendants have completed an audit of any such laboratory within six (6) months prior to the Effective Date, initial audits of those laboratories pursuant to this Paragraph 6.a. shall not be required.

b. During the term of this Consent Decree, Defendants shall conduct subsequent audits such that each laboratory that Defendants use for MON analyses of MON wastewater samples at the Facility is audited once every two (2) calendar years.

c. Defendants may conduct audits themselves, retain third parties to conduct these audits, or use audits conducted by others as their own, but the responsibility to ensure compliance with this this Paragraph 6. is solely Defendants'.

7. Training.

   a. Within sixty (60) days after the Effective Date, Defendants shall modify, to the extent necessary, and implement their training program to include an at least annual (i.e., at least once every twelve (12) months) training for all employees who draw wastewater samples for MON compliance purposes.

   b. Within one hundred twenty (120) days after the Effective Date, Defendants shall complete the development, or review and revision, of standard operating procedures for all control devices and treatment processes used to comply with the MON at the Facility. Within one hundred eighty (180) days after the Effective Date, Defendants shall complete an initial training program regarding these procedures for all operators assigned to the relevant equipment, if such training has not already been provided. Comparable training shall also be provided to any persons who subsequently become operators, prior to their assumption of this duty. "Refresher" training in these procedures shall be performed on a three-year cycle (*i.e.* at least once every thirty-six (36) months) during the term of the Consent Decree. If an employee is not available to take the refresher training when required, it shall be provided before that employee resumes operating the applicable equipment.

   c. Defendants shall require any contractors hired to perform any of the requirements of this Appendix to provide evidence that its employees are properly trained to implement all requirements that they are hired to perform.

   d. Defendants shall provide information on activities under this Paragraph in the semi-annual progress reports required under this Consent Decree.

8. Recordkeeping and Reporting Requirements for this Appendix in Addition to Reports Required under 40 C.F.R. § 63.2520 and Section IX of this Consent Decree: At the times specified in the applicable provisions of this Appendix, Defendants will submit, as and to the extent required, the following information to EPA and TCEQ:

   a. MON Compliance Review and Evaluation Report (under Paragraph 2);

   b. MON Corrective Action Plan, (under Paragraph 3.a.);

   c. Revised NOCS (under Paragraph 3.b.);

   d. Certification of Compliance (under Paragraph 3.c.);

   e. Notifications with respect to carbon canisters (under Subparagraph 4.a. (Carbon Canisters)).

   f. Summary of Annual Review activity (under Paragraph 5);

g. An identification of all laboratory audits completed during the period, including a description of methods used in the audit and the results of the audit (under Paragraph 6); and

h. A description of measures taken during the preceding twelve (12) month period to comply with training requirements (under Paragraph 7).

APPENDIX C

RCRA REQUIREMENTS
Sabine River Operations Facility

1. Hazardous Waste Compliance Evaluation and Compliance Evaluation Response Plan.

Defendants shall perform the activities set out below to ensure that all RCRA hazardous waste streams at the Facility are properly identified and documented as required pursuant to 40 C.F.R. Part 262 and 30 Tex. Admin. Code Chapter 335.

a. Defendants shall retain an approved Independent Third Party, selected in accordance with provisions set forth in Section V (Compliance Evaluation and Audit Requirements) of this Consent Decree, to complete a Hazardous Waste Compliance Evaluation, in accordance with the deadlines set forth below and an approved schedule proposed by the Independent Third Party, after consultation with Defendants concerning, among other factors, resource demands from concurrent or overlapping audits that could impede the audits' or Evaluation's prompt completion, that shall be submitted to TCEQ for approval, in consultation with EPA, within sixty (60) days from the date of Defendants' selection of the Independent Third Party. The Independent Third Party retention contract shall require the Independent Third Party to consult with Defendants during the course of the Hazardous Waste Compliance Evaluation, and shall require that Defendants cooperate with and assist the Independent Third Party upon reasonable request. The Hazardous Waste Compliance Evaluation shall be completed in the manner and within the scope set forth below to assess compliance with the Resource Conservation and Recovery Act ("RCRA") regulations promulgated thereunder at 40 C.F.R. Parts 260 through 272, the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Chapter 361, and the regulations promulgated thereunder at Title 30 of the Texas Administrative Code ("30 Tex. Admin. Code") Chapter 335 for all wastes generated at the Facility or received by the Facility from a third party (including any waste from INVISTA s.a.r.l., but excluding stormwater) that are discharged to the Facility's ditches or surface impoundments. Defendants shall ensure that the Independent Third Party retention contract requires that the Hazardous Waste Compliance Evaluation is to be conducted by the Independent Third Party in accordance with provisions set forth in Section V (Compliance Evaluation and Audit Requirements) of this Decree and shall include without limitation the following actions:

   i. Locate, identify, perform hazardous waste determinations and sample, if necessary, each waste generated at the Facility or received by the Facility from a third party (on-site tenant), except stormwater, that is discharged to Facility ditches or surface impoundments. Conduct sampling of wastes if

sufficient process knowledge is unavailable or if the Independent Third Party auditor determines that available process knowledge is insufficient for appropriate determination of a waste. If the Independent Third Party proposes sampling of wastes, Defendants may choose to conduct split sampling of the wastes. For wastes described by this Paragraph 1.a.i. generated at the Facility, all samples shall be taken at the point of generation. For wastes described by this Paragraph 1.a.i. received by the Facility from a third party, all samples shall be taken at the point of receipt by the Facility at or before the point of discharge to a Facility ditch or surface impoundment and before any mixing at the Facility;

ii. Verify that each waste generated at the Facility, or received by the Facility from a third party, except stormwater, that is discharged to Facility ditches or surface impoundments has the appropriate documentation in accordance with 40 C.F.R. Part 262, 30 Tex. Admin. Code Chapter 335, and make such new hazardous waste determinations and waste characterization records as the Independent Third Party deems necessary to satisfy all applicable regulatory requirements. Defendants shall assist the Independent Third Party, upon its reasonable request, with making the new hazardous waste determinations and waste characterization records. For those wastes received by the Facility from INVISTA, the Independent Third Party may rely on available waste determinations or sampling, or both, conducted by INVISTA at the point of generation;

iii. For all wastes identified pursuant to the work under Paragraph 1.a.i., above, indicate the location where each waste generated at the Facility (except stormwater) is discharged, and where each waste received from a third party (except stormwater) is discharged at the Facility, using process flow diagrams or Facility maps, or both, as appropriate; and

iv. Evaluate Defendants' compliance with applicable statutory and regulatory requirements of hazardous waste management, for the hazardous wastes identified pursuant to Paragraph 1.a.i.

b. Hazardous Waste Compliance Evaluation Report.

i. Defendants shall ensure that the Independent Third Party retention contract requires that, within sixty (60) days of completion of the Hazardous Waste Compliance Evaluation, the Independent Third Party shall submit to Defendants a draft evaluation report ("Draft Hazardous Waste Compliance Evaluation Report" or "Draft Report"). Pursuant to Paragraphs 1.a.i. - 1.a.iv., the Draft Hazardous Waste Compliance Evaluation Report shall document findings from the evaluation, including but not limited to,

identification of all wastes, documentation of all hazardous waste determinations, and indication of where each waste is discharged or received.

ii. Defendants shall have forty-five (45) days after receiving the Draft Hazardous Waste Compliance Evaluation Report to review and provide written comments to the Independent Third Party on the Draft Report. The Independent Third Party is not obliged to make any changes it does not find to be objectively substantiated.

iii. Defendants shall ensure that the Independent Third Party retention contract requires that, within forty-five (45) days after the deadline for Defendants to provide written comments, the Independent Third Party's final Hazardous Waste Compliance Evaluation Report shall be provided to Defendants, EPA, and TCEQ and shall include copies of any comments made by Defendants, responses to Defendants' written comments, and an explanation of resulting modifications, if any, made to the final report.

c. Subject to the provisions of Section XX (Modification) of this Consent Decree, at the Independent Third Party's request, Defendants may seek extensions to deadlines in Paragraph 1.b. of this Appendix. The extension request(s) shall be submitted in writing, shall include an explanation, and shall be submitted to EPA and TCEQ at least thirty (30)days prior to the deadline. If TCEQ, in consultation with EPA, does not approve or deny the request at least five (5) days prior to the deadline, the deadline will be extended by ten (10) days.

d. Compliance Evaluation Response Plan.

i. If necessary, based on the findings in the final Hazardous Waste Compliance Evaluation Report, within one hundred twenty (120) days of receiving the final Hazardous Waste Compliance Evaluation Report, Defendants shall submit to EPA and TCEQ for review and approval by TCEQ, in consultation with EPA, pursuant to Section VI (Approval of Deliverables) of this Consent Decree, a Compliance Evaluation Response Plan. The Compliance Evaluation Response Plan shall identify any alterations, maintenance, equipment replacements, facility upgrades, modifications, changes, or other measures that will be taken to correct any non-compliance, to ensure continuing hazardous waste compliance at the Facility. The Compliance Evaluation Response Plan, if required, shall also include a schedule for completing all such measures.

ii. Defendants shall implement the Compliance Evaluation Response Plan, if required, in accordance with the schedule as approved by TCEQ, in consultation with EPA.

e. Certification of Compliance. If a Compliance Evaluation Response Plan is required pursuant to Paragraph 1.d. above, then within sixty (60) days after completing the implementation of all measures required pursuant to the Compliance Evaluation Response Plan, Defendants shall submit to EPA and TCEQ a Certification of Compliance in accordance with Section IX (Reporting Requirements) of this Consent Decree that the Facility has completed all required measures in compliance with such plan and that no hazardous waste is being placed or disposed in any units that are not authorized to receive hazardous waste.

2. RCRA Waste Management Plan.

a. Within ninety (90) days after either the completion of the Certification of Compliance set out in Paragraph 1.e., above, or, in the event a Certification of Compliance is not required, submittal of the Independent Third Party's final Hazardous Waste Compliance Evaluation Report pursuant to Paragraph 1.b.iii., above, Defendants shall develop and submit to EPA and TCEQ (without appendices) a RCRA Waste Management Plan ("RWMP") utilizing information from the final Hazardous Waste Compliance Evaluation Report and, if required to be prepared, the Compliance Evaluation Response Plan.

b. The RWMP shall set forth procedures and an implementation schedule for the identification and hazardous waste determinations of all wastes (as defined in 40 C.F.R. Part 261 and 30 Tex. Admin. Code Chapter 335), except stormwater, that are discharged to ditches or surface impoundments at the Facility. The RWMP shall include as appendices documentation supporting all hazardous waste determinations made for wastes generated at, or received by, the Facility, except stormwater, that are discharged to the ditches or surface impoundments as of the Effective Date, as required by 40 C.F.R. Part 262 and 30 Tex. Admin. Code Chapter 335 (including both hazardous waste determinations and non-hazardous waste determinations). Defendants shall update the RWMP when there is a new waste covered by the requirements of this Paragraph 2.b. or when there is a process change that could materially affect any of the existing waste already identified in the RWMP under this Paragraph 2.b. The updated RWMP shall include a hazardous waste determination for each of the new or modified wastes.

c. The RWMP shall include an appendix that is updated on an ongoing basis and contains a summary identifying all wastes, except stormwater, that are discharged to the ditches or surface impoundments as of the Effective Date. The summary shall identify the wastes, their waste classification, where they are generated, how

they are managed, and where the wastes enter the ditches or surface impoundments.

d. Within forty-five (45) days of approval of the RWMP by TCEQ, in consultation with EPA, Defendants shall commence implementation of the RWMP at the Facility. The RWMP shall be maintained at the Facility so that it is readily accessible to plant personnel and TCEQ and EPA representatives.

e. In accordance with the approved schedule for implementation of the RWMP at the Facility, Defendants shall certify to EPA and TCEQ in writing that they have fully implemented the RWMP and that Defendants are in compliance with the RWMP, or Defendants shall certify in what respect they have implemented the RWMP and describe what portions of the RWMP they have not implemented or are not in compliance with and propose a schedule for full implementation and compliance. Defendants' certification shall include a copy of the summary (identified above in Paragraph 2.c.) set forth as an appendix to the RWMP identifying all wastes that are discharged to the ditches or surface impoundments.

f. With the exception of records for those wastes generated at the Facility that are routinely managed in off-site RCRA Part B-permitted incinerators, including the RCRA Part B-permitted incinerator and associated permitted units (i.e., container storage areas and tanks) transferred to, and now owned and operated by, Heritage, for each waste stream generated at or received by the Facility (except stormwater) that is not included in the RWMP, the RWMP shall identify where at the Facility the documentation relating to the waste determinations for those wastes is kept.

3. pH Exceedance Tracking and Correction System.

a. Within thirty (30) days after the Effective Date, Defendants shall submit to EPA and TCEQ a report (the "pH Meter Identification Report") that identifies all pH meters at the Facility that provide continuous monitoring and are used to measure pH in ditches and surface impoundments ("pH meters").

b. For Defendants' pH meters identified pursuant to Paragraph 3.a., Defendants shall properly maintain and calibrate the pH meters according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately within the boundaries of instrument capability at all times they are operational, including recording any pH readings of less than or equal to 2.0 or greater than or equal to 12.5 standard units. Except during events of maintenance, repair, malfunction, calibration, power surges, power outages, and quality assurance/quality control, that are documented at or near the time of such event as to date, cause and duration, pH meters and data collection and recording systems will be considered operational.

c. Defendants shall evaluate alternatives for addressing pH in the waste described in Paragraph 2.c., including, but not limited to, determination of whether the waste can be re-routed to existing neutralization tanks prior to discharge in the Third Street Wood-lined Ditch or determination of whether in-line pH buffering units are needed to ensure no hazardous waste is discharged to the Third Street Wood-lined Ditch, and if so, the appropriate number and location of such units. Defendants shall submit a report (the "Evaluation of Alternatives for pH Wastes Report") to TCEQ and EPA within ninety (90) days after submittal of the Hazardous Waste Compliance Evaluation Report under Paragraph 1.b.iii., above, or, if required, within ninety (90) days after submittal of the Compliance Evaluation Response Plan under Paragraph 1.d., above, that describes the alternative chosen (including the proposed number and locations of buffering units if buffering is the selected alternative) and provides a schedule for implementation of the chosen alternative. TCEQ, in consultation with EPA, shall review the Evaluation of Alternatives for pH Wastes Report and schedule, and either approve, approve subject to specified conditions or proposed revisions, or disapprove, the report and schedule. Defendants shall implement the chosen alternative in accordance with the schedule approved by the TCEQ to ensure that, following a pH exceedance event, the affected waters are restored to a pH range between 2.0 and 12.5 standard units before discharge into the Third Street Wood-lined Ditch.

d. Based on EPA and TCEQ's review of the Hazardous Waste Compliance Evaluation Report required by Paragraph 3.b. (and, if required, the Compliance Evaluation Response Plan under Paragraph 1.d.), the pH meters identified pursuant to Paragraph 3.a., and the Evaluation of Alternatives for pH Wastes Report required by Paragraph 3.c., EPA or TCEQ, in consultation with the other, may determine, that there is the potential for waste exhibiting the hazardous characteristic of corrosivity (D002) to discharge into a ditch or surface impoundment without detection by the pH meters identified by Defendants in Paragraph 3.a. Based on EPA's or TCEQ's identification of specific potentially corrosive waste, as described immediately above, EPA or TCEQ, in consultation with the other, may select additional locations in ditches or surface impoundments at the Facility where Defendants shall install pH meters so that Defendants can detect any pH exceedances and take the appropriate remedial steps identified in Paragraph 3.e., below. If either TCEQ or EPA, in consultation with the other, determines that Defendants must install additional pH meters at the Facility, then either agency will notify Defendants in writing of the requirement and location for installation of additional pH meters within one-hundred twenty (120) days after receipt of the Evaluation of Alternatives for pH Wastes Report required by Paragraph 3.c. Within one hundred twenty (120) days after receipt of such notification by either TCEQ or EPA regarding additional pH meters, Defendants

shall submit a work plan and schedule for installation of the meters to TCEQ and EPA for review and approval, in consultation with the other. Defendants shall install any additional pH meters in accordance with the approved schedule. Upon installation of the additional pH meters, if any, Defendants shall incorporate the additional meters into the pH Exceedance Tracking and Correction System described below. A "pH exceedance" for purposes of this section (i.e., Paragraph 3, pH Exceedance Tracking and Corrections System) is defined as a pH reading recorded in the Facility's Distributive Control System from operational pH meters identified in Paragraphs 3.a. and 3.b., above, or in this Paragraph 3.d., that is less than or equal to 2.0 or greater than or equal to 12.5 standard units.

e. In accordance with the approved schedule, in order to ensure characteristically corrosive hazardous wastes are not improperly discharged in Facility ditches or surface impoundments and in order to monitor for potential spills of corrosive wastes that could enter Facility ditches or surface impoundments, Defendants shall commence implementation of a pH Exceedance Tracking and Correction System for evaluating and responding to all pH meter readings of less than or equal to 2.0 or greater than or equal to 12.5 standard units. The pH Exceedance Tracking and Correction System shall require:

    i. Connection of the pH meters to the Facility's Distributive Control System so that operational pH meter readings can be continuously monitored by plant operating staff, and be designed to immediately notify personnel of any operational pH meter reading of less than or equal to 2.0 standard units or greater than or equal to 12.5 standard units;

    ii. Within forty-eight (48) hours of discovering any pH exceedance, Defendants shall commence a root cause investigation to determine the source of the low or high pH meter readings;

    iii. Within thirty (30) days after discovery of a pH exceedance, Defendants shall complete the root cause investigation and commence appropriate action to prevent a recurrence of the pH exceedance; and

    iv. Defendants shall document the results of the root cause investigation in a written report that includes, but is not limited to, an identification of any remedial action taken or to be taken and a schedule for completing such remedial action if it cannot be completed within forty-five (45) days after discovery of the pH exceedance. This report shall be kept at the Facility and made available for EPA and TCEQ representatives upon request.

4. Unit-Specific Requirements.

a. Defendants shall conduct investigations and, if necessary, response actions relating to (1) the Third Street Wood-lined Ditch, which includes the Mixing Cell and the East Conduit, and (2) the Shell Pit (collectively, "Covered Units") as set forth below.

i. Covered Units—Sediments and Soil. Within ninety (90) days after the Effective Date of the Consent Decree, Defendants shall submit to TCEQ for approval, in consultation with EPA, an investigation plan to provide a representative examination of the sediments, and potentially subsurface soils, associated with the Covered Units for the presence of constituents of concern ("COCs"). The investigation of sediments in the Third Street Wood-lined Ditch shall involve sampling and analysis for pH and for the presence of metal COCs listed in Appendix IX of 40 C.F.R. Part 264. The investigation of sediments in the Shell Pit shall involve sampling and analysis for pH, the presence of metal COCs listed in Appendix IX of 40 C.F.R. Part 264, and the presence of volatile organic compound ("VOC")/semi-volatile organic compound ("SVOC") COCs listed in Appendix IX of 40 C.F.R. Part 264. Defendants shall collect a sufficient number of samples to reliably characterize the nature and extent of COCs in the sediments and, if necessary, subsurface soils for the Covered Units, as well as the horizontal and vertical extent of COCs as described in Paragraph 4.a.i.1. The investigation plan shall also include a schedule for submitting an affected property assessment report ("APAR"), as detailed in Paragraph 4.a.iii., below. Defendants shall complete the investigation in accordance with a schedule in the investigation plan approved by the TCEQ.

1. This investigation shall be extended to soils below that portion of the Third Street Wood-lined Ditch west of the dam only for (1) pH, if sediment samples from the unit have pH readings of less than or equal to 2.0 or greater than or equal to 12.5 standard units, and (2) any COCs from the investigation described in Paragraph 4.a.i. detected in sediments in this unit at concentrations above the "Sediment Assessment Level," which shall be the highest of either the (i) lowest of the critical Texas Risk Reduction Program ("TRRP") sediment Protective Concentration Level ("PCL") or the Tier 1 residential soil PCL (assuming 0.5-acre source area and Class 1 groundwater), (ii) background concentration, or (iii) method quantitation limit ("MQL").

2. This investigation shall be extended to soils below that portion of the Third Street Wood-lined Ditch east of the dam, below the Mixing Cell, and below the East Conduit, only for (1) pH, if sediment samples from the unit have pH readings of less than or equal to 2.0 or greater than or equal to 12.5 standard units, and (2) any metal COCs listed in Appendix IX of 40 C.F.R. Part 264 detected in sediments in these units at concentrations above the Sediment Assessment Level.

3. This investigation shall be extended to soils below the Shell Pit only for (1) pH, if sediment samples from the unit have pH readings of less than or equal to 2.0 or greater than or equal to 12.5 standard units, and (2) any metal and VOC/SVOC COCs listed in Appendix IX of 40 C.F.R. Part 264 detected in sediments in this unit at concentrations above the Sediment Assessment Level.

ii. Covered Units—Groundwater. If the investigation set forth in Paragraph 4.a.i. determines that there are COCs in soils below the Covered Units that are above the "Soil Assessment Level," which shall be the highest of either the (i) lowest critical TRRP Tier 1 residential soil PCL (assuming 0.5-acre source area and Class 1 groundwater), (ii) background concentration, or (iii) MQL, then within ninety (90) days of such determination, Defendants shall submit an addendum to the investigation plan (or submit a new groundwater investigation plan) to the TCEQ, for review and approval, in consultation with EPA, to extend the investigation for those COCs to groundwater below and, to the extent necessary, downgradient of the Covered Units. Tier 2 or Tier 3 $^{GW}Soil_{Ing}$ PCLs may be developed for any metal COCs exceeding the Tier 1 $^{GW}Soil_{Ing}$ PCLs or background concentrations. The development of Tier 2 $^{GW}Soil_{Ing}$ PCLs shall require pre-approval by the TCEQ before use. Defendants shall complete the groundwater investigation in accordance with a schedule in the investigation plan addendum (or new groundwater investigation plan) approved by the TCEQ.

iii. Covered Units—APAR. Upon completion of the investigations as specified in Paragraphs 4.a.i. and 4.a.ii., Defendants shall submit an APAR, using Form TCEQ-10325 or current applicable Form, documenting the Covered Units investigation results to the TCEQ, for review and approval, in consultation with EPA. The APAR shall be submitted within the time frame established in the approved schedule included in the investigation plan, investigation plan addendum, or supplemental groundwater investigation plan. The APAR shall be considered complete and approved when the full nature and extent of the contamination, risk assessment,

QA/QC procedures, Data Quality Objectives, and a description of recommended response actions, including interim actions, are documented and approved by the TCEQ, in consultation with EPA.

iv. Covered Units—Response Actions. If a response action plan ("RAP") is required by the TRRP rules, then within one hundred twenty (120) days after receipt of approval from TCEQ of the APAR referenced above in Paragraph 4.a.iii., Defendants shall submit a RAP to TCEQ, for review and approval, in consultation with EPA. The RAP shall include necessary response actions to remove, decontaminate, mitigate, or control any COCs at concentrations above the critical PCLs based on commercial/industrial land use or ecological or human receptors, as applicable, and in accordance with 30 Tex. Admin. Code § 350.78, that are present in the sediments within, or in soils below or groundwater below or downgradient of, the Covered Units pursuant to the TRRP, as codified at 30 Tex. Admin. Code Chapter 350, and 30 Tex. Admin. Code § 335.167 and 40 C.F.R. Part 264, Subpart F. The RAP shall include response action related to the sediments:

1. For COCs detected in the sediments at concentrations at or above those set forth in 40 C.F.R. § 261.24 as determined by the methodology referenced in 40 C.F.R. § 261.24; and

2. For COCs detected in the sediments at concentrations below those set forth in 40 C.F.R. § 261.24 as determined by the methodology referenced in 40 C.F.R. § 264.24, but above the Sediments Assessment Level, if results of a risk-based analysis indicates that a response action is necessary.

Defendants shall implement the RAP as approved or modified by TCEQ and according to the schedule approved by TCEQ, in consultation with EPA. Response actions may be conducted in phases for any Covered Unit to allow operational use of portions of the unit, as necessary, during these activities. The unit(s) may be subsequently used for non-hazardous waste management in accordance with 30 Tex. Admin. Code § 335.169 and 40 C.F.R. Part 264, Subpart G.

b. Ethylene Steam Strippers and Ethylene Pond.

Defendants must sufficiently demonstrate that the wastewater discharging from the Ethylene Steam Strippers into the Ethylene Pond has a benzene concentration of less than 0.5 parts per million ("ppm") during operations or manage that wastewater discharge as a regulated hazardous waste stream. Defendants shall conduct an Engineering Evaluation of alternatives to allow such demonstration.

Defendants shall submit to EPA and TCEQ a report on the Engineering Evaluation ("Engineering Evaluation Report") within one-hundred eighty (180) days after the Effective Date that describes the alternative chosen and has a schedule for construction, installation, and implementation of the alternative. The alternative chosen may include the option of providing for an ongoing demonstration of compliance by means other than ongoing sampling (e.g., monitoring process parameters) to reduce or eliminate sampling requirements. If such alternative is chosen, then the Engineering Evaluation Report shall include provisions for sufficient initial sampling at appropriate locations and with the appropriate frequency as necessary after the alternative is implemented to support the demonstration. Defendants shall submit the proposed alternative, schedule for completion , and any demonstration of compliance to TCEQ for review and approval, in consultation with EPA. If sampling of wastewater discharges indicates benzene concentrations above 0.5 ppm, in addition to management of the discharge as a regulated hazardous waste as stated above, then the Ethylene Pond shall be considered a Covered Unit under this Appendix and shall be subject to the investigation, APAR preparation and submittal, and potential response action provisions of Paragraphs 4.a.i. - 4.a.iv., above, except as modified below and that the 90-day deadline in Paragraph 4.a.i. shall commence from the date of receipt of the sampling results.

If the Ethylene Pond is deemed a Covered Unit pursuant to this Appendix, investigation of sediments within the unit shall comprise sampling and analysis of volatile organic compound COCs listed in Appendix IX of 40 C.F.R. Part 264. If any such COCs are detected in sediments at concentrations above the Sediment Assessment Level, then the investigation shall be extended to the soils below the Ethylene Pond for those COCs. This investigation shall be extended to groundwater below and, to the extent necessary, downgradient of the Ethylene Pond, only for COCs in soils below the Ethylene Pond that are determined to be above the Soil Assessment Level. Further, all other applicable procedural and substantive requirements specified in Paragraphs 4.a.i. - 4.a.iv., such as preparation, submittal, and implementation of investigation plans, the APAR, and any response action plan that may be necessary, would also apply.

5. Financial Assurance. Defendants shall provide financial assurance for response (and closure and post-closure, if applicable) and corrective actions required by this Consent Decree at the Facility in accordance with the TCEQ's financial assurance rules at 30 Tex. Admin. Code Chapter 37 and 40 C.F.R. Part 264, Subpart H.

APPENDIX D

CLEAN WATER ACT
Sabine River Operations Facility

1. Compliance Evaluation at the Facility

   a. Treatment System Evaluation. Defendants shall conduct an evaluation at the Facility to assess whether the wastewater collection, conveyance, and treatment systems in place are adequate to ensure compliance with the terms and conditions of Texas Pollutant Discharge Elimination System Permit No. WQ0000475000/TX0006327 ("TPDES Permit"), and the Tex. Water Code Chapter 26 and the regulations promulgated thereunder, including Title 30 Texas Administrative Code Chapter 305 (herein cumulatively referred to as "CWA Compliance"). The evaluations shall be conducted according to the schedule and requirements set forth in Paragraphs 1.a.i. – 1.a.iv., below.

      i. In accordance with the provisions set forth in Section V (Compliance Evaluation and Audit Requirements) of this Consent Decree, Defendants shall retain an Independent Third Party to carry out assessments and engineering analyses to evaluate the Facility's current and continuing CWA Compliance ("Treatment System Evaluation"). In addition to other criteria in Section V, the Independent Third Party must have at least five (5) years of experience with the requirements of National Pollutant Discharge Elimination System permits and with treatment systems for control of relevant effluent parameters in the Facility's TPDES Permit.

      ii. The Independent Third Party retention contract shall require that the Treatment System Evaluation is completed in accordance with the requirements set forth in subparagraphs a.ii. - a.iii. below on an approved schedule. The Independent Third Party retention contract shall require the Independent Third Party to prepare a proposed schedule for conducting the Evaluation, after consultation with Defendants concerning, among other factors, resource demands from concurrent or overlapping audits that could impede the audits' or Evaluation's prompt completion, and submit a proposed schedule to EPA for review and approval, in consultation with TCEQ, within sixty (60) days after the Independent Third Party is retained by Defendants. The Treatment System Evaluation shall include, identify, or create, but is not limited to:

         1. An identification and, if necessary, sampling analysis of all streams entering the collection, conveyance, and treatment systems, including but not limited to: wastewater, process wastewater, domestic wastewater, utility wastewaters, cooling and non-contact cooling streams; and a verification of the concentration, volume and flow of each stream;

2. A process flow diagram that identifies each component of the wastewater treatment plant;
3. A map identifying all laterals, mains, junction boxes, manholes, pump stations, sumps, and other infrastructure used to collect and convey wastewater into the collection and conveyance system;
4. An inspection of each component for physical integrity;
5. An identification of any locations of installed bypasses;
6. An analysis to determine the required hydraulic capacity for the proper treatment of wastewater at the Facility and the actual hydraulic capacity of the treatment plant;
7. An analysis to determine the pollutant removal efficiencies for typical operating conditions;
8. An analysis to determine any operational or environmental conditions when untreated wastewater may be discharged from the treatment plant;
9. A review of all sampling and monitoring procedures and methods to ensure that samples and measurements are representative, and the identification of sample technologies and pollutant monitors in use;
10. A determination of whether or not each discharged stream is accurately identified in the TPDES Permit and Application, and whether or not the appropriate waste stream is going to the appropriate outfall as identified in the TPDES Permit;
11. A plan to remove or render permanently inoperative all identified pipes and connections to the collection, conveyance, and treatment system that are no longer in use, and with no plans for use, and not accounted for in the Facility's TPDES permit; and
12. An evaluation of the technical feasibility, practicality, and effectiveness of existing treatment systems to ensure continuing compliance with the CWA and TPDES program. This evaluation shall take into account increased loading from any known or anticipated expansions at the Facility.

iii. The Independent Third Party retention contract shall provide that the Independent Third Party may use information from the RCRA Hazardous Waste Evaluation set forth in Section IV and Appendix C of this Consent Decree to assist in completing the Treatment System Evaluation.

iv. The Independent Third Party retention contract shall require that the Independent Third Party complete the CWA Compliance Review and Evaluation Report as set forth below.

1. Within sixty (60) days after completion of the Treatment System Evaluation, the Independent Third Party will submit to Defendants a draft report of its evaluation ("CWA Compliance Review and Evaluation Report") for the Facility, consistent with Section V of

this Consent Decree, that sets forth the results of the Treatment System Evaluation.

2. Defendants shall have forty-five (45) days after receiving the draft CWA Compliance Review and Evaluation Report to review and provide written comments to the Independent Third Party on the draft CWA Compliance Review and Evaluation Report. The Independent Third Party is not obliged to make any changes to the draft CWA Compliance Review and Evaluation Report it does not find to be objectively substantiated.

3. The Independent Third Party's final CWA Compliance Review and Evaluation Report, along with separate documents containing copies of the written comments made by Defendants and the Independent Third Party's responses to any of Defendants' written comments and explanations of resulting modifications, if any, made to the final CWA Compliance Review and Evaluation Report, shall be provided to Defendants, EPA and TCEQ within forty-five (45) days after the deadline for Defendants to provide written comments on the draft CWA Compliance Review and Evaluation Report.

4. Subject to the Modification provisions of Section XX of this Consent Decree, at the Independent Third Party's request, Defendants may seek extensions to the deadlines in Paragraph 1(a)(iv) of this Appendix. Any extension request(s) shall be in writing, shall include an explanation, and shall be submitted to EPA and TCEQ for approval or disapproval at least thirty (30)) days prior to the deadline. If EPA, in consultation with TCEQ, does not approve or deny the request at least five (5) days prior to the deadline, the deadline will be extended by ten (10) days.

b. <u>CWA Corrective Action Plan</u>.

i. If corrective action is required pursuant to the CWA Compliance Review and Evaluation Report, then within one hundred-twenty (120) days after receiving the CWA Compliance Review and Evaluation Report, Defendants shall submit to EPA for review and approval, in consultation with TCEQ, pursuant to Section VI of this Consent Decree (Approval of Deliverables), a CWA Corrective Action Plan. The CWA Corrective Action Plan shall identify any alterations, maintenance, equipment replacement, facility upgrade, modification, change, proposed permit revisions, or other measures to the associated collection, conveyance, and treatment system that will be taken to address the findings of the CWA Compliance Review and Evaluation Report. The CWA Corrective Action Plan shall include an expeditious schedule for completing all such measures.

ii. Defendants shall implement the plan according to the schedule provided in such Plan as approved by EPA, in consultation with TCEQ, provided, however, that such schedule shall begin no later than thirty (30) days after Defendants' receive notice of such approval. Furthermore, the Parties recognize that the schedule submitted by Defendants may include an anticipated approval date, and that Defendants may update the proposed schedule if it is not approved on or prior to the anticipated approval date.

2. Discharge Monitoring Reports ("DMRs")

In DMRs for the Facility, Defendants shall report all additional samples taken at sampling points identified in the TPDES Permit using EPA-approved methodologies for parameters identified in the TPDES Permit.

3. pH Monitoring and Control System

Within one-hundred eighty (180) days after receipt of the necessary permit approvals, unless a longer timeframe is approved by EPA, in consultation with TCEQ, Defendants shall install a pH control system near Outfall 201 and a pH meter to monitor pH on a continuous basis at Outfall 201.

a. Within sixty (60) days after the Effective Date, Defendants shall submit a TPDES permit amendment application to authorize and require pH meter continuous monitoring of wastewater at Outfall 201, with parameters and conditions as described below:

i. Defendants shall maintain the pH within the range specified by the TPDES permit. Excursions from the range are permitted. An excursion is an unintentional and temporary incident in which the pH value of the wastewater exceeds the range set forth in the Facility's TPDES permit. A pH excursion is not a violation and a non-compliance report is not required for pH excursions provided:

1. The excursion does not exceed the range of 5-11 standard pH units;
2. The individual excursion does not exceed 60 minutes; and
3. The sum of all excursions does not exceed 7 hours and 26 minutes in any calendar month.

ii. "Unintentional and temporary incident" refers to excursions that occur largely beyond an operator's control at a well-designed, well-operated facility. A pattern of systemic poor operations involving pH control or inadequate pH controls design does not constitute "unintentional or temporary incidents." The burden of proof is on EPA and/or the TCEQ to establish that Facility pH excursions do not constitute "unintentional or temporary incidents," because

of a pattern of systemic poor operations involving pH control or inadequate pH controls design.

4. Certification of Compliance

Within thirty (30) days after completion of the implementation of all measures required pursuant to the CWA Corrective Action Plan, if required, Defendants shall submit a report to EPA and TCEQ certifying that the Facility has completed and remains in compliance with the approved Corrective Action Plan. Within thirty (30) days after completion of the implementation of all measures required pursuant Paragraph 3 above, Defendants shall submit a report to EPA and TCEQ certifying that the Facility has completed installation of and is operating the pH Monitoring and Control System.

Final

APPENDIX E

ENVIRONMENTAL MANAGEMENT SYSTEM
Sabine River Operations Facility

a. Within thirty (30) days from the Effective Date, Performance Materials NA, Inc. ("PMNA") shall certify in accordance with Section IX (Reporting Requirements) of this Consent Decree that it has implemented the sections of The Dow Chemical Company's Operating Discipline Management System ("ODMS") necessary to establish an Environmental Management System ("EMS") for its operations at the Facility on a going-forward basis and that the ODMS satisfies the then current requirements of the International Organization for Standardization 14001 Environmental Management Standard.

b. On the first, second and third anniversaries of the Effective Date, PMNA shall submit a report to EPA and TCEQ ("ODMS Report") documenting changes to the ODMS for the Facility, if any, and its efforts to reformat, revise and otherwise update EMS-related records and other documentation created prior to PMNA's implementation of ODMS at the Facility.

c. This Appendix shall terminate upon PMNA's submission of the third ODMS Report to EPA and TCEQ following the third anniversary of the Effective Date.