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WHEREAS Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (EPA), has filed a civil Complaint in this action concurrently with this Consent Decree pursuant to Section 113(b)(2) of the Clean Air Act (CAA), 42 U.S.C. § 7413(b)(2); Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045; Section 311(b)(7)(E) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(7)(E) and (e)(2); and Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, against Defendant, Barton Solvents, Inc. (Defendant or Barton) with respect to its solvent blending, storage and distribution facilities (Facilities) located in Council Bluffs, Iowa; Kansas City, Kansas; Valley Center, Kansas; Bettendorf, Iowa; and Des Moines, Iowa.

WHEREAS the Complaint alleges that Defendant:

a. Violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) at its Valley Center and Des Moines Facilities by failing to: (1) identify hazards which may result from releases of hazardous substances using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which may occur;

b. Violated Section 304(b) and (c) of EPCRA, 42 U.S.C. § 11004(b) and (c), by failing to immediately notify the Kansas State Emergency Response Commission (SERC) Designee, which is the Kansas Emergency Management Department, of a release of hazardous substances that occurred at the Valley Center, Kansas Facility on July 17, 2007, and by failing to submit, as soon as practicable, a written emergency follow-up notice concerning said release to the SERC and the Sedgwick County Local Emergency Planning Committee (LEPC);

c. Violated Section 311(j) of the CWA, 33 U.S.C. § 1321(j), by failing to comply with the Spill Prevention Control and Countermeasure (SPCC) regulations promulgated under Section 311(j) of the CWA and set forth at 40 C.F.R. § 112 et seq. at its Facilities located in Des Moines, Iowa, Council Bluffs, Iowa, Bettendorf, Iowa and Kansas City, Kansas; and

d. Violated federal and state regulations promulgated, approved and federally enforceable under Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), pertaining to the characterization, management, and storage of hazardous and universal waste at its Facilities located in Valley Center, Kansas, Council Bluffs, Iowa and Kansas City, Kansas.

WHEREAS Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in this 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 between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

**I. JURISDICTION AND VENUE**

1. This court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3); Section 311 (b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n);

Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g); and 28 U.S.C. §§ 1331, 1345 and 1355. The Court has personal jurisdiction over the Parties.

2. Venue is proper in this judicial district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3); Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E); Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g); and 28 U.S.C. §§ 1391(b) and (c), and 1395(a) because Defendant's headquarters is located in this judicial district and some of the violations alleged occurred within this district at Defendant's facilities located in Des Moines, Council Bluffs and Bettendorf, Iowa.

3. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted.

## **II. APPLICABILITY**

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

5. No transfer of ownership or operation of any of the Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least fifteen (15) Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement (with confidential provisions marked as "Confidential Business Information" pursuant to 40 C.F.R. Part 2), to the United States in accordance with Section XIII (Notices and Submissions). Any attempt to transfer ownership or

operation of any of the Facilities without complying with this Paragraph constitutes a violation of this Decree.

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

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, contractors or Auditors to take any actions necessary to comply with the provisions of this Consent Decree, except as permitted by Section VIII (Force Majeure).

### **III. DEFINITIONS**

8. Terms used in this Consent Decree that are defined in the CAA, CWA, EPCRA, or RCRA, or in regulations promulgated thereunder, shall have the meanings assigned to them in such statutes or 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. “Applicable State RCRA Requirements” shall mean for the Kansas City, KS, El Dorado, KS, and Valley Center, KS Facilities, the EPA authorized Kansas RCRA requirements found at Kansas Administrative Regulations (KAR) 28-31-1-279a and for the West Bend, WI Facility, the EPA authorized Wisconsin RCRA regulations found at Wisconsin Administrative Code (WAC) Chapters NR 661, 662, 673, and 679.

b. “Auditor(s)” shall mean the independent third parties approved by EPA to conduct the CAA Section 112(r)(1) Audit, CWA Section 311(j) SPCC Audit, and the RCRA Audit pursuant to Appendix B of this Consent Decree.

c. “Audit Finding” shall mean each way in which any document, record, report, diagram, test, system, review, evaluation, policy, practice, plan, training, procedure, personnel, equipment, or other item, action or omission at a Facility deviates from, or does not comply or conform with Appendices A.1, A.2, and A.3 of this Consent Decree and/or a requirement or standard set forth in Appendix B, Paragraphs 5.c, 6.c, and 7.c.

d. “Complaint” shall mean the Complaint filed by the United States in this action.

e. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXI).

f. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

g. “Defendant” shall mean Barton Solvents, Inc.

h. “Date of Lodging” shall mean the date that this Consent Decree is lodged with the Court for public comment.

i. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

j. “Effective Date” shall have the definition provided in Section XIV.

k. “Interest” shall mean the rate specified at 28 U.S.C. § 1961.

l. “Facility” or Facilities” shall mean each or all of the following solvent blending, storage and distribution operations that are owned or operated by Defendant as of the

Date of Lodging of this Consent Decree:

Valley Center, Kansas Facility (VC Facility)  
201 South Cedar,  
Valley Center, KS 67147

Kansas City, Kansas Facility (KCK Facility)  
901 S. 66th Terrace  
Kansas City, KS 66111

Des Moines, Iowa Facility (DM Facility)  
1970 NE Broadway  
Des Moines, IA 50313

Bettendorf, Iowa Facility (Bettendorf Facility)  
201 36th Street  
Bettendorf, IA 52722

Council Bluffs, Iowa Facility (CB Facility)  
2135 9th Avenue  
Council Bluffs, Iowa 51501

El Dorado, Kansas Facility (ED Facility)  
2601 Pioneer Drive  
El Dorado, KS 67042

West Bend, Wisconsin Facility (WB Facility)  
800 Rail Way  
West Bend, Wisconsin 53095

m. “Federal RCRA Requirements” shall mean all requirements applicable to a Facility pursuant to RCRA, 42 U.S.C. § 6901 et seq., and the regulations promulgated thereunder including 40 C.F.R. §§ 260-299.

n. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

o. “Parties” shall mean the United States and Defendant.



p. “Section” shall mean a portion of this Decree identified by a Roman numeral.

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

#### **IV. CIVIL PENALTY**

9. Within thirty (30) Days after the Effective Date, Defendant shall pay the sum of One Million, One Hundred Thousand Dollars (\$1,100,000.00) as a civil penalty, together with Interest accruing from May 15, 2015.

10. Payment Method for Civil Penalty.

a. Of the \$1,100,000 civil penalty to be paid, Defendant shall pay \$1,046,000 as civil penalty for the CAA, EPCRA and RCRA violations alleged in the Complaint. Defendant shall pay the remaining \$54,000 as a civil penalty for the CWA violations alleged in the Complaint which shall be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

b. The Defendant shall pay the civil penalty at <https://www.pay.gov> or by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (FLU) of the United States Attorney’s Office for the Southern District of Iowa after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

David Casten  
1920 NE Broadway Avenue  
Des Moines, IA 50313  
[davec@barsol.com](mailto:davec@barsol.com)

(515) 265-7998

on behalf of Defendant. Defendant 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 XIII (Notices and Submissions).

11. At the time of payment, Defendant shall send notice that payment has been made: (a) to EPA via email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and (b) to the United States via email or regular mail in accordance with Section XIII (Notices and Submissions). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Barton Solvents, Inc.* and shall reference the civil action number and DOJ case number 90-5-2-1-10133.

12. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

#### **V. COMPLIANCE REQUIREMENTS**

13. The following compliance requirements in Paragraphs 14 - 24 below and Appendices A.1, A.2, and A.3, and Appendix B of this Consent Decree apply to each Facility except the VC Facility. As of the Date of Lodging of this Consent Decree, Defendant has ceased all business operations at the VC Facility. If during the term of this Consent Decree Defendant re-commences operations at the VC Facility, then it must comply with all requirements set forth in Paragraphs 14 - 24 below, Appendices A.1, A.2, and A.3, and Appendix B at the VC Facility and the Effective Date for purposes of these compliance requirements at the VC Facility shall be the date such operations commence.

**A. CAA Section 112(r)(1) Compliance Measures**

14. At each Facility, Defendant shall implement applicable statutes, regulations, codes, industry standards and practices or alternative methods to comply with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

15. Defendant shall comply with all requirements set forth in Appendix A.1 to this Consent Decree at the ED, CB, DM, KCK, WB and Bettendorf Facilities.

**B. EPCRA Compliance Measures**

16. At each Facility, Defendant shall comply with Section 304 of EPCRA, 42 U.S.C § 11004, and the regulations promulgated thereunder.

17. At each Facility, Defendant shall:

a. review and update the Integrated Contingency Plan (ICP) to ensure that it meets (i) timely release notification requirements (as soon as Barton has actual or constructive knowledge of any release other than federally permitted releases) of a hazardous substance or extremely hazardous substances in quantities equal to or greater than a reportable quantity in a 24-hour period); and (ii) the required follow up notification requirements for release of a reportable quantity under CERCLA and EPCRA (as soon as practicable after a release which requires immediate notice) as required by Section 304 of EPCRA, 42 U.S.C § §11004; and

b. amend the Federal and State Notifications section of the ICP so that it contains the current and correct agency and phone numbers as designated by the appropriate SERC and LEPC to ensure correct notification under Section 304 of EPCRA, 42 U.S.C § 11004.

**C. CWA Section 311(j) SPCC Compliance Measures**

18. At each Facility, Defendant shall comply with all applicable SPCC regulations promulgated under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and codified at 40 CFR 112 et seq.

19. Defendant shall revise the SPCC Plans for the ED, DM, KCK, CB, WB and Bettendorf Facilities so that each fully complies with all applicable SPCC regulations, codified at 40 C.F.R. § 112 et seq., and with Appendix A.2 of this Consent Decree.

**D. RCRA Compliance Measures**

20. Defendant shall comply with all Federal RCRA Requirements at each Facility and with Applicable State RCRA Requirements at each Facility, including but not limited to requirements relating to:

- a. determining whether wastes are hazardous at the point of generation as required by 40 C.F.R. § 261.3 and 262.11;
- b. storing hazardous waste without a Permit or interim status including:
  - i. conducting weekly inspections at all hazardous waste accumulation areas as required by 40 C.F.R. § 265.174;
  - ii. providing adequate aisle space as required by 40 C.F.R. § 265.35;
  - iii. training program requirements as required by 40 C.F.R. § 265.16;
  - iv. hazardous waste container labeling and dating requirements as required by 40 C.F.R. § 262.34; and requirements for closing satellite and storage containers as required by 40 C.F.R. § 265.173; and
  - v. hazardous waste contingency plan requirements as required by 40 C.F.R. § 265, Subpart D.

c. providing required notice to land disposal facilities receiving waste from Facilities as required by 40 C.F.R. § 268.7 and all applicable parts of 40 C.F.R. § 268; and

d. handling universal waste and used oil as required by 40 C.F.R. § 273 and Subpart B, and applicable provisions of Part 279.

21. Defendant shall comply with all requirements set forth in Appendix A.3 of this Consent Decree at the ED, DM, KCK, CB, WB and Bettendorf Facilities.

**E. Independent Third Party Compliance Audits**

22. Defendant shall retain independent third party Auditors who shall conduct the following compliance audits (Audits) at each Facility in accordance with the requirements set forth in Appendix B of this Consent Decree: (a) a CAA Section 112(r)(1) Audit; (b) a CWA Section 311(j) SPCC Audit; and (c) a RCRA Audit. The Audits will evaluate each Facility's compliance or conformance with the Audit standards set forth in Paragraphs 5.c, 6.c and 7.c of Appendix B and with the compliance requirements set forth in Paragraphs 14 - 21 above, and Appendices A.1, A.2, and A.3 of this Consent Decree. Defendant shall ensure that the Auditors conduct each Audit in accordance with all requirements set forth in Appendix B by the deadlines set forth in Paragraph 14 of Appendix B.

23. Defendant shall be solely responsible for paying for each Auditor's fees and expenses.

24. Notwithstanding the review or approval by any agency of the United States of any plans, reports, policies or procedures formulated pursuant to the Consent Decree, Defendant will remain solely responsible for compliance with the terms of the Consent Decree, all applicable permits, and all applicable federal, state, regional, and local laws and regulations.

25. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

## **VI. REPORTING REQUIREMENTS**

26. Defendant shall submit the following reports to EPA:
- a. Within fifteen (15) Days of the end of each calendar quarter, starting with the quarter after the Effective Date of this Consent Decree, Defendant shall submit a quarterly status report (paper and electronic copy) for activities occurring the previous quarter which includes, but is not limited to, the status of the Audits; the status of Audit Reports; the status of Defendant's responses to the Audit Findings; the status of any disputes regarding any Audit Findings in any Audit Report; and the status of implementation of measures to correct such Audit Findings.
  - b. Each report shall also include a statement regarding any measures taken to correct Audit Finding(s) that occurred after submission of prior quarterly status reports.
  - c. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten (10) Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial

steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. 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 thirty (30) Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraphs relieves Defendant of its obligation to provide the notice required by Section VIII (Force Majeure).

d. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in subparagraphs 26.a, b, and c above.

e. All reports shall be submitted to the persons designated in Section XIII (Notices and Submissions).

27. Certification of Reports.

a. Each report submitted by Defendant under this Section and under Appendix B shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations.

b. This certification requirement does not apply to emergencies or notifications where compliance would be impractical.

28. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CWA, CAA, EPCRA, or RCRA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or requirement.

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

## **VII. STIPULATED PENALTIES**

30. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this 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.

31. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$2,500 per Day for each Day that the payment is late.

32. Stipulated Penalties for Violation of Compliance Measures.

a. No stipulated penalties under this Consent Decree shall accrue for violations of the Compliance Measures set forth in Paragraphs 14 - 21 above, or Audit Findings listed in an Auditor's Report submitted to EPA pursuant to Appendix B, Paragraph 10, provided



that such Audit Finding is corrected as required by Appendix B, Paragraph 12. Except as set forth in Paragraph 63, the United States hereby explicitly reserves its rights to bring a civil action based on any violation of Compliance Measures set forth in Paragraphs 14 - 21, violations of other provisions of this Consent Decree, Audit Findings, or applicable law (including, but not limited to, actions for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt).

b. The following stipulated penalties shall accrue per violation per Day for violations of Compliance Measures set forth in Paragraphs 14 - 21 above where such violations commenced after the date for completion of the applicable Audit as set forth in Paragraph 14 of Appendix B, or where such violations are not contained in the Audit Findings listed in the Auditor's Report.

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
Days 1-10	\$750
Days 11-30	\$1,000
Days 31-59	\$1,500
Days 60 and Beyond	\$3,000

33. Stipulated Penalties for Failure to Perform Audits and Timely and Adequately Correct Audit Findings in Accordance with Appendix B of this Consent Decree. Defendant shall be liable for the following stipulated penalties that shall accrue per violation per Day for the following violations of the requirements pertaining to the compliance Audits as set forth in Appendix B.

a. Failure to complete an Audit in accordance with the Audit methodology set forth in Paragraphs 5, 6, and 7 of Appendix B, evaluate compliance or conformance with the specified Audit standards set forth in Paragraphs 5, 6, and 7 of Appendix B, and complete the Audit by the applicable deadline as set forth in Paragraphs 8 and 14 of Appendix B:

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
Days 1-10	\$350
Days 11-30	\$1,000
Days 31-59	\$1,500
Days 60 and Beyond	\$3,000

b. Failure of Auditor to submit Auditor's Report to EPA and/or of Defendant to submit Defendant's Audit Statement as required by Paragraphs 10 - 11 of Appendix B:

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
Days 1-10	\$250
Days 11-30	\$1,000
Days 31-59	\$1,500
Days 60 and Beyond	\$3,000

c. Failure of Defendant to correct an Audit Finding by applicable deadline as set forth in Paragraphs 12 and 14 of Appendix B:

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
Days 1-30	\$1,000
Days 31-59	\$2,000

Days 60 and Beyond	\$4,000
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34. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement set forth in Sections VI (Reporting Requirements) and X (Information Collection and Retention) of this Consent Decree:

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
Days 1-30	\$300
Days 31-59	\$1,000
Days 60 and Beyond	\$2,000

35. The following stipulated penalties shall accrue per violation per Day for all other violations of this Consent Decree not set forth in Paragraphs 31 - 34 above:

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
Days 1-59	\$200
Days 60 and Beyond	\$500

36. Except as provided in Paragraph 39.a and b below, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

37. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

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

39. Stipulated penalties shall continue to accrue as provided in Paragraph 36 above, during any Dispute Resolution, but need not be paid until the following:

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

b. if the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph 39.c below;

c. if any Party appeals the District Court's decision or order, Defendant shall pay all accrued penalties determined to be owing, together with Interest, within fifteen (15) Days of receiving the final appellate court decision if the decision is in favor of the United States.

40. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraphs 10 - 11 above, 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.

41. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for Interest on such penalties, accruing as of the date of receipt of EPA's written demand pursuant to Paragraph 37 above. Nothing in this Paragraph

shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

42. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States (including, but not limited to, statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt) for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of an applicable federal or state statute or regulation, Defendant shall be allowed a credit for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### **VIII. FORCE MAJEURE**

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

44. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic transmission to the United States, within four (4)

Days of when Defendant first knew or, with reasonable diligence, should have known, that the event might cause a delay. Within ten (10) Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all documentation available at that time supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant 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. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known. However, at any time before EPA notifies Defendant pursuant to Paragraphs 45 - 46 below as to whether it agrees that the delay or anticipated delay constitutes a force majeure event, Defendant may provide EPA with additional information that was not and could not have been known to Defendant at the time of the initial written notification of force majeure for consideration by EPA.

45. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other unrelated

obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

46. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

47. If EPA does not timely respond to Defendant's notice or does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, Defendant may invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution). If Defendant invokes dispute resolution, it shall do so no later than thirty (30) Days after receipt of EPA's decision. If EPA has not responded to Defendant's notice of force majeure, Defendant may invoke Dispute Resolution no earlier than thirty (30) Days and no later than ninety (90) Days after Defendant submitted its Force Majeure notice to EPA.

48. In any Dispute Resolution proceeding concerning Defendant's claim of force majeure, Defendant 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 Defendant complied with the requirements of Paragraphs and 43 - 44. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### **IX. DISPUTE RESOLUTION**

49. 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. Defendant's failure to seek resolution of a dispute

under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

50. 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 Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days following receipt of the Notice of Dispute, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures set forth in Paragraphs 51 - 55 below.

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

52. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of 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 Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.



53. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of 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.

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

55. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 53 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 53, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree.

56. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant 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 39. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and shall be paid as provided in Section VII (Stipulated Penalties) unless waived or reduced by the United States pursuant to Paragraph 38.

**X. INFORMATION COLLECTION AND RETENTION**

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

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; or
- e. assess Defendant's compliance with this Consent Decree.

58. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

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

60. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. 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.

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

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

**XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

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

64. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 63. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under any applicable federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 63. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, any of Defendant's Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

65. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to one of Defendant's Facilities or Defendant's violations, Defendant shall not assert, and may not maintain, any

defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 63.

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

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

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

## **XII. COSTS**

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

incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

**XIII. NOTICES AND SUBMISSIONS**

69. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent to the addresses listed below by both email and U.S. mail or an overnight delivery service. Where the Consent Decree requires a notice or submission to be provided to “the United States,” Defendant shall provide such notice to both U.S. Department of Justice (DOJ) and all of the EPA recipients listed below. Where the Consent Decree requires a notice or a submission to be provided only to “EPA,” Defendant need only provide such notice or submission to EPA and need not provide it to DOJ. Submissions pertaining to the VC, ED, CB, KCK, Bettendorf, and DM Facilities shall be directed to EPA Region 7 and those pertaining to the WB Facility shall be directed to EPA Region 5.

**AS TO THE UNITED STATES:**

**U.S. DOJ**

EES Case Management Unit  
Re: DJ No. 90-5-2-1-10133  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
eesdcopy.enrd@usdoj.gov

**EPA Region 7**

**Region 7 SPCC and GDC information:**

Margaret Stockdale  
USEPA REGION 7  
11201 Renner Blvd.  
Mail Code: AWMDSTOP

Lenexa, KS 66219  
[stockdale.margaret@epa.gov](mailto:stockdale.margaret@epa.gov)

Region 7 RCRA information:

Don Toensing  
USEPA REGION 7  
11201 Renner Blvd.  
Mail Code: AWMDRESP  
Lenexa, KS 66219  
Toensing.Donald@epa.gov

**EPA Region 5**

Region 5 RCRA information:

Walt Francis  
U.S. EPA, Region 5  
77 West Jackson Blvd (LR-8J)  
Chicago, IL 60604  
[francis.walt@epa.gov](mailto:francis.walt@epa.gov)

Region 5 GDC information:

Mick Hans  
U.S. EPA, Region 5  
77 West Jackson Blvd (SC-5J)  
Chicago, IL 60604  
[hans.mick@epa.gov](mailto:hans.mick@epa.gov)

**AS TO DEFENDANT:**

**Stinson Leonard Street**

David Tripp  
1201 Walnut, Ste. 2900  
Kansas City, MO 64113  
[David.Tripp@stinsonleonard.com](mailto:David.Tripp@stinsonleonard.com)

**Barton Solvents**

David Casten  
1920 NE Broadway Avenue  
Des Moines, IA 50313  
[davec@barsol.com](mailto:davec@barsol.com)  
(515) 265-7998

70. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

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

72. For all notices, submissions or other communications required under this Consent Decree, Defendant may assert any confidentiality claim which it has available under the federal Freedom of Information Act, 5 U.S.C. § 552 et seq.

#### **XIV. EFFECTIVE DATE**

73. 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.

#### **XV. RETENTION OF JURISDICTION**

74. 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 IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

#### **XVI. MODIFICATION**

75. 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.

#### **XVII. TERMINATION**

76. After Defendant has paid the Civil Penalty and any accrued stipulated penalties and Interest demanded by EPA, has completed the Audits and corrected all Audit Findings in accordance with the requirements set forth in Appendix B of this Consent Decree, and has



maintained substantial compliance with all other requirements of this Consent Decree for a period of two (2) years after it has completed all requirements of Appendix B, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

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

78. If the United States does not agree that the Decree may be terminated or does not respond to Defendant's Request within 180 Days, Defendant may invoke Dispute Resolution under Section IX.

#### **XVIII. PUBLIC PARTICIPATION**

79. 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. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Final approval of this Consent Decree by the United States is subject to the public notice, comment, and participation requirements under RCRA and 28 C.F.R. § 50.7.

80. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court, or to challenge

any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

**XIX. SIGNATORIES/SERVICE**

81. Each undersigned representative of Defendant 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.

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

**XX. INTEGRATION**

83. 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. Except for the Appendices identified in Section XXI below, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree, except as provided in Section XVI (Modification).

**XXI. APPENDICES**

84. The following appendices are attached hereto and hereby incorporated into this Consent Decree.

“Appendix A” lists compliance measures to be performed by Defendant pursuant to Paragraphs 15, 19, and 21 of this Consent Decree.

“Appendix B” sets forth the requirements for the Compliance Audits required by Paragraph 22 of this Consent Decree;

“Appendix C” lists RCRA protocols and checklists referred to in Appendix B of this Consent Decree.

“Appendix D” is Section 3.2.6 of Defendant’s Process Safety Management Program Manual Revision 2 (September 2014) for each Facility. Upon agreement of the Parties, this Appendix may be replaced by later versions of the Defendant’s Process Safety Management Program Manual and such replacement shall not be considered a material modification of this Consent Decree under Paragraph 75 of this Consent Decree.

**XXII. FINAL JUDGMENT**

85. 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 and Defendant. The Court finds that there is no just reason for delay and, therefore, enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

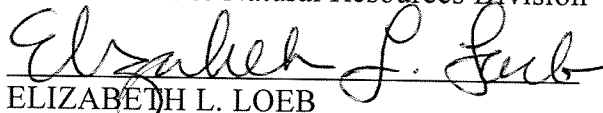
Dated and entered this     day of \_\_\_\_\_, 2015

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:



JOHN C. CRUDEN  
Assistant Attorney General  
Environment & Natural Resources Division



ELIZABETH L. LOEB  
Senior Counsel  
Environmental Enforcement Section  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044  
Elizabeth.Loeb@usdoj.gov  
(202) 616-8916

NICHOLAS A. KLINEFELDT  
United States Attorney

/s/ William C. Purdy  
WILLIAM C. PURDY  
Assistant U.S. Attorney  
110 E. Court Avenue, Suite 286  
Des Moines, Iowa 50309  
Tel: (515) 473-9315  
Fax: (515) 473-9282  
E-Mail: [bill.purdy@usdoj.gov](mailto:bill.purdy@usdoj.gov)

  
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MARK HAGUE  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
U.S. EPA, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

  
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DAVID COZAD  
Regional Counsel  
U.S. Environmental Protection Agency  
U.S. EPA, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

  
\_\_\_\_\_

JENNIFER TROTTER  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
U.S. EPA, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219



SUSAN HEDMAN  
Regional Administrator  
U.S. Environmental Protection Agency  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604



for: BERTRAM C. FREY  
Acting Regional Counsel  
U.S. Environmental Protection Agency  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

FOR BARTON SOLVENTS:

A handwritten signature in cursive script that reads "David Casten". The signature is written in black ink and is positioned above a horizontal line.

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David Casten  
Barton Solvents  
1920 NE Broadway Avenue  
Des Moines, IA 50313  
davec@barsol.com  
(515) 265-7998

# APPENDIX A.1



## **GDC COMPLIANCE MEASURES**

Prior to the commencement of the Audits required by Paragraphs 13 and 22 of this Consent Decree, at the ED, KCK, DM , CB, and Bettendorf Facilities, Defendant shall comply with all of the following requirements.

### **A. Conformance with Industry Standards**

1. At each Facility, Defendant shall complete a hazard review or analysis to fulfill the hazard assessment requirements under the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and take all necessary measures to correct each deficiency and address, to completion, each action item and/or finding from the hazard review or analysis.
2. At each Facility, Defendant shall continually implement a process to manage changes to equipment to prevent inappropriate, incompatible, and/or unsafe changes to equipment.
3. At each Facility, Defendant shall continually evaluate and implement currently recognized and generally accepted good engineering practices to minimize and address the hazards of the chemicals stored, handled, or processed.
4. At each Facility, Defendant shall certify that Standard Operating Practices are current and accurate.
5. At each Facility, Defendant shall conduct an analysis substantially consistent with Chapter 6 of the National Fire Protection Association (NFPA) 77 and NFPA 30 and the Society of Fire Protection Engineers (SFPE) and NFPA Engineering Guidance to Performance Based Fire Protection, 2nd Edition, to determine adequacy of existing fire and safety systems based on existing Facility design, siting, equipment, practices, fire load, and capabilities of local first responders.
6. Defendant's Process Safety Management (PSM) Program, Section 1.3, Professional Engineer Certification for each Facility shall contain a signature by a Professional Engineer certifying that process equipment meets the currently accepted industry standards (PSM Program Section 3.2.6) and practices. This includes but is not limited to bulk tanks, emergency pressure valves and pressure release valves, pumps, hoses and filling of totes, inerting, safety equipment, and grounding and bonding systems.
7. At each Facility, Defendant shall review its PSM Program, Section 3.1.3b, Safe Upper and Lower limits - Pressures for consistency with temperatures and pressures used in: (1) the hazard review and/or analysis, in Defendant's PSM Program Section 3.2 (Process Equipment); and (2) the original

equipment manufacturer's (OEM) manuals/specifications. This review shall include limits for all equipment used including, but not limited to, any nitrogen inerting equipment, pumps, and pressure relief valves.

8. At each Facility, Defendant shall update and review the process equipment subject to the PSM Program to make sure it is current and accurate for each Facility. This includes, but is not limited to, ensuring that where inerting, safety equipment, and grounding and bonding systems bulk tanks, emergency pressure valves, emergency relief valves, pumps, hoses are listed as process equipment, these systems are being properly operated, maintained, and utilized.
9. At each Facility, Defendant shall retain and maintain all the OEM specifications and manuals for all the current equipment used in processes handling extremely hazardous substances as part of Defendant's PSM Program, Section 3.2, Process Equipment.
10. At each Facility, Defendant shall review and establish Facility electrical classification determinations for process areas to determine if they meet NFPA 70.

**B. Conduct a Hazard Analysis Review Assessment**

1. At each Facility, Defendant shall review onsite tankage for spark promoters as part of the hazard review and/or analysis process under A.1 above and ensure that they are continually in compliance with industry codes, standards and practices including, but not limited to, American Petroleum Institute (API) 2003 4.1.3.4 and NFPA 77 8.5.2.3.
2. Each Facility's hazard review and/or analysis shall address and resolve all scenarios in the "what if" checklist (2014 appendix I of Defendant's PSM Program). This includes, but is not limited to, scenarios involving static electricity; external fire rupture/spill/explosion; and all other scenarios with a risk rating of "medium" and above or the likelihood of "frequent" or "occasional." These scenarios shall identify the person(s) who will perform actions, the person(s) who will track the status of such actions, and the person(s) who will create and maintain a target date for completion until the action is completed.
3. In 2014 Appendix J of Defendant's PSM Program, each Facility hazard review and/or analysis shall complete and resolve all "action items." The action items shall identify the person(s) who will perform actions, the person(s) who will track the status of the actions, and the person(s) who will create and maintain the target date for completion until the action is completed.

**C. Design and Maintain a Safe Facility**

1. At each Facility, Defendant shall develop and implement Management of Change (MOC) process for procedural and process equipment changes. If the MOC process includes emergency changes and temporary changes (short term), these changes cannot be extended indefinitely without further review. If changes covered by a MOC affect process safety information Defendant shall implement a pre start-up safety review (PSSR).
2. Defendant shall amend the Mechanical Integrity Section of the PSM Program (Appendix A table 1) to include all process related equipment as indicated in the hazard review and/or analysis (Appendix I & J of Defendant's PSM Program). These sections of the PSM Program shall be specifically updated to include nitrogen inerting equipment where applicable; bulk storage tank monthly visual inspections.
3. Defendant shall develop written operating procedures that provide clear and detailed instructions for safely conducting activities associated with those substances listed under Section 112(r)(3) of the CAA General Duty Clause, 42 U.S.C. § 7412(r)(3), that include:
  - a. Emergency operations;
  - b. Emergency shutdown of process equipment;
  - c. Normal operations that include, but are not limited to, the transfer of fluids, blending, and sampling, that, at a minimum, address the following: introduction of air into lines, pump speeds and rates, splash filling, proper placement of fill pipes relative to liquid level and bottom of tank, use of anti-static additives, use of inert gases, grounding and bonding, and meeting generally accepted industry standards and/or manufactures recommendations for flammables.

**D. Equipment Inspection or Maintenance of Process Equipment**

1. At each Facility, all employees handling substances listed under Section 112(r)(3) of the CAA General Duty Clause, 42 U.S.C. § 7412(r)(3), shall be trained in the current operating procedures. All employees shall be trained in all MOCs prior to actually performing the procedure.
2. At each Facility, all operating procedures shall be current, accurate, and set forth in writing pursuant to Section C.3 above. These procedures shall be annually certified for minimum of 5 years.

# APPENDIX A.2

### **SPCC COMPLIANCE MEASURES**

Prior to the commencement of the Audit required by Paragraphs 13 and 22 of this Consent Decree, the SPCC Plans for the ED, CB, KCK, DM, and Bettendorf Facilities shall include the following:

1. A signed copy of Appendix C to the SPCC Plan (Certification of the Applicability of the Substantial Harm Criteria).
2. A signature of a registered Professional Engineer certifying each Plan and that each Plan meets the requirements of 40 C.F.R. § 112.3(d).
3. A statement that satisfies the requirements of information required by 40 C.F.R. § 112.5 (a),(b), and (c), including, but not limited to, identifying all amendments to the SPCC Plan that have been made, who made the amendments, and when the amendments were made.
4. The name, date, and signature indicating management approval at a level of authority able to commit resources as required by 40 C.F.R. § 112.7.
5. A description of the physical layout of the Facility including a diagram that meets all of the requirements of 40 C.F.R. § 112.7(a)(3).
6. Information and procedures to enable a person reporting an oil discharge to meet the reporting requirements set forth in 40 C.F.R. § 112.7(a)(4).
7. Records of inspections and tests for the past three years, signed by a supervisor or inspector, and kept with the SPCC Plan as required by 40 C.F.R. § 112.7(e).
8. Documentation as to whether the Facility has a true loading rack as defined in 40 C.F.R. § 112.7(h). For each such loading rack, the SPCC Plan shall provide a description of the containment system.
9. All information regarding qualified oil-filled operational equipment as required by 40 C.F.R. §112.7(k).
10. Appropriate qualifications for personnel performing tests/inspections in accordance with industry standards as required by 40 CFR §112.8 (c)(6).
11. Comparison records for above ground container integrity testing as required by 40 C.F.R. § 112.8(c)(6).

# APPENDIX A.3

## **RCRA COMPLIANCE MEASURES**

**Prior to commencement of the Audits required by Paragraphs 13 and 22 of this Consent Decree, Defendant shall comply with the following compliance measures at the ED, CB, KCK, DM, and Bettendorf Facilities:**

**I. Hazardous Waste Determinations**

1. At each Facility, Defendant shall make all hazardous waste determinations at the point of generation when the product becomes a waste and is no longer functional. The determination shall be made before any dilution, treatment, or mixing of wastes occur.
2. At each Facility, records of all hazardous waste determinations relying on waste profiles shall include the profiles relied upon.
3. At each Facility, all hazardous waste determinations relying on process knowledge shall include specific information about the process/processes relied upon.
4. At each Facility where a hazardous waste determination is conducted for tank farm water, documentation shall be provided showing that the testing used has the ability to detect the type and amount of any potential Volatile Organic Compounds/solvents in the tank farm water.

**II. Integrated Contingency Plans (ICPs), Training Plans (TP), Training Matrix (TM), and Training Course List (TCL)**

**A. Requirements:**

1. All information in the ICP, TP, TM, and TCL shall be consistent in all of these documents.
2. The ICP for each Facility shall describe all actions the Facility will take to comply with 40 C.F.R. §§ 265.51 and 265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the Facility. 40 C.F.R. § 265.52(a); 40 C.F.R. § 262.34(a)(4), KAR 28-31-262, and KAR 28-31-265 (requiring compliance with 40 C.F.R. § 265.52(a)). Specifically, each Facility ICP shall include:
  - a. Actions that shall be taken after a tornado. Where the Initial Response Section of the ICP addresses tornados, it shall list the actions to be taken in after a tornado including, but not limited to, inspecting hazardous waste storage for damage; addressing damaged hazardous waste containers/spills/leaks; and any other actions that are necessary.

- b. The signals that indicate an evacuation, the primary and secondary evacuation routes, how safety will be ensured, and how the emergency will be stabilized (in the Emergency Response Information, Sustained Actions Section of each ICP).
  - c. Training information in the ICP section discussing fires (small fires) that matches the training information in each Facility TP and TM. If all employees receive training on how to use fire extinguishers then each Facility ICP, TP, and TM shall indicate that all employees receive training. If all employees do not receive such training, each Facility ICP, TP, and TM shall list the name(s) of the individual(s) that are trained to use extinguishers.
  - d. There shall be consistent information about the number of phases referred to in the Incident-Emergencies Section of the ICP and in the other parts of the ICP.
  - e. Current maps indicating evacuation routes. These maps shall be updated to incorporate changes as changes occur.
  - f. Clear instructions that the Emergency Coordinator/Emergency Contact (EC) is to be contacted immediately upon discovery of an emergency (spill, fire, release etc.).
  - g. A complete list of arrangements that have been made with local authorities. This shall include a complete description of what actions have been taken and the equipment each local authority is responsible for providing.
3. The ICP for each Facility shall include a list of all emergency equipment at the Facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), and where this equipment is required. The ICP shall also include the location, and a physical description of each item on the list, and a brief outline of its capabilities per 40 C.F.R. § 265.52(e); KAR 28-31-262, KAR 28-31-265, and 40 C.F.R. § 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.52(e)). Specifically, each Facility ICP shall include:
- a. An emergency equipment list that includes soda ash used to address a spill or other emergency.
  - b. An emergency equipment list that includes the location of all fire extinguishers, intercom systems, phones, fire hydrants, and all other equipment used in an emergency.
4. The ICP for each Facility shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as EC as required by



40 C.F.R. § 265.55. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary EC and others shall be listed in the order in which they will assume responsibility as alternate ECs.

40 C.F.R. § 265.52(d); KAR 28-31-262, KAR 28-31-265, and 40 C.F.R. § 262.34(a)(4) (requiring compliance with 40 C.F.R. § 265.52(d)).

Specifically, each Facility ICP shall include:

- a. The Primary and alternate ECs' home phone numbers under the title "normal business hours" and under the title "non-business hours."
  - b. Information pertaining to the EC. Each Facility ICP shall identify every employee who can fill the role of EC, per 40 C.F.R. § 265.52(d). Each Facility TP shall also contain job descriptions for each title/position, a description of the training given, a list of the individuals assigned to each position, and required qualifications for all employees listed to perform the role of EC, per 40 C.F.R. § 265.16(d).
  - c. Information on the EC assistant. If the Facility ICP refers to an EC assistant, then the TP shall include a job description for this title/position, a description of the training given, a list of the individuals assigned to this position, and the required qualifications per 40 C.F.R. § 265.16(d).
  - d. Information on roles during an emergency. If the Facility ICP indicates that any staff member can fill multiple roles during an emergency, then it shall include a job description for each title/position, a description of the training given for each position, a list of the individuals assigned to these positions, and the required qualifications for each of these positions. This information shall also be included in the corresponding Facility TP.
  - e. Information on temporary ECs. If the Facility ICP indicates that a discoverer of an emergency becomes temporary EC until the EC arrives, then it shall list each individual who can act as a temporary EC.
5. The TP for each Facility shall explain how it ensures that Facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable: (i) Procedures for using, inspecting, repairing, and replacing Facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to ground-water contamination incidents; and (vi) Shutdown of operations. 40 C.F.R. § 265.16(a)(3); KAR 28-31-262, KAR 28-31-265 and 40 C.F.R.

§ 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(a)). Specifically, each Facility TP shall include:

- a. State requirements for the state where each Facility is located. This includes, but is not limited to, listing state required training for used oil. Training on applicable state requirements shall be consistent throughout all applicable parts of the TP.
  - b. Hazardous Waste Management Work Instruction and Hazardous Waste Management Procedure documents that list all state specific requirements for the state where each Facility is located including, but not limited to, state requirements for generator classes; the amount of wastes applicable to each generator class; and incompatibility requirements. The information in these documents shall be consistent with the information in TP, TM, and TCL.
  - c. A list of site specific information and training regarding the actions employees would take to address spills, to address fires, and to respond to any other type of emergency/disaster that requires implementation of ICP.
  - d. Information on the response team. If the Facility ICP refers to the existence of a “response team,” then it shall identify the employees on that team, describe what training is given to those employees, include the job description of each individual on the team, and list required qualifications for team members. This information shall also be included in the corresponding Facility TP.
6. Each TP shall include the job title for each position at the Facility related to hazardous waste management, and the name of the employee filling each job as required by 40 C.F.R. § 265.16(d)(1); KAR 28-31-262, KAR 28-31-265, and 40 C.F.R. § 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(d)(1)). Specifically, each Facility TP shall include:
- a. Job titles/job descriptions/training documentation that are consistent with information in the Facility TP, TM, and TCL. This includes, but is not limited to, required information for titles of each Manager; General Manager; and Corporate Sales Manager.
  - b. Information on the job title/description for Driver. If the Facility TP contains a job description for the title of “Driver,” then the TP shall also include the specific qualifications required for that position. Such qualifications include, but are not limited to, whether a CDL (commercial driver’s license) is required and whether hazardous materials certification on a CDL is required.

- c. Information on specific duties for the positions of Warehouseman and Driver. If the Facility TP indicates that Warehouseman and Driver positions perform emergency response duties, then the TP shall also include documentation that these employees are receiving training on emergency equipment use and inspection and repair in order to perform their duties. This information shall also be indicated in each Facility TP and TM.
  - d. Information on duties of part time employees and their training. If the Facility TM and TP indicate that part time employees label containers as part of their job description, the TM shall also list all the training such part time employees are receiving to allow them to label containers. This information shall include training on pre-transport requirements that include labeling and manifesting.
7. The TP shall include a written job description for each position listed under 40 C.F.R. § 262.16(d)(1) (positions related to hazardous waste management). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of Facility personnel assigned to each position. 40 C.F.R. § 265.16(d)(2); 40 C.F.R. § 262.34(a)(4), KAR 28-31-262, and KAR 28-31-265 (requiring compliance with 40 C.F.R. § 265.16(d)(2)). Specifically, each Facility ICP and/or TP shall include:
- a. The titles/positions for Temporary Incident Commander, Temporary EC, and EC Assistant, and for each of the above positions, the TP shall include a job description, the name of all employees who can fill each of these positions, a description of the training given for each position and each individual who receives such training, and the required qualifications for each position.
  - b. Information on fire drills. If the Facility ICP indicates fire drills are performed, then it shall include a job description for each position responsible for performing such drills, the training that is given to employees in that position, and required qualifications for that position. This information shall also be included in the corresponding Facility TP.
  - c. A job description for part time and temporary employee positions that are referenced in training documentation. Each Facility TP shall also include a list of employees filling those positions, all training that these individuals/positions are receiving, required qualifications, and job descriptions for those positions. The training listed shall enable each individual to fulfill all of the duties in their job descriptions.

8. The TP shall detail how training records will include a description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 40 C.F.R. § 265.16(d)(1), 40 C.F.R. § 265.16(d)(3); KAR 28-31-262, KAR 28-31-265, and 40 C.F.R. § 262.34(a)(4) (requiring compliance with 40 C.F.R. § 265.16(d)(3)). Specifically, each Facility TP shall include:
  - a. A TCL that is legible and describes all training that is given.
  - b. Information indicating that individuals with the job description of training providers have received the training they are providing. Each type of training that is given by a training provider shall be listed as a part of that individual's job description.
  - c. All job descriptions at the Facility and the amount of training for each such position.
  - d. Consistent job descriptions and training for all positions that indicate they are being cross trained. The Facility TM and TCL shall also indicate that all of these employees/ job descriptions are receiving all of the same training.
  - e. Details of the type and amount of introductory and continuing training. This could be done referencing applicable information in that Facility's ICP and TCL or by listing out all necessary information.
  - f. A list of Department of Transportation (DOT) training requirements and the amount of DOT training that is given for each applicable employee.
  - g. Identification of any third party providers given duties in the emergency actions and controls section of the Facility ICP. These third party providers shall also be identified in the ICP and each Facility TP shall document that each third party provider has been given training for the job duties they are assigned in the ICP.
  - h. Documentation on RCRA training. If the Facility TP requires a job description to know RCRA regulations, then the TP shall state that each of these job descriptions have been trained on 40 C.F.R. §§ 265, 268, 279. These job descriptions include, but are not limited to, lab personnel and dispatchers.
  - i. A detailed description of the training necessary for the training requirements for the position/job description of Operations Manager and the amount of training that is given to the person in that position.
9. Each TP shall document the training or job experience required under 40 C.F.R. § 265.16 (a), (b), and (c) that has been given to, and completed by,

# Appendix B

Facility personnel. 40 C.F.R. § 265.16(d)(4); KAR 28-31-262, KAR 28-31-265, and 40 C.F.R. § 262.34(a)(4) (requiring compliance with 40 C.F.R. § 265.16(d)(4)). Specifically, each Facility TP shall include for each job description:

- a. The type of training required,
- b. Specific requisite skill required,
- c. Required qualifications, previous work history, and
- d. A statement on how the training relates to each job description.

This could be done by referencing applicable information in that Facility's ICP and TCL or by listing out all necessary information.

**Appendix B: Requirements for Independent Third Party Compliance Audits**

1. Pursuant to Paragraphs 13 and 22 of the Consent Decree, Defendant shall retain independent third party auditors (Auditors) who shall conduct the following compliance Audits at each Facility (except the VC Facility unless required pursuant to Paragraph 13 of the Consent Decree) in accordance with the requirements set forth in this Appendix B: (a) a CAA Section 112(r)(1) Audit; (b) a CWA Section 311(j) SPCC Audit; and (c) a RCRA Audit. Defendant shall give each Auditor a copy of this Consent Decree and all appendices, as well as all other information and access necessary to complete the Audits set forth herein. The Audits will evaluate each Facility's compliance or conformance with the Audit standards set forth in Paragraphs 5.c, 6.c, and 7.c below and with the compliance requirements set forth in Appendices A.1, A.2, and A.3 to this Consent Decree. Defendant shall ensure that the Auditors conduct the Audits in accordance with the requirements set forth in Paragraphs 3 - 15 of this Appendix B.

2. The definitions set forth in Section III of the Consent Decree shall apply in the Audits conducted in accordance with this Appendix.

3. EPA Approval of Auditors.

a. EPA has approved the following Kestrel Management employees as independent third party Auditors to conduct the three separate Audits set forth in Paragraphs 5, 6 and 7 below.

- i. GDC Audit: Randy Block
- ii. SPCC Audit: Jack Anderson
- iii. RCRA Audit: Sarah Burton
- iv. Alternate Auditor for All Audits: Robert Evangelisti

b. If EPA has approved an Auditor and that Auditor cannot satisfactorily perform the Audit, within sixty (60) Days of learning that the Auditor cannot satisfactorily perform the Audit, Defendant shall submit to EPA for approval a proposed replacement independent third party Auditor that has the applicable qualifications as set forth in Paragraphs 5.a, 6.a, or 7.a below for the type of audit that Auditor is to conduct. EPA shall review the proposed replacement Auditors and either approve them, or disapprove them and provide Defendant with the reasons for such disapproval. Nothing in this paragraph precludes the United States from assessing stipulated penalties for missed Audit deadlines associated with the need to replace an Auditor unless Defendant successfully asserts that the inability of the Auditor to perform the Audit as required was a Force Majeure event in accordance Section VIII of the Consent Decree.

4. Notice of Audit Commencement. At least thirty (30) Days prior to the commencement of each Audit, Defendant shall provide notice to EPA pursuant to Section XIII of this Consent Decree (Notices and Submissions) of the Day that each Audit will commence along with the checklist that the Auditor(s) propose to use for the Audit

5. Section 112(r)(1) Audit. Defendant shall ensure that the Auditor conducts a Section 112(r)(1) Audit at each Facility as required by Paragraphs 13 and 22 of the Consent Decree.

a. Auditor Qualifications. The Auditor for each Section 112(r)(1) Audit shall be an independent third party who has extensive knowledge and expertise in the field of flammable and combustible liquids, static electricity, and associated codes, industry standards, and industry practices, including but not limited to those listed in Paragraph 5.b and c below and those listed codes, standards, practices found in Section 3.2.6 of Defendant's September 2014



Process Safety Management (PSM) Program Manual Revision 2 (September 2014) for each Facility, which is attached to the Consent Decree as Appendix D.

b. Section 112(r)(1) Audit Methodology and Sequence

i. Paper Audit. The Auditor for the Section 112(r)(1) Audit shall first review all documents related to implementation of Section 3.2.6 of Defendant's PSM Program Manual Revision 2 (September 2014) attached as Appendix D, engineering and design specifications, and other documents relating to the physical systems of the flammable/combustible liquids processes at each Facility including but not limited to each facility's hazard review and/or analysis (HA), management of change (MOC), and standard operating procedures (SOPs). The Auditor will additionally determine if Defendant has identified, and its written policies and practices conform with, the most current applicable federal, state and local codes and regulations, and industry practices, standards and guidelines.

ii. On-Site Audit. Following the Paper Audit set forth in Paragraph 5.b.i above, at each Facility the Auditor shall conduct on-site evaluations of the equipment, processes, practices, systems, training, operations and maintenance relating to the handling and storage of flammable/combustible liquids including but not limited to the following items listed in (a) through (d) below.

- (a) Safety Systems and Safety Relief Valve Systems
  - (1) Fire protection
  - (2) Grounding and bonding
  - (3) E-stop/emergency shutdown systems
  - (4) Inerting systems
  - (5) Electrical classification

- (6) Emergency action and response plans/programs
- (b) Bulk Liquid Tankage
  - (1) Secondary containment
  - (2) Tank farm design, operations & maintenance
  - (3) Controls and pumps
  - (4) Storage & blend tank design
  - (5) Storage & blend operations & maintenance
- (c) Operating Procedures
  - (1) Bulk Shipping & Receiving
  - (2) Packing (totes & drums)
  - (3) Grounding & Bonding
- (d) Managing Changes

c. Section 112(r)(1) Audit Standards. In the Audit at each Facility set forth in Paragraph 5.b above, the Auditor shall evaluate the conformance of each Facility's documents, HA, MOC and SOPs, processes, practices, policies, designs, procedures, systems, training, equipment, operations, and maintenance with the following standards:

- i. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);
- ii. Appendix A.1 of this Consent Decree; and
- iii. all applicable federal, state and local codes and regulations, and

current accepted industry practices, standards and guidelines, including but not limited to the applicable provisions of:

- (a) API STD 653, Tank Inspection, Repair, Alternation, and

Reconstruction;

- (b) API 2000, Venting Atmospheric and Low – pressure Storage Tanks;
- (c) API RP 2003, Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents;
- (d) NFPA 70 - National Electrical Code, National Fire Protection Association, Quincy, MA;
- (e) NFPA 70B, Recommended Practice for Electrical Equipment Maintenance;
- (f) NFPA 30, Flammable and Combustible Liquids Code;
- (g) NFPA 77, Recommended Practice on Static Electricity;
- (h) UL 142, Standard for Steel Aboveground tanks for Flammable and Combustible Liquids;
- (i) International Code Council (ICC), International Building Code;
- (j) ICC International Fire Code;
- (k) any additional national or location-specific regulations, codes, standards or guidelines that the Auditor determines applies to a Facility; and
- (l) any other codes, standards, and practices listed in Section 3.2.6 of each Facility’s PSM Program Manual Revision 2 (September 2014) attached to the Consent Decree as Appendix D.

The Auditor shall evaluate conformance with all of the above-listed codes, standards and practices regardless of any retroactivity or grandfathering limitations contained therein.

Defendant may use alternative methods for achieving compliance with the requirements of the

applicable and recommended industry practices and/or standards as long as the selected alternatives are documented by the Facility to be equivalent to or better than the applicable industry standards in reducing the hazards.

6. CWA Section 311(j) SPCC Audit. The Defendant shall ensure that the Auditor conducts a CWA Section 311(j) SPCC Audit as set forth below at each Facility except the WB Facility as required by Paragraphs 13 and 22 of the Consent Decree.

a. SPCC Auditor Qualifications. The Auditor for each CWA Section 311(j) SPCC Audit shall be an independent third party and professional engineer with expertise in the development and implementation of SPCC plans in accordance with SPCC requirements codified at 40 CFR §112 et seq. The Auditor must be knowledgeable of SPCC regulations and have experience in evaluating the compliance of facility plans, policies, practices and procedures with applicable SPCC regulations, plans and requirements.

b. CWA Section 311(j) SPCC Audit Methodology and Sequence.

i. Paper Audit. The Auditor for the CWA Section 311(j) SPCC Audit shall first review each Facility's documents related to SPCC compliance including its SPCC Plan required by 40 C.F.R. § 112 et seq., the Facility's SPCC training records and all documents listed in the U.S. Environmental Protection Agency SPCC Field Inspection and Plan Review Checklist (December 10, 2012).

ii. On-Site Audit. Following the Paper Audit set forth in Paragraph 6.b.i above, the Auditor shall conduct on-site evaluation of the oil handling and storage operations at each Facility to assess Defendant's compliance with applicable SPCC regulations and requirements. These on-site Audits shall include inspection and evaluation of:

(a) all bulk liquid storage facilities subject to SPCC regulations and requirements;

(b) secondary containment and tank design operations, maintenance and controls; and

(c) emergency response drills and programs and emergency response procedures.

c. Section 311(j) SPCC Audit Standards. The Auditor for the Section 311(j) SPCC Audit shall evaluate each Facility's SPCC Plans, training records and other SPCC related documents and the items listed in Paragraph 6.b.ii above for compliance with the following standards:

i. applicable SPCC Regulations found at 40 C.F.R. §112 et. seq.

ii. Appendix A.2 of this Consent Decree;

iii. other requirements contained in the Facility's SPCC Plan and SPCC Training Plan; and

iv. U.S. Environmental Protection Agency SPCC Field Inspection and Plan Review Checklist (December 10, 2012).

7. RCRA Audit. Defendant shall ensure that the Auditor conducts a RCRA Audit as set forth below at each Facility as required by Paragraphs 13 and 22 of the Consent Decree.

a. Auditor Qualifications. The Auditor for each RCRA Audit shall be an independent third party with substantive knowledge and expertise of Federal RCRA Requirements and Applicable State RCRA Requirements. The Auditor must have familiarity with the operations and practices of the Facilities to be audited and must have experience in evaluating compliance with Federal RCRA Requirements and Applicable State RCRA

Requirements including but not limited to evaluation of training plans, contingency plans, hazardous waste determinations, generator requirements, and transporter requirements.

b. RCRA Audit Methodology.

i. Paper Audit. The Auditor for the RCRA Audit shall first:

(a) identify the Federal RCRA Requirements and Applicable State RCRA Requirements that apply to each Facility;

(b) review State and EPA RCRA files for each Facility at State and EPA regional offices if the Auditor determines such review is needed to perform Audit requirements; and

(c) review the paper and electronic files at each Facility related to compliance with Federal RCRA Requirements and Applicable State RCRA Requirements and Appendix A.3 of this Consent Decree, including but not limited to the Integrated Contingency Plans (ICPs), Training Plans (TP), Training Matrix (TM), and Training Course List (TCL), hazardous waste determination protocols, procedures and documentation; hazardous waste storage protocols, procedures and documentation, manifesting protocols, procedures and documentation; land disposal protocols, procedures and documentation; and EPA-enforceable transporter protocols, procedures and documentation.

ii. On-Site Audit. Following the Paper Audit set forth in Paragraph 7.b.i above, the Auditor shall conduct an on-site evaluation at each Facility. The Auditor may use whatever assessments or evaluations he or she believes will aid in the compliance evaluation but at a minimum shall:

(a) conduct the on-site evaluation in accordance with the applicable provisions of the “Protocol for Conducting Environmental Compliance Audits of

Hazardous Waste Generators under RCRA” and “Protocol for Conducting Environmental Compliance Audits of Used Oils and Universal Waste Generators under the Resources Conservation and Recovery Act,” both of which are listed in Appendix C of the Consent Decree, and shall complete the applicable portions of checklists contained in these protocols that delineate all items that were evaluated;

(b) for the VC, ED and KCK Facilities, the RCRA Auditor shall also follow the KDHE checklist listed in Appendix C to this Consent Decree (the Hazardous Waste Generator Regulations: A User-Friendly Reference Document Version 6: August 2012); and

(c) for the WB Facility the RCRA Auditor shall also follow the Wisconsin Checklist entitled Large Quantity Generator Inspection (Revision: 12/03/2012) listed in Appendix C to this Consent Decree.

c. RCRA Audit Standards. The RCRA Auditor shall evaluate each Facility’s compliance with the following standards:

i. all Federal RCRA Requirements and Applicable State RCRA Requirements including but not limited to the requirements pertaining to:

(a) Storage of waste less than 90 days including, aisle space of storage areas, training for all personnel that handle or manage hazardous waste (40 C.F.R. Part 265, Subpart B, General Facility Standards);

(b) Integrated Contingency Plans (Hazardous Waste Contingency Plan) (40 C.F.R. Part 265, Subpart D, Contingency Plan and Emergency Procedures);

- (c) Pre-Transport Requirements (40 C.F.R. Part 262, Subpart C); including container packaging, labeling, marking, dating, placarding and accumulation time);
  - (d) Preparedness and Prevention (40 C.F.R. Part 265, Subpart C);
  - (e) The Manifest (40 C.F.R. Part 262, Subpart B);
  - (f) Transporters (40 C.F.R. Part 263);
  - (g) Land Disposal Restrictions (40 C.F.R. Part 268);
  - (h) Air Emission Standards for Tanks, Surface Impoundments, and Containers (40 C.F.R. Part 265, Subpart CC);
  - (i) Universal Waste (40 C.F.R. Part 273, Subparts A, B and D);
  - (j) Used Oil (40 C.F.R. Part 279, Subparts A, B, C and E); and
  - (k) Closing containers and addressing incompatible wastes (40 C.F.R. Part 265, Subpart D).the requirements set forth in Appendix A.3 of this Consent Decree; and
- ii. the checklists listed in Appendix C of this Consent Decree.

8. Audit Completion. Defendant shall ensure that each Auditor completes each Audit at each Facility no later than the applicable deadline for each Facility set forth in the Table in Paragraph 14 below.



9. Audit Out-briefing.

a. Within five (5) Days of the completion of each on-site Audit, the Auditor will conduct an out-briefing with Defendant in which the Auditor shall orally convey the major Audit Findings.

b. Defendant shall notify EPA of the scheduled date of the out-briefing for each Audit at least five (5) Days prior to the out-briefing. EPA shall have the right to have its representatives (including contractors) attend the out-briefing either in person or telephonically. If the out-briefing date changes, Defendant shall notify EPA at least 48 hours prior to the out-briefing.

c. Defendant shall correct Audit Findings disclosed at the out-briefing in accordance with Paragraph 12 below. Regardless of whether the Defendant corrects such Audit Findings, the Auditor shall include such Audit Findings in the Auditor's Report submitted to EPA pursuant to Paragraph 10 below, but may also include a description of the correction(s) that occurred prior to submission of the Auditor's Report.

10. Auditor's Report. For each Audit at each Facility, no later than the applicable deadline set forth in the table in Paragraph 14 below, Defendant shall ensure that the Auditor submits a report of the Audit results (Auditor's Report) directly to EPA pursuant to Section XIII (Notices and Submissions) of this Consent Decree. The Auditor shall not share any written draft reports with Defendant prior to the submission of the Auditor's Report directly to EPA. EPA shall give notice to Defendant as soon as possible before it has any material communications directly with an Auditor about an Audit and give Defendant the opportunity to participate in such conversations. The Auditor's Report shall:

- a. describe when and how the Audit was conducted;
- b. describe all the types of information and records reviewed in each paper Audit phase pursuant to Paragraphs 5.b.i, 6.b.i, or 7.b.i above, and the equipment, processes, practices, structures and other items reviewed, tested, observed or evaluated during the on-site Audit phase pursuant to Paragraphs 5.b.ii, 6.b.ii, or 7.b.ii above;
- c. identify each Audit Finding of non-compliance and non-conformance with the Audit standards set forth in Paragraphs 5.c, 6.c, or 7.c discovered in each Audit; and
- d. provide a detailed recommendation as to how each discovered Audit Finding should be corrected.

11. Defendant's Statement for Each Audit. For each Audit at each Facility, no later than the applicable deadline set forth in the Table in Paragraph 14 below, Defendant shall submit to EPA, pursuant to Section XIII of this Consent Decree (Notices and Submissions), a written statement (Defendant's Audit Statement) in which Defendant:

- a. responds to or comments on each of the Audit Findings; and
- b. describes each completed or proposed action to correct each Audit Finding, including the date(s) that such corrections occurred or are scheduled to occur.

12. Correction of Audit Findings.

a. Except as provided in Paragraph 12.b below, for each Audit at each Facility, Defendant shall implement all steps necessary to correct each Audit Finding identified in the Auditor's Report by the earlier of:

- i. the date it is reasonable under the circumstances; or
- ii. the applicable date set forth in the table in Paragraph 14 for correction under this Paragraph 12.a.

b. Extensions of Correction Deadlines in Limited Circumstances.

i. Defendant may seek more time to implement correction of Audit Findings if in Defendant's Audit Statement submitted to EPA pursuant to Paragraph 11 above, Defendant explains and documents:

(a) that the correction is likely to cost Defendant more than \$25,000; and

(b) that it is not reasonable under the circumstances to correct the Audit Finding by the applicable deadline set forth in the table in Paragraph 14 below for correction under Paragraph 12.a; and

(c) the date by which Defendant believes correction is reasonable under the circumstances.

ii. Where Defendant seeks additional time to correct Audit Findings pursuant to Paragraph 12.b.i above, Defendant shall correct such Audit Findings no later than the earlier of:

(a) the correction date proposed in Defendant's Audit Statement; or

(b) the date indicated by EPA in an objection submitted under Paragraph 13 below, provided that such date is not less than ninety (90) Days after Defendant's receipt of EPA's objection; or

(c) a different date for correction agreed to by the parties or ordered by the Court in Dispute Resolution under Section IX of the Consent Decree; or

(d) the latest possible date for correction under this Paragraph 12.b.ii as set forth in the in the Table in Paragraph 14 below.

13. EPA Objections to Proposed Timing or Method of Correction of Audit Findings.

a. At any time after receiving the Defendant's Audit Statement pursuant to Paragraph 11 above, EPA may object to (1) the method by which Defendant has or intends to correct an Audit Finding; and/or (2) to the proposed timing of correction where Defendant's Audit Statement proposes a later date for correction than the applicable deadline set forth in the table in Paragraph 14 for correction under Paragraph 12.a. If EPA objects, it shall notify the Defendant in writing pursuant to Section XIII of the Consent Decree (Notices and Submissions) as to the bases of its objection(s), and indicate what method or methods to correct the Audit Finding(s) are required, and/or provide the date(s) by which it believes it is reasonable under the circumstances for Defendant to correct the Audit Finding(s).

b. If Defendant disagrees with EPA's proposed method or timing of correction, it may invoke dispute resolution in accordance with Section IX of this Consent Decree (Dispute Resolution) by submitting a Notice of Dispute to EPA within fifteen (15) Days of receiving EPA's objection. If this method of correction is an issue in a dispute, it shall be Defendant's burden to establish that the method by which it proposes to correct the Audit Finding(s) will result in compliance with the applicable Audit standards set forth in Paragraphs 5.c, 6.c, or 7.c above. If the timing of correction is in dispute, it shall be Defendant's burden to establish (1) that it will cost more than \$25,000 to correct the finding; and (2) that it is not reasonable under the circumstances to correct the Audit Finding(s) any earlier than the date proposed in Defendant's Audit Statement submitted pursuant to Paragraph 11 above.

c. If Defendant does not invoke dispute resolution within fifteen (15) Days of receiving EPA's objection pursuant to Paragraph 13.a above, Defendant shall correct the Audit Finding(s) by the method indicated in EPA's objection by the earliest date set forth in Paragraph 12.b.ii above.

14. Audit Milestone Deadlines. For each Audit, Defendant shall complete or ensure that the Auditor completes the following Audit milestones no later than the applicable deadlines set forth in the table below for: (1) Completion of the Audit as required by Paragraph 8 above; (2) Submission of the Audit Report as required by Paragraph 10 above; (3) Submission of Defendant's Statement in response to the Audit as required by Paragraph 11 above; and (4) Correction of all Audit Findings as required by Paragraph 12 above, unless EPA has agreed to an alternative date for correction.

<b>Facility</b>	<b>Deadline for Completion of Each Audit</b>	<b>Deadline for Auditor Report On Each Audit</b>	<b>Deadline for Defendant's Audit Statement For Each Audit</b>	<b>Deadline for Correction of all Audit Findings Unless Delayed Per Paragraph 12.a.</b>	<b>Deadline for Corrections of Audit Findings subject to Paragraph 12.b.</b>
DM	Eff. Date + 4M <sup>1</sup>	Eff. Date + 6M	Eff. Date + 7M	Eff. Date + 10M	Eff. Date + 20M
Bettendorf	Eff. Date + 4M	Eff. Date + 6M	Eff. Date + 7M	Eff. Date + 10M	Eff. Date + 20M
CB	Eff. Date + 6M	Eff. Date + 8M	Eff. Date + 9M	Eff. Date + 12M	Eff. Date + 22M
KCK	Eff. Date + 6M	Eff. Date + 8M	Eff. Date + 9M	Eff. Date + 12M	Eff. Date + 22M
ED	Eff. Date + 8M	Eff. Date + 10M	Eff. Date + 11M	Eff. Date + 14M	Eff. Date + 24M
WB	Eff. Date + 8M	Eff. Date + 10M	Eff. Date + 11M	Eff. Date + 14M	Eff. Date + 24M

15. Notification of Correction of Audit Findings of Non-Compliance and Non-Conformance. For each Audit Finding in the Auditor's Report, Defendant shall notify EPA of the method and date of correction of the Audit Finding of non-compliance and non-conformance

<sup>1</sup> As used herein, "M" means "Months" and "Eff. Date" means the Effective Date of this Consent Decree.

in the quarterly report submitted pursuant to Paragraph 26 of the Consent Decree for the quarter in which the correction was completed.

# **APPENDIX C**

## **Appendix C: RCRA PROTOCOLS AND CHECKLISTS**

### **Kansas Facilities:**

#### Guidance:

1. Hazardous Waste Generator Regulations (Version 6, August 2012)

#### Protocols:

1. Protocol for Conducting Environmental Compliance Audits of Used Oil and Universal Waste Generators under the Resources Conservation and Recovery Act(EPA 300-B-00-002/March 2000)
2. Protocol for Conducting Environmental Compliance Audits for Hazardous Waste Generators under RCRA (EPA 305-B-01-003/June 2001)

#### KDHE Checklists:

1. KDHE COM100, Hazardous Waste Compliance Inspection Report Checklist/Cover Page Revised: 5-2-11
2. KDHE COM105, Hazardous Waste Generator Compliance Inspection Checklist (Revised July 12, 2011)
3. KDHE COM110, Hazardous Waste Transporter Compliance Inspection Checklist; (TRANSPORTER10-25-02.wpd: Generator Checklist Revised October 25, 2002)
4. KDHE COM200, Used Oil Compliance Inspection Checklist Cover Page (Used Oil Cover Page 04-25-03.wpd: Checklist Revised April 25, 2003)
3. KDHE COM205 – Subpart C – Used Oil Generator Compliance Inspection Checklist (Used Oil Generator Checklist Revised 5-2-11)

### **Iowa Facilities**

#### Guidance:

1. Hazardous Waste Generator Regulations (Version 6, August 2012)

#### Protocols

1. Protocol for Conducting Environmental Compliance Audits of Used Oil and Universal Waste Generators under the Resources Conservation and Recovery Act(EPA 300-B-00-002/March 2000)
2. Protocol for Conducting Environmental Compliance Audits for Hazardous Waste Generators under RCRA (EPA 305-B-01-003/June 2001)

### **Wisconsin Facility:**



1. Wisconsin Checklist entitled Large Quantity Generator Inspection (Revision: 12/03/2012)

# APPENDIX D

Bettendorf  
Section 3.2.6 of Process  
Safety Management  
Program Manual

### 3.2.5 Ventilation

Storage and handling of flammable liquids at the Bettendorf branch is conducted outdoors, where natural ventilation is available. Hygiene monitoring conducted in 1991 (Council Bluffs), 1998 (Kansas City and Bettendorf) and 2012 (Des Moines and West Bend) showed no requirements for ventilation. Some mechanical ventilation is provided of operator comfort in packaging areas and prevent accumulation of flammable vapor-air mixtures in compliance with OSHA 1910.106(a)(31).

### 3.2.6 Design Codes and Standards

The facility complies with local building codes, electrical codes, and the following industry standards:

- API RP 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 4<sup>th</sup> edition, 2013 edition.
- API 2000, *Venting Atmospheric and Low-pressure Storage Tanks*, 6<sup>th</sup> edition, 2009.
- API RP 2003, *Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents*, 7<sup>th</sup> Edition, 2008.
- NEC/NFPA 70, *National Electric Code*.
- NFPA 70B, *Recommended Practice for Electrical Equipment Maintenance*, 2013 edition.
- NFPA 30, *Flammable and Combustible Liquids Code*, 2012 edition.
- NFPA 77, *Recommended Practice on Static Electricity*, 2014 edition.
- UL 142, *Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids*, 9th Edition, 2006.
- International Code Council (ICC), *International Building Code*, 2009 edition.
- ICC, *International Fire Code*, 2009 edition.
- Pratt, Thomas H., *Electrostatic Ignitions of Fires and Explosions*, Wiley, July 1997.
- Center for Chemical Process Safety (CCPS), *Guidelines for Safe Warehousing of Chemicals*, June 1998.
- OSHA regulations on Flammable and Combustible Liquids
-

Council Bluffs  
Section 3.2.6 of Process  
Safety Management  
Program Manual

Hygiene monitoring conducted in 1991 (Council Bluffs), 1998 (Kansas City and Bettendorf) and 2012 (Des Moines and West Bend) showed no requirements for ventilation. Some mechanical ventilation is provided of operator comfort in packaging areas and prevent accumulation of flammable vapor-air mixtures in compliance with OSHA 1910.106(a)(31).

### 3.2.6 Design Codes and Standards

The facility complies with local building codes, electrical codes, and the following industry standards:

- API RP 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 4<sup>th</sup> edition, 2013 edition.
- API 2000, *Venting Atmospheric and Low-pressure Storage Tanks*, 6<sup>th</sup> edition, 2009.
- API RP 2003, *Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents*, 7<sup>th</sup> Edition, 2008.
- NEC/NFPA 70, *National Electric Code*.
- NFPA 70B, *Recommended Practice for Electrical Equipment Maintenance*, 2013 edition.
- NFPA 30, *Flammable and Combustible Liquids Code*, 2012 edition.
- NFPA 77, *Recommended Practice on Static Electricity*, 2014 edition.
- UL 142, *Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids*, 9th Edition, 2006.
- International Code Council (ICC), *International Building Code*, 2009 edition.
- ICC, *International Fire Code*, 2009 edition.
- Pratt, Thomas H., *Electrostatic Ignitions of Fires and Explosions*, Wiley, July 1997.
- Center for Chemical Process Safety (CCPS), *Guidelines for Safe Warehousing of Chemicals*, June 1998.
- OSHA regulations on Flammable and Combustible Liquids

### 3.2.7 Material and Energy Balances

Blending is performed in a batch process. The two ingredients are mixed through use of a recirculating pump, minimizing addition of kinetic energy. No mechanical agitation is used. The only materials

Des Moines  
Section 3.2.6 of Process  
Safety Management  
Program Manual

### 3.2.5 Ventilation

Storage and handling of flammable liquids at the Des Moines branch is conducted outdoors, where natural ventilation is available. Hygiene monitoring conducted in 1991 (Council Bluffs), 1998 (Kansas City and Bettendorf) and 2012 (Des Moines and West Bend) showed no requirements for ventilation. Some mechanical ventilation is provided of operator comfort in packaging areas and prevent accumulation of flammable vapor-air mixtures in compliance with OSHA 1910.106(a)(31).

### 3.2.6 Design Codes and Standards

The facility complies with local building codes, electrical codes, and the following industry standards:

- API RP 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 4<sup>th</sup> edition, 2013 edition.
- API 2000, *Venting Atmospheric and Low-pressure Storage Tanks*, 6<sup>th</sup> edition, 2009.
- API RP 2003, *Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents*, 7<sup>th</sup> Edition, 2008.
- NEC/NFPA 70, *National Electric Code*.
- NFPA 70B, *Recommended Practice for Electrical Equipment Maintenance*, 2013 edition.
- NFPA 30, *Flammable and Combustible Liquids Code*, 2012 edition.
- NFPA 77, *Recommended Practice on Static Electricity*, 2014 edition.
- UL 142, *Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids*, 9th Edition, 2006.
- International Code Council (ICC), *International Building Code*, 2009 edition.
- ICC, *International Fire Code*, 2009 edition.
- Pratt, Thomas H., *Electrostatic Ignitions of Fires and Explosions*, Wiley, July 1997.
- Center for Chemical Process Safety (CCPS), *Guidelines for Safe Warehousing of Chemicals*, June 1998.
- OSHA regulations on Flammable and Combustible Liquids



El Dorado  
Section 3.2.6 of Process  
Safety Management  
Program Manual

### 3.2.5 Ventilation

Storage and handling of flammable liquids at the El Dorado branch is conducted outdoors, where natural ventilation is available. Hygiene monitoring conducted in 1991 (Council Bluffs), 1998 (Kansas City and Bettendorf) and 2012 (Des Moines and West Bend) showed no requirements for ventilation. Some mechanical ventilation is provided of operator comfort in packaging areas and prevent accumulation of flammable vapor-air mixtures in compliance with OSHA 1910.106(a)(31).

### 3.2.6 Design Codes and Standards

The facility complies with local building codes, electrical codes, and the following industry standards:

- API RP 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 4<sup>th</sup> edition, 2013 edition.
- API 2000, *Venting Atmospheric and Low-pressure Storage Tanks*, 6<sup>th</sup> edition, 2009.
- API RP 2003, *Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents*, 7<sup>th</sup> Edition, 2008.
- NEC/NFPA 70, *National Electric Code*.
- NFPA 70B, *Recommended Practice for Electrical Equipment Maintenance*, 2013 edition.
- NFPA 30, *Flammable and Combustible Liquids Code*, 2012 edition.
- NFPA 77, *Recommended Practice on Static Electricity*, 2014 edition.
- UL 142, *Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids*, 9th Edition, 2006.
- International Code Council (ICC), *International Building Code*, 2009 edition.
- ICC, *International Fire Code*, 2009 edition.
- Pratt, Thomas H., *Electrostatic Ignitions of Fires and Explosions*, Wiley, July 1997.
- Center for Chemical Process Safety (CCPS), *Guidelines for Safe Warehousing of Chemicals*, June 1998.
- OSHA regulations on Flammable and Combustible Liquids
- NFPA 69, "Standard on Explosion Prevention Systems", 2014 edition.

Kansas City  
Section 3.2.6 of Process  
Safety Management  
Program Manual

monitoring conducted in 1991 (Council Bluffs), 1998 (Kansas City and Bettendorf) and 2012 (Des Moines and West Bend) showed no requirements for ventilation. Some mechanical ventilation is provided of operator comfort in packaging areas and prevent accumulation of flammable vapor-air mixtures in compliance with OSHA 1910.106(a)(31).

### 3.2.6 Design Codes and Standards

The facility complies with local building codes, electrical codes, and the following industry standards:

- API RP 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 4<sup>th</sup> edition, 2013 edition.
- API 2000, *Venting Atmospheric and Low-pressure Storage Tanks*, 6<sup>th</sup> edition, 2009.
- API RP 2003, *Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents*, 7<sup>th</sup> Edition, 2008.
- NEC/NFPA 70, *National Electric Code*.
- NFPA 70B, *Recommended Practice for Electrical Equipment Maintenance*, 2013 edition.
- NFPA 30, *Flammable and Combustible Liquids Code*, 2012 edition.
- NFPA 77, *Recommended Practice on Static Electricity*, 2014 edition.
- UL 142, *Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids*, 9th Edition, 2006.
- International Code Council (ICC), *International Building Code*, 2009 edition.
- ICC, *International Fire Code*, 2009 edition.
- Pratt, Thomas H., *Electrostatic Ignitions of Fires and Explosions*, Wiley, July 1997.
- Center for Chemical Process Safety (CCPS), *Guidelines for Safe Warehousing of Chemicals*, June 1998.
- OSHA regulations on Flammable and Combustible Liquids
- NFPA 69, "Standard on Explosion Prevention Systems", 2014 edition.

### 3.2.7 Material and Energy Balances

Blending is performed in a batch process. The two ingredients are mixed through use of a recirculating pump, minimizing addition of

West Bend  
Section 3.2.6 of Process  
Safety Management  
Program Manual

### 3.2.5 Ventilation

Storage and handling of flammable liquids at the West Bend branch is conducted outdoors, where natural ventilation is available. Hygiene monitoring conducted in 1991 (Council Bluffs), 1998 (Kansas City and Bettendorf) and 2012 (Des Moines and West Bend) showed no requirements for ventilation. Some mechanical ventilation is provided of operator comfort in packaging areas and prevent accumulation of flammable vapor-air mixtures in compliance with OSHA 1910.106(a)(31).

### 3.2.6 Design Codes and Standards

The facility complies with local building codes, electrical codes, and the following industry standards:

- API RP 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 4<sup>th</sup> edition, 2013 edition.
- API 2000, *Venting Atmospheric and Low-pressure Storage Tanks*, 6<sup>th</sup> edition, 2009.
- API RP 2003, *Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents*, 7<sup>th</sup> Edition, 2008.
- NEC/NFPA 70, *National Electric Code*.
- NFPA 70B, *Recommended Practice for Electrical Equipment Maintenance*, 2013 edition.
- NFPA 30, *Flammable and Combustible Liquids Code*, 2012 edition.
- NFPA 77, *Recommended Practice on Static Electricity*, 2014 edition.
- UL 142, *Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids*, 9th Edition, 2006.
- International Code Council (ICC), *International Building Code*, 2009 edition.
- ICC, *International Fire Code*, 2009 edition.
- Pratt, Thomas H., *Electrostatic Ignitions of Fires and Explosions*, Wiley, July 1997.
- Center for Chemical Process Safety (CCPS), *Guidelines for Safe Warehousing of Chemicals*, June 1998.
- OSHA regulations on Flammable and Combustible Liquids