

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 3:19-cv-00232
	)	
TOLEDO REFINING COMPANY LLC,	)	
	)	
Defendant,	)	
_____	)	

**CONSENT DECREE**

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**APPENDICES**

The following Appendices are attached to and part of this Consent Decree:

Appendix A: Emission Reductions from Flares and Control of Flaring Events

***Flaring Appendices Table 1***

<b>NUMBER</b>	<b>ABBREVIATION</b>	<b>DESCRIPTION</b>
A1.1	Nlsn-Cmplxty	Equations and Methodology to Calculate Refinery-Specific Complexity and Industry-Average Complexity using Nelson Complexity Index
A1.2	FLR-Limit-Calc	Methodology for Calculating Refinery Flaring Limitation (including TRC's Form EIA-820 for Report Year 2018)
A1.3	Stips-Calc	Calculating the Amount of Stipulated Penalties Due for Violating Limitations on Flaring when the Stipulated Penalties are Based on Excess VOC and SO <sub>2</sub> Emitted

Appendix B: Phyto-Pollution Reduction Supplemental Environmental Project

Appendix C: February 1, 2013 Finding of Violation and September 30, 2013 Notice of Violation and Findings of Violation

**CONSENT DECREE**

WHEREAS Plaintiff the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint (“Complaint”) against Defendant Toledo Refining Company LLC (“TRC” or “Defendant”), concurrently with the lodging of this Consent Decree, for alleged environmental violations at TRC’s petroleum refinery located in Oregon, Ohio (“Refinery” or “Toledo Refinery”);

WHEREAS the United States, the State of Ohio, and TRC are among the parties to a Consent Decree entered by the United States District Court for the Eastern District of Pennsylvania in Civil Action No. 2:05 CV 02866 on March 21, 2006 (the “2006 Consent Decree”), which covers four refineries, including the Toledo Refinery;

WHEREAS, on February 1, 2013, and on September 30, 2013, EPA issued an Amended Finding of Violation and a Notice and Finding of Violation, respectively, to TRC asserting the Toledo Refinery’s non-compliance with, among other things, certain requirements of the: (i) Clean Air Act (“CAA”), 42 U.S.C. § 7401 *et seq.*, and corresponding federal regulations; and (ii) Toledo Refinery Title V permit;

WHEREAS TRC denies that it has violated and/or continues to violate the 2006 Consent Decree or any statutory, regulatory, or permit requirements, and maintains that it has been and remains in compliance with the 2006 Consent Decree and all applicable statutes, regulations, and permits and is not liable for civil penalties and injunctive relief as alleged in the Complaint or for stipulated penalties under the 2006 Consent Decree;

WHEREAS, pursuant to Paragraph 247 of the 2006 Consent Decree, TRC complied with and completed the 2006 Consent Decree with respect to Toledo Refinery obligations except for certain limited obligations that were not yet completed but are being incorporated herein;

WHEREAS EPA reviewed extensive information and data submitted by TRC regarding its compliance with the Toledo Refinery obligations in the 2006 Consent Decree and determined that, except for the limited obligations that are incorporated herein and the payment of certain stipulated penalties for alleged non-compliance with the 2006 Consent Decree at the Toledo Refinery, TRC has satisfactorily completed the requirements for termination set forth in Paragraph 254 of the 2006 Consent Decree;

WHEREAS the United States, Ohio, and TRC (the “Parties”) have agreed to resolve this payment of stipulated penalties through the filing of a Joint Motion in the Eastern District of Pennsylvania in Civ. Act. No. 05-02866 under which TRC will pay \$76,700 in stipulated penalties to the United States and Ohio for the alleged violations;

WHEREAS, because of the resolution of stipulated penalties and because this Consent Decree incorporates all remaining obligations of the 2006 Consent Decree that pertain to the Toledo Refinery (in addition to a resolution of the matters alleged in the Complaint), and because of the agreed-upon satisfactory compliance and completion of all other 2006 Consent Decree obligations that pertain to the Toledo Refinery, the Parties have included in the Joint Motion identified above a request for termination of the 2006 Consent Decree as to the Toledo Refinery that will terminate all obligations of the 2006 Consent Decree that apply to the Toledo Refinery, provided that all stipulated penalties have been paid and this Consent Decree has been entered;

WHEREAS the United States anticipates that compliance with this Consent Decree will reduce emissions of volatile organic compounds (“VOCs”) by 180 tons per year (“tpy”). The United States also anticipates reductions of hazardous air pollutants (“HAPs”);

WHEREAS discussions between the United States and TRC (“the Parties”) have resulted in the settlement embodied in the Consent Decree;

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

WHEREAS the Parties recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties at arm's length and 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, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Sections 113(b) and 167 of the CAA, 42 U.S.C. §§ 7413(b) and 7477; and over the Parties. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because TRC is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, TRC consents to this Court's jurisdiction over this Decree, over any action to enforce this Decree, and over TRC. TRC also consents to venue in this judicial district.

2. For purposes of this Consent Decree, TRC does not contest that the Complaint states claims upon which relief may be granted.

3. The State of Ohio has actual notice of the commencement of this action in accordance with the requirements of CAA Sections 113(a)(1) and 113(b)(3), 42 U.S.C. §§ 7413(a)(1) and 7413(b)(3).

## II. APPLICABILITY AND BINDING EFFECT

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon TRC and any successors, assigns, and other entities or persons otherwise bound by law. The obligations of this Consent Decree relating to TRC apply at the Toledo Refinery and no other refinery owned or operated by TRC.

5. Effective from the Date of Lodging of this Consent Decree, TRC shall give written notice, and shall provide a copy of, this Consent Decree to any successors in interest at least thirty (30) days prior to the transfer of ownership or operation of any portion of the Toledo Refinery. TRC shall notify the United States in accordance with the notice provisions set forth in Section XVI (Notices), of any successor in interest at least thirty days prior to any such transfer.

6. If TRC intends to request that the United States agree to a transferee's assumption of any obligations of the Consent Decree, TRC shall condition any transfer, in whole or in part, of ownership of, operation of, or other interest in (exclusive of any non-controlling, non-operational shareholder interest) the Toledo Refinery upon the transferee's written agreement to execute a modification to the Consent Decree that shall make the terms and conditions of the Consent Decree applicable to the transferee.

7. As soon as practicable prior to the transfer governed by Paragraph 6: (i) TRC shall notify the United States of the proposed transfer and of the specific Consent Decree provisions that TRC proposes the transferee assume; (ii) TRC shall certify that the transferee would be contractually bound to assume the obligations and liabilities of this Consent Decree; and (iii) the transferee shall submit to the United States a certification that the transferee has the financial and technical ability to assume the obligations and liabilities of this Consent Decree and



a certification that the transferee is contractually bound to assume the obligations and liabilities of this Consent Decree.

8. After the submission to the United States of the notice and certification required by the previous Paragraph, either: (i) the United States shall notify TRC that the United States does not agree to modify the Consent Decree to make the transferee responsible for complying with the terms and conditions of the Consent Decree; or (ii) the United States, TRC, and the transferee shall file with the Court a joint motion requesting the Court approve a modification substituting the transferee for TRC as the Defendant responsible for complying with the terms and conditions of the Consent Decree.

9. If TRC does not receive a response from the United States under Paragraph 8 within 60 days, then TRC and the transferee may file, without the agreement of the United States, a motion requesting the Court to approve a modification substituting the transferee for TRC as the Defendant responsible for complying with some or all of the terms and conditions of the Consent Decree.

10. Except as provided in Paragraphs 4–8 and Section XI (Force Majeure), TRC shall be solely responsible for ensuring that performance of the work required under this Consent Decree is undertaken in accordance with the deadlines and requirements contained in this Consent Decree (including Appendices). TRC shall provide an electronic or hard copy of this Consent Decree to its officers, the Toledo Refinery plant manager, the Toledo Refinery Manager of Health, Safety, Security, and Environmental Protection, and all personnel in the Toledo Refinery Environmental Department. In addition, TRC shall ensure that its employees, agents, and contractors whose duties might reasonably include compliance with any provision of this Decree are made aware of this Consent Decree and aware of the specific requirements of this

Consent Decree that fall within such person's duties. TRC shall place an electronic version of the Consent Decree on an accessible internal electronic database or website. TRC shall condition any contract for work required under this Consent Decree upon performance of the work in conformity with the terms of this Consent Decree. Copies of the applicable portions of this Consent Decree do not need to be supplied to firms who are retained solely to supply materials or equipment to satisfy requirements of this Consent Decree.

11. In any action to enforce this Consent Decree, TRC shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **III. OBJECTIVES**

12. It is the purpose of the Parties to this Consent Decree to further the objectives of the Clean Air Act, the Ohio SIP promulgated pursuant to Section 110 of the Clean Air Act, 42 U.S.C. § 7410, and the rules and regulations promulgated under the Clean Air Act.

### **IV. DEFINITIONS**

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

a. "2006 Consent Decree" shall mean the civil consent decree entered in *United States, et al. v. Sunoco, Inc.*, Civil No. 2:05 CV 02866 (E.D. Pa.) on March 21, 2006.

b. "Calendar Quarter" shall mean any one of the three month periods ending on March 31st, June 30th, September 30th, and December 31st.

c. “Certified Low-Leaking Valves” shall mean valves for which a manufacturer has issued either: (i) a written guarantee that the valve will not leak above 100 parts per million (ppm) for five years; or (ii) a written guarantee, certification or equivalent documentation that the valve has been tested pursuant to generally-accepted good engineering practices and has been found to be leaking at no greater than 100 ppm.

d. “Certified Low-Leaking Valve Packing Technology” shall mean valve packing technology for which a manufacturer has issued either: (i) a written guarantee that the valve packing technology will not leak above 100 ppm for five years; or (ii) a written guarantee, certification or equivalent documentation that the valve packing technology has been tested pursuant to generally-accepted good engineering practices and has been found to be leaking at no greater than 100 ppm.

e. “Consent Decree” or “Decree” shall mean this Consent Decree, including any and all appendices attached to this Consent Decree, and any amendments thereto.

f. “Covered Equipment” shall mean all pumps and valves in light liquid or gas/vapor service in all Covered Process Units.

g. “Covered Process Units” shall mean any process unit that is, or under the terms of this Consent Decree becomes, subject to the equipment leak provisions of 40 C.F.R. Part 60, Subpart GGGa.

h. “Date of Entry” shall mean the Effective Date of this Consent Decree.

i. “Date of Lodging” shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Northern District of Ohio.

j. “Day” (that is, with an initial capitalization) or “day” (that is, without an initial capitalization) shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree for the submission of material(s), where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next business day. In computing any period of time under this Consent Decree for the payment of a penalty, 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 federal business day.

k. “DOR” shall mean Delay of Repair.

l. “Effective Date” shall have the definition set forth in Section XVII (Effective Date) of this Consent Decree.

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

n. “Equipment” shall mean any equipment as defined in 40 C.F.R. § 60.591a.

o. “H<sub>2</sub>S” shall mean hydrogen sulfide.

p. “LDAR” shall mean Leak Detection and Repair.

q. “LDAR Audit Commencement Date” or “Commencement of an LDAR Audit” shall mean the first day of the on-site inspection that accompanies an LDAR audit.

r. “LDAR Audit Completion Date” or “Completion of an LDAR Audit” shall mean one hundred and twenty (120) Days after the LDAR Audit Commencement Date.

s. “LDAR Program” shall mean the Leak Detection and Repair Program specified in Section V.B of this Decree which includes measures required to come into compliance with 40 C.F.R. Part 60, Subpart GGGa, and applicable, corresponding state or local

equipment leak requirements, as well as measures to mitigate the environmental harm caused by the alleged LDAR noncompliance at the Covered Process Units and Covered Types of Equipment (including “initial attempt at repair” in Paragraph 26, “drill and tap repairs” in Paragraph 29; and the “valve replacement program” in Paragraphs 43–49).

t. “Maintenance Shutdown” shall mean a shutdown of a Covered Process Unit that lasts longer than 30 Days.

u. “Method 21” shall mean the test method found at 40 C.F.R. Part 60, Appendix A, Method 21.

v. “Ohio” shall mean the State of Ohio, on behalf of the Ohio Environmental Protection Agency.

w. “Ohio EPA” shall mean the Ohio Environmental Protection Agency and any of its successor departments or agencies.

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

y. “Parties” shall mean the United States and TRC.

z. “Project Dollars” shall mean TRC’s expenditures and payments incurred or made in carrying out the Supplemental Environmental Projects identified in Section VI and Appendix B to the extent that such expenditures or payments both: (i) comply with the requirements set forth in that Section and Appendix B; and (ii) constitute TRC’s direct payments for such projects or TRC’s external costs for contractors, vendors, and equipment.

aa. “Refinery” or “Toledo Refinery” shall mean the refinery owned and operated by TRC in Toledo, Illinois, which is subject to the requirements of this Consent Decree.

bb. “Repair Verification Monitoring” shall mean the utilization of monitoring (or another method that indicates the relative size of the leak) by no later than the end of the next calendar day of each attempt at repair of a leaking piece of Covered Equipment to achieve the best repair/lowest emission rate possible.

cc. “Screening Value” shall mean the highest emission level that is recorded at each piece of Covered Equipment as it is monitored in compliance with Method 21.

dd. “Section” shall mean a portion of this Consent Decree that has a heading identified by an upper case Roman numeral.

ee. “Shutdown” shall mean the cessation of operation for any purpose.

ff. “SO<sub>2</sub>” shall mean sulfur dioxide.

gg. “Startup” shall mean the setting in operation for any purpose.

hh. “VOC” or “Volatile Organic Compounds” shall have the definition set forth in 40 C.F.R. § 51.100(s).

## V. COMPLIANCE REQUIREMENTS

### A. Flaring Emission Reductions and Controls

14. Emission Reductions from Flares and Control of Flaring Events. TRC shall implement and comply with the Emissions Reductions from Flares and Control of Flaring Events set forth in Appendix A to this Consent Decree by the dates specified therein to control and minimize emissions from the flaring devices at the Toledo Refinery.

### B. Leak Detection and Repair

15. NSPS Applicability. Upon the Date of Entry, each “process unit” (as defined by 40 C.F.R. § 60.590a(e)) at the Toledo Refinery, other than the BTX CMPU, shall be an “affected facility” for purposes of 40 C.F.R. Part 60, Subpart GGGa, and shall be subject to and comply with the requirements of Subpart GGGa no later than one year from the Date of Entry, except as

specifically provided in this Paragraph.

- a. This Consent Decree does not require the Toledo Refinery to accept applicability of 40 C.F.R. Part 60, Subpart GGGa, for its compressors.
- b. Process units on which construction commenced prior to January 4, 1983, shall not be subject to the requirements in 40 C.F.R. § 60.482-7a(h)(2)(ii) regarding difficult-to-monitor valves.
- c. Entry of this Consent Decree satisfies the following notification and testing requirements that are triggered by initial applicability of 40 C.F.R. Part 60, Subparts A and GGGa: 40 C.F.R. §§ 60.7, 60.8, 60.482-1a(a) and 60.487a(e).
- d. For any process unit at the Toledo Refinery, any two consecutive months of monitoring that TRC conducts in compliance with the monitoring requirements of 40 C.F.R. Part 60, Subpart GGGa before the Date of Entry shall satisfy the requirement to conduct monitoring of those components for two consecutive months following the initial applicability of 40 C.F.R. Part 60, Subpart GGGa.

Nothing in this Section V.B shall relieve TRC of its independent obligation to comply with the requirements of any other applicable requirements of 40 C.F.R. Part 60, Subpart GGGa, or with any other federal, state or local LDAR regulation that may apply to Equipment at the Toledo Refinery.

16. Leak Detection and Repair: General. TRC shall implement and comply with the requirements set forth in Paragraphs 17 – 52 by the dates specified therein. The terms “in light

liquid service” and “in gas/vapor service” shall have the definitions set forth in the applicable provisions of 40 C.F.R. Part 60, Subpart GGGa, and Part 63, Subpart CC.

17. Applicability. The requirements of Paragraphs 17 – 52 shall apply to all Covered Equipment. In addition, the requirements of Paragraphs 18, 33, 36.a, 36.b, and 50 shall also apply to all Equipment at the Toledo Refinery that is regulated under any federal, state, or local LDAR program. The requirements of Paragraphs 17 – 52 are in addition to, and not in lieu of, the requirements of any federal, state or local LDAR regulation that may be applicable to a piece of Covered Equipment. If there is a conflict between a federal, state or local LDAR regulation and Paragraphs 17 – 52, TRC shall follow whichever regulation is more stringent.

18. Written Facility-Wide LDAR Document. By no later than six (6) months after the Date of Entry, TRC shall develop a written facility-wide LDAR document that describes: (i) its facility-wide LDAR program (*e.g.*, applicability of regulations to process units and/or specific Equipment; leak definitions; monitoring frequencies); (ii) a tracking program (*e.g.*, Management of Change) that ensures that new pieces of Equipment added to the Toledo Refinery for any reason are integrated into the LDAR program and that pieces of Equipment that are taken out of service are removed from the LDAR program; (iii) the roles and responsibilities of all employee and contractor personnel assigned to LDAR functions at the Toledo Refinery; (iv) how the number of personnel dedicated to LDAR functions is sufficient to satisfy the requirements of the LDAR program; and (v) how the Toledo Refinery plans to implement this LDAR Program. TRC shall review this document on an annual basis and update it as needed by no later than December 31 of each year, beginning December 31, 2018.

19. Monitoring Frequency. By no later than the Date of Entry, TRC shall perform quarterly monitoring of valves and monthly monitoring of pumps qualifying as Covered



Equipment. By no later than one year after the Date of Entry, TRC shall comply with the monitoring frequency for valves as required by 40 C.F.R. § 60.482-7a, 40 C.F.R. § 60.482-4a, 40 C.F.R. § 60.482-8a, and 40 C.F.R. § 60.482-10a, except as provided in 40 C.F.R. § 60.482-1a, and for pumps as required by 40 C.F.R. § 60.482-2a and 40 C.F.R. § 60.482-8a.

20. Monitoring Frequency: Alternative Standards for Valves – Skip Period Leak Detection and Repair. TRC may elect to comply with the skip period monitoring requirements set forth in 40 C.F.R. § 60.483-2a, if applicable.

21. Method 21 and Alternative Work Practice Monitoring.

- a. Except as provided in subparagraph 21.b, by no later than the Date of Entry, for all Covered Equipment, TRC shall comply with Method 21 in performing LDAR monitoring, using a Flame Ionization Detector (FID) attached to a data logger, or equivalent equipment, which directly electronically records the Screening Value detected at each piece of Covered Equipment, the date and time that each Screening Value is taken, and the identification numbers of the monitoring instrument and technician. TRC or its contractor shall transfer this monitoring data to an electronic database on at least a weekly basis for recordkeeping purposes. Notwithstanding the foregoing, TRC may use paper logs where necessary or more feasible (*e.g.*, small rounds, re-monitoring, or when data loggers are not available or broken). Any manually recorded monitoring data shall be transferred to the electronic database within 7 days of monitoring.
- b. Alternative Work Practice.
  - i. From the Date of Entry, TRC may utilize the Alternative Work Practice as defined at 40 C.F.R. 60.18(g) (“the AWP”) for monitoring Equipment that meets the “difficult to monitor” criteria set out at 40 C.F.R. § 60.482-7a(h)(1).
  - ii. No sooner than three (3) years from the Date of Entry, TRC may submit a request for review and approval of an AWP for LDAR monitoring of all Covered Equipment. Such request shall include a protocol that, at a minimum, addresses the following operational criteria:
    - (A) calibration procedures;
    - (B) startup (*i.e.*, warming-up the Optical Gas Imaging (OGI) Instrument)/shutdown procedures;
    - (C) video recording and storage;

- (D) site-specific impact of weather conditions (*e.g.*, wind speed, temperature, and visibility);
- (E) maintenance of the OGI Instrument;
- (F) certification of personnel to use the OGI instrument;
- (G) minimum number of hours of field use by certified personnel prior to certified personnel performing compliance monitoring; and
- (H) identification of process unit(s) where certified personnel may monitor with an OGI instrument.

If such request is approved by EPA, TRC may utilize the AWP for monitoring all Covered Equipment.

22. Monitoring Equipment Calibration. TRC shall conduct all calibrations of LDAR monitoring equipment as required by Subpart GGGa in accordance with 40 C.F.R. Part 60, EPA Reference Test Method 21, prior to each time LDAR monitoring equipment is placed into service before each monitoring shift or is restarted during a monitoring shift, except as provided below. TRC shall conduct calibration drift assessment rechecks of the LDAR monitoring equipment at the end of each monitoring shift and prior to each time LDAR monitoring equipment is turned off during each monitoring shift, except when LDAR monitoring equipment is unable to function such that the calibration drift assessment recheck cannot be performed before the LDAR monitoring equipment turns off. TRC is not required to conduct a calibration drift assessment re-check during the same monitoring shift in the event of a “flame-out” of the instrument if the instrument can be immediately re-ignited. The calibration drift assessment shall be conducted using calibration gas as provided in 40 C.F.R. § 60.485a(b)(1) with a concentration approximately equal to the applicable internal leak definition. If any calibration drift assessment after the initial calibration shows a negative drift of more than 10% from the previous calibration, TRC shall re-monitor all components that had a reading greater than 250 ppm. TRC shall retain all calibration records for at least one year, or as otherwise required by any federal state or local law, whichever provides the longest retention requirement.

23. Leak Detection Methods. To the extent required by 40 C.F.R. Part 60, Subpart GGGa, TRC shall identify leaks through Method 21 monitoring (or the AWP pursuant to Paragraph 21.b), and audio, visual, and olfactory sensing inspections.

24. Leak Definitions and Repairs for Valves and Pumps.

- a. By no later than the Date of Entry, for each leak detected at or above the leak definition for valves defined at 40 C.F.R. § 60.482-7a(b), TRC shall perform repairs in accordance with Paragraphs 26 - 31 of this Consent Decree.
- b. By no later than the Date of Entry, for each leak detected at or above the leak definition for pumps defined at 40 C.F.R. § 60.482-2a(b)(1)(ii), TRC shall perform repairs in accordance with Paragraphs 27 - 31 of this Consent Decree.

25. Leaks Detected Through Audio, Visual, or Olfactory Sensing. By no later than the Date of Entry, for all Covered Equipment, at any time, including outside of periodic monitoring, that a leak is detected through audio, visual, or olfactory sensing, TRC must monitor and/or repair the piece of Covered Equipment in accordance with 40 C.F.R. Part 60, Subpart GGGa. For AVO leaks in light liquid or gas/vapor service, TRC must also comply with Paragraphs 27 - 31 of this Consent Decree. For AVO leaks of components in heavy liquid service, TRC must comply with the applicable requirements set forth at 40 C.F.R. § 60.482-8a.

26. Initial Attempt at Repair for Valve Readings Greater than 200 ppm of VOCs. TRC shall make an attempt at repair on any valve that has a reading greater than 200 ppm of VOCs, excluding control valves and other valves that LDAR personnel are not authorized to repair.

27. First and Final Attempts at Repair. For each leak subject to Paragraph 24 of this Consent Decree, by no later than five (5) Days after detecting a leak, TRC shall perform a first attempt at repair. By no later than fifteen (15) Days after detection, TRC shall perform a final

attempt at repair or may place the valve or pump covered by Paragraph 24 on the Delay of Repair list provided that TRC has complied with 40 C.F.R. Part 60, Subpart GGGa and with the requirements of Paragraphs 28 –30 and 32 of this Consent Decree.

28. Repair Verification Monitoring. For each attempt at repair as set forth in Paragraphs 26 and 27, TRC shall perform Repair Verification Monitoring. Notwithstanding the “initial attempt” threshold specified in Paragraph 26, a leak shall be determined to be successfully repaired if Repair Verification Monitoring confirms a reading of less than 500 ppm.

29. Drill-and-Tap Repairs.

- a. Except as provided in Subparagraph 29.b, for leaking valves (other than control valves), when other repair attempts have failed to reduce emissions below the applicable leak definition and TRC is not able to remove the leaking valve from service, TRC shall attempt at least one drill-and-tap repair (with a second injection of sealant if the first injection is unsuccessful at repairing the leak) before placing the valve on the DOR list.
- b. Drill-and-tap is not required when there is a safety, mechanical, product quality, or major environmental issue with repairing the valve using the drill-and-tap method, in which case TRC shall document the reason(s) why any drill-and-tap attempt was not performed prior to placing any valve on the DOR list.

30. For each leak, TRC shall record the following information: the date of all repair attempts; the repair methods used during each repair attempt; the date, time and Screening Values for all re-monitoring events; and, if relevant, the information required under 29 and 32 of this Consent Decree for Covered Equipment placed on the DOR list.

31. Taking Covered Equipment Out of Service. Nothing in Paragraphs 27 - 30 of this Consent Decree is intended to prevent TRC from taking a leaking piece of Covered Equipment out of service; provided however, that prior to placing the leaking piece of Covered Equipment back in service, TRC must either repair the leak or comply with the requirements of Paragraph 32 of this Consent Decree to place the piece of Covered Equipment on the DOR list.

32. Delay of Repair. By no later than the Date of Entry with respect to the requirements of subparagraphs (a) and (b), and by no later than six (6) months after the Date of Entry with respect to the requirements of subparagraphs (c) and (d), for all Covered Equipment placed on the DOR list, TRC shall require the following:

- a. Sign-off from the refinery manager, a TRC official responsible for environmental management and compliance at the refinery, an official responsible for plant engineering, an operations manager, or an area superintendent or unit supervisor that the piece of Covered Equipment is technically infeasible to repair without a process unit shutdown;
- b. Periodic monitoring, at the frequency required for other pieces of Covered Equipment of that type in the process unit, of the Covered Equipment placed on the DOR list;
- c. No more than 0.10% of all valves may be on the DOR list at any one time. If TRC commits to repack a valve with Certified Low-Leaking Valve Packing Technology or commits to replace with a Certified Low-Leaking Valve at the next Maintenance Shutdown, such valve shall not be included in computing the applicable percentage limitation of valves that may be on the DOR list at any one time;
- d. TRC must maintain a list of all the valves that TRC has committed to repack or replace pursuant to Subparagraph 32.c.; and,
- e. Covered Equipment may be removed from the DOR list if it is monitored at the frequency required for other pieces of Covered Equipment of that type in the process unit for two successive monitoring periods without detecting a leak greater than the Leak Definition as set forth in 40 C.F.R. Part 60, Subpart GGGa for that type of Covered Equipment.

33. Management of Change. For each Management of Change process or analysis, TRC shall ensure that each piece of Equipment added to the Toledo Refinery or removed from the Toledo Refinery for any reason is evaluated to determine if it is or was subject to LDAR requirements and that such pieces of Equipment are integrated into or removed from the LDAR program.

34. Training. By no later than six (6) months after the Date of Entry, TRC shall have ensured that all personnel (whether employed by the Operator of the Toledo Refinery or contractors) responsible for LDAR monitoring, maintenance of LDAR monitoring equipment, LDAR repairs, and/or any other duties generated by the LDAR program have completed training on all aspects of LDAR that are relevant to the person's duties. By that same time, TRC shall develop a training protocol to ensure that refresher training is performed once per calendar year and that new personnel are sufficiently trained prior to any involvement in the LDAR program.

35. Daily Certification by Monitoring Technicians. By no later than ninety (90) days after the Date of Entry, on each day that monitoring occurs, at the end of such monitoring day to the extent practical but in no case later than the next work day for the monitoring technician, TRC shall ensure that each monitoring technician certifies that the data collected represents the monitoring performed for that day by requiring the monitoring technician to sign a form that includes the following certification:

On [insert date], I reviewed the monitoring data that I collected on [insert date] and, to the best of my knowledge and belief, the data accurately represents the monitoring I performed on that date.

In lieu of a form for each technician for each day of monitoring, a log sheet may be created that includes the certification that the monitoring technicians would date and sign each day that the technician collects data.

36. Quality Assurance ("QA")/Quality Control ("QC"). Commencing with the second full calendar quarter after the Date of Entry, and during each calendar quarter thereafter, at unannounced times, an LDAR-trained employee or contractor of TRC, who does not serve as an LDAR monitoring technician on a routine basis, shall undertake the following:

- a. review Management of Change documentation for the previous calendar quarter, and conduct process unit walk-throughs to determine whether all

pieces of Equipment identified in the previous calendar quarter's Management of Change documentation as being subject to the LDAR program are, to the extent required, included in the LDAR database and properly tagged;

- b. during the process unit walk-throughs required by subparagraph 36.a., and during such additional walk-throughs as may be necessary to assure that all Covered Process Units are reviewed at least once per year, conduct spot checks of Equipment to verify that the Equipment checked is, to the extent required, included in the LDAR database and is properly tagged;
- c. review the LDAR database's electronic records to:
  - i. verify that Covered Equipment was monitored at the appropriate frequency;
  - ii. verify that proper documentation and sign-offs have been recorded for all Covered Equipment placed on the shutdown or DOR list;
  - iii. ensure that repairs have been performed within the required timeframe;
  - iv. review monitoring data and Covered Equipment counts (*e.g.*, number of pieces of Covered Equipment monitored per Day) for feasibility and unusual trends; and,
  - v. verify that proper calibration records and monitoring instrument maintenance information are stored and maintained;
- d. conduct spot checks of LDAR program records to verify that records are maintained as required; and
- e. observe in the field each LDAR monitoring technician conducting monitoring in a Covered Process Unit evaluated during such calendar quarter under Paragraph 36.a. to ensure monitoring is being conducted as required.

TRC shall correct any deficiencies detected or observed as soon as practicable. TRC shall maintain a log that: (i) records the date and time that the reviews, verifications, and observations required by this Paragraph were undertaken; and (ii) describes the nature and timing of any corrective actions taken.

37. LDAR Audits: General. TRC shall conduct LDAR audits pursuant to the schedule in Paragraph 38 and the requirements of Paragraph 39 of this Consent Decree. TRC shall retain a third-party with experience in conducting LDAR audits to conduct no less than the

initial audit and follow-up audits every two (2) years until termination of the Consent Decree. To perform the third-party audit, TRC shall select a different company than its regular LDAR contractor.

38. LDAR Audits: Schedule. TRC shall ensure that an LDAR audit at the Toledo Refinery is conducted by an independent contractor with expertise in LDAR program requirements to perform a third-party audit for all regulatory LDAR requirements and for the LDAR provisions of this Section V.B. The LDAR audit shall be conducted every twenty-four (24) months in accordance with the following schedule: for the first LDAR audit at the Toledo Refinery, the LDAR Audit Commencement Date shall be no later than the fourth calendar quarter commencing after the Date of Entry. For each subsequent LDAR audit, the LDAR Audit Completion Date shall occur within the same calendar quarter that the first LDAR Audit Completion Date occurred.

39. LDAR Audits: Requirements. Each LDAR audit shall include, but not be limited to, reviewing compliance with all applicable regulations, reviewing and/or verifying the same items that are required to be reviewed and/or verified in Paragraph 36 of this Consent Decree, and performing the following activities for Covered Equipment:

- a. Calculating a Comparative Monitoring Audit Leak Percentage. Covered Equipment, excluding pumps and valves in heavy liquid service, shall be monitored to calculate a leak percentage for each Covered Process Unit that is covered in the audit, broken down by Covered Equipment type (*i.e.*, valves and pumps). The monitoring that takes place during the audit shall be called “comparative monitoring” and the leak percentages derived from the comparative monitoring shall be called the “Comparative Monitoring Audit Leak Percentage.” Until termination of this Consent Decree, TRC shall conduct a comparative monitoring audit pursuant to this Paragraph during each LDAR audit. Each Covered Process Unit at the Toledo Refinery that is not the subject of the current audit shall have a comparative monitoring audit at least once before a previously-audited Covered Process Unit is audited again.



- b. Calculating the Historic, Average Leak Percentage from Prior Periodic Monitoring Events. For the Covered Process Unit that is audited, the historic average leak percentage from prior monitoring events, broken down by Covered Equipment type (*i.e.*, valves and pumps), shall be calculated. The following number of complete monitoring periods immediately preceding the comparative monitoring audit shall be used for this purpose: valves - 4 periods; and pumps -12 periods.
- c. Calculating the Comparative Monitoring Leak Ratio. For the Covered Process Unit that is audited, the ratio of the comparative monitoring audit leak percentage from Paragraph 39.a to the historic average leak percentage from Paragraph 39.b shall be calculated. If a calculated ratio yields an infinite result, TRC shall assume one leaking piece of Covered Equipment was found in the process unit through its routine monitoring during the 12-month period before the audit, and the ratio shall be recalculated.

In addition to these items, LDAR audits after the first audit shall include reviewing the Toledo Refinery's compliance with the LDAR provisions of this Section V.B.

40. When More Frequent Periodic Monitoring is Required. If a comparative monitoring audit leak percentage calculated pursuant to Paragraph 39.a. triggers a more frequent monitoring schedule under any applicable federal, state, or local law or regulation than the frequencies listed in Paragraphs 19, 20 or 21 of this Consent Decree for the equipment type in that Covered Process Unit, TRC shall monitor the affected type of Covered Equipment at the greater frequency unless and until less frequent monitoring is again allowed under the specific federal, state, or local law or regulation. At no time may TRC monitor at intervals less frequently than those in the applicable Paragraph 19, 20, or 21 of this Consent Decree.

41. Corrective Action Plan ("CAP").

- a. Requirements of a CAP. By no later than 30 days after each LDAR Audit Completion Date, TRC shall develop a preliminary corrective action plan ("CAP") if the results of an LDAR audit identify any deficiencies or if the Comparative Monitoring Leak Ratio calculated pursuant to Subparagraph 39.c is 3.0 or higher, and a Comparative Monitoring Audit Leak Percentage calculated pursuant to Paragraph 39.a is 0.5% or higher. The CAP shall describe the actions that TRC shall take to correct the

deficiencies and/or the systemic causes of a Comparative Monitoring Leak Ratio that is 3.0 or higher and a Comparative Monitoring Audit Leak Percentage of 0.5% or higher. The CAP also shall include a schedule by which those actions shall be undertaken. TRC shall complete each corrective action as expeditiously as possible with the goal of completing each action within 90 days after the LDAR Audit Completion Date. If any action is not completed or is not expected to be completed within 90 days after the LDAR Audit Completion Date, TRC shall explain the reasons in the final CAP to be submitted under Subparagraph 41.b., together with a proposed schedule for completion of the action(s) as expeditiously as practicable.

- b. Submissions of the CAP to EPA. By no later than 120 Days after the LDAR Audit Completion Date, TRC shall submit the final CAP to EPA, together with a certification of the completion of corrective action(s). For any corrective actions requiring more than 90 Days to complete, TRC shall include an explanation together with a proposed schedule for completion as expeditiously as practicable.
- c. Approval/Disapproval of All or Parts of a CAP.
  - i. Unless within 60 Days after receipt of the CAP, EPA disapproves all or part of a CAP's proposed actions and/or schedules, the CAP shall be deemed approved.
  - ii. By no later than 60 Days after receipt of TRC's CAP, EPA may disapprove any or all aspects of the CAP. Each item that is not specifically disapproved shall be deemed approved. Except for good cause, EPA may not disapprove any action within the CAP that already has been completed. Within 45 days of receipt of any disapproval from EPA, TRC shall submit a revised CAP that addresses the deficiencies that EPA identified. TRC shall implement the revised CAP either pursuant to the schedule that EPA proposed, or, if EPA did not specify a schedule, as expeditiously as practicable.
  - iii. A dispute arising with respect to any aspect of a CAP shall be resolved in accordance with the dispute resolution provisions of this Consent Decree.

42. Valve Replacement Program. By no later than twelve (12) months after the Date of Entry, TRC shall implement the program set forth in Paragraphs 43 through 49 of this Consent

Decree to replace and/or improve the emissions performance of the valves in each Covered Process Unit.

43. Valves.

- a. By no later than twelve (12) months after the Date of Entry:
  - i. TRC shall implement modified purchasing procedures that evaluate the availability of valves and valve packing that meet the requirements for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology at the time that the valves and/or valve packing is acquired.
  - ii. Except as provided in Paragraph 44, TRC shall install valve packing material that meets the requirements for Certified Low-Leaking Valve Packing Technology whenever repacking any valve in gas/vapor or light liquid VOC service in a Covered Process Unit.
- b. By no later than six (6) months after the Date of Entry (except as provided in Paragraph 44), TRC shall ensure that each new valve in gas/vapor or light liquid VOC service that it purchases for use in any Covered Process Unit either is a Certified Low-Leaking Valve or is fitted with Certified Low-Leaking Valve Packing Technology.
- c. By no later than 12 months after the Date of Entry (except as provided in Paragraph 44), TRC shall ensure that each new valve in gas/vapor or light liquid VOC service that it installs in any Covered Process Unit either is a Certified Low-Leaking Valve or is fitted with Certified Low-Leaking Valve Packing Technology.
- d. Replacing or Repacking Existing Valves that have Screening Values at or above 5,000 ppm. Except as provided in Paragraph 44, for each Existing Valve in each Covered Process Unit that has a Screening Value at or above 5,000 ppm during any monitoring event, TRC shall replace or repack the Existing Valve with a Certified Low-Leaking Valve or with Certified Low-Leaking Valve Packing Technology. TRC shall undertake this replacement or repacking by no later than 30 days after the monitoring event that triggers the replacement or repacking requirement, unless the replacement or repacking requires a process unit shutdown. If the replacement or repacking requires a process unit shutdown, TRC shall undertake the replacement or repacking during the first Maintenance Shutdown that follows the monitoring event that triggers the requirement to replace or repack the valve. If TRC completes the replacement or repacking within 30 days of detecting the leak, TRC shall not be required

to comply with Paragraphs 26 - 31. If TRC does not complete the replacement or repacking within 30 days, or if, at the time of the leak detection, TRC reasonably can anticipate that it might not be able to complete the replacement or repacking within 30 days, TRC shall comply with all applicable requirements of Paragraphs 26 - 31 in addition to the requirements of this sub-paragraph 43.d.

44. Commercial Unavailability of a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology. TRC shall not be required to utilize a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology to replace or repack a valve if a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is commercially unavailable based on the factors and procedures set forth in Paragraphs 45 - 48.

45. Commercial Unavailability: Summary of Factors and Procedures to Establish Commercial Unavailability. Paragraphs 45 - 48 outline a process to be followed and factors to be taken into consideration to establish that a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is not “commercially available” pursuant to Paragraph 44. Factors and procedures other than those identified in Paragraphs 45 - 48 may also be utilized to establish that a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is not commercially available.

46. Commercial Unavailability: Factors. The following factors shall be taken into account for determining the availability of safe and suitable Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technologies:

- (1) Valve type;
- (2) Valve service and operating conditions;
- (3) Type of refinery process equipment in which the valve is used;
- (4) Seal performance;
- (5) Service life;
- (6) Packing friction;
- (7) Temperature and pressure limitations; and
- (8) Retrofit applications (*e.g.*, re-piping or space limitations).

- (9) The following factors may also be relevant for consideration, depending on the process unit or equipment in use at the refinery:
  - (a) Valve or valve packing specifications identified by the licensor of the process unit or equipment in use at the refinery (including components that are part of a design package by a specialty-equipment provider as part of a larger process unit); or
  - (b) Valve or valve packing vendor or manufacturer recommendations for the relevant refinery unit and/or process unit components.

47. Commercial Unavailability: Process. The following procedure shall be followed for determining the availability of a Certified Low-Leaking Valve or Certified Valve Packing Technology:

- a. TRC must contact a reasonable number of vendors of valves and valve packing technologies, taking into account the relevant factors identified above, prior to asserting a claim that Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is not commercially available.
  - i. For purposes of this Consent Decree, except as otherwise specified herein, a reasonable number of vendors shall mean at least three vendors of valves and three vendors of valve packing technologies;
  - ii. If fewer than three vendors of valve or valve packing technologies are contacted, the determination of whether such fewer number is reasonable for purposes of this Consent Decree shall be based on factors (9)(a) and/or (9)(b) above, or on a demonstration that fewer than three vendors offer valves or valve packing technologies for the service and operating conditions of the valve to be replaced, in consideration of factors (1) through (8) above, as applicable.
- b. TRC shall obtain a written representation from each vendor contacted or equivalent documentation that the particular valve that TRC needs is commercially unavailable either as a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology.
- c. TRC shall prepare a written report fully explaining the basis for each claim that a valve or valve packing is not commercially available, to include all relevant documentation and other information supporting the claim. Such report shall also identify the commercially available valve or packing technology that comes closest to meeting the requirements for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology that is selected and installed by TRC pursuant to Paragraph 43. Such report shall be included in the Semi-Annual Report required by

Section VIII of the Consent Decree, for the period in which the valve or valve packing is replaced.

- d. Ongoing Assessment of Availability. TRC may use a prior determination of Commercial Unavailability of a valve or valve packing pursuant to Paragraphs 45 - 48 for a subsequent Commercial Unavailability claim for the same valve or valve packing (or valve or valve packing in the same or similar service), provided that the previous determination was completed within the preceding 12-month period. After one year, TRC must conduct a new assessment of the availability of a valve or valve packing meeting Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology requirements.

48. EPA Review of Claim of Commercial Unavailability. Upon discretionary review by EPA of any claim of commercial unavailability, if EPA disagrees that a valve or valve-packing technology is commercially unavailable, EPA shall notify TRC in writing, specifying the valve or valve packing EPA believes to be commercially available and the basis for its availability for the service and operating conditions of the valve. Following receipt by TRC of EPA's notice, the following shall apply:

- a. TRC is not required to retrofit any valves or valve packing for which the unavailability claim was asserted, except as provided in Subparagraph 48.c. below
- b. EPA's notification shall serve as notice to TRC of EPA's intent that a future claim of commercial unavailability will not be accepted for: (a) the valve or valve packing that was the subject of the unavailability claim, or (b) for a valve or valve packing in the same or similar service, taking into account the factors identified in Paragraph 46. If TRC disagrees with EPA's notification, TRC and EPA may informally discuss the basis for the claim of commercial unavailability. EPA may thereafter revise its notification, if necessary.
- c. If TRC makes a subsequent commercial unavailability claim for the same valve or valve packing (or valve or valve packing in the same or similar service) that was the subject of a prior unavailability claim which was not accepted by EPA, and such subsequent claim is also denied by EPA on the same basis as provided in EPA's prior notification, TRC shall retrofit the valve or valve packing with the commercially available valve or valve packing technology at the next Maintenance Shutdown.

- d. Any disputes concerning EPA's notification to TRC of the commercial availability of a valve or valve packing technology in a particular application pursuant to Paragraph 48.c. shall be addressed under the Dispute Resolution provisions in Section XII of this Consent Decree.

49. Valve Replacement Program Recordkeeping. TRC shall secure and retain for the duration of this Consent Decree the following records from vendors/manufacturers:

- a. For Certified Low-Leaking Valves and Certified Low-Leaking Valve Packing Technology, documentation from each manufacturer that demonstrates that the valve or packing technology meets the definition of "Certified Low-Leaking Valve" and/or "Certified Low-Leaking Valve Packing Technology."
- b. For valves or valve packing technology that cannot be replaced by a "Certified Low-Leak Valve" and/or a "Certified Low-Leaking Valve Packing Technology," a written representation from each vendor contacted or equivalent documentation that the particular valve that TRC needs is commercially unavailable either as a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology.

50. Certification of Compliance. Within 180 Days after the initial LDAR Audit Completion Date, TRC shall submit a certification to EPA and Ohio EPA that, to the best of the certifier's knowledge and belief after reasonable inquiry: (i) the Toledo Refinery is in compliance with all applicable LDAR regulations, except for any corrective actions not yet completed, as described in part (ii) of this Paragraph; (ii) TRC has completed all corrective actions, if applicable, or is in the process of completing all corrective actions pursuant to a CAP; and (iii) all Equipment at the Toledo Refinery that is regulated under any federal, state, or local leak detection program has been identified and included in the Toledo Refinery's LDAR program.

51. Recordkeeping. TRC shall keep all records, including copies of all LDAR audits, to document compliance with the requirements of Paragraphs 17 - 52 in accordance with Section VIII (Reporting and Recordkeeping) of this Consent Decree. All monitoring data, leak repair

data, training records, and audits will be retained for one (1) year following termination of the Consent Decree, except as provided in Paragraph 112. Upon request by EPA, TRC shall make all such documents available to EPA and shall provide, in their original electronic format, all LDAR monitoring data generated during the life of this Consent Decree.

52. LDAR Requirements for Compliance Status Reports. In each Compliance Status Report due under Section VIII of this Consent Decree, TRC shall report the following information with respect to the relevant reporting period:

- a. The number of personnel assigned to LDAR functions at the Toledo Refinery and the percentage of time for each person dedicated to performing his/her LDAR functions;
- b. An identification and description of any non-compliance with the requirements of Paragraphs 17 - 52;
- c. An identification of any problems encountered in complying with the requirements of Paragraphs 17 - 52;
- d. A listing of any valves for which TRC committed to repack with Certified Low-Leaking Valve Packing Technology or committed to replace with a Certified Low-Leaking Valve, but did not fulfill such repack or replacement at the next Maintenance Shutdown;
- e. identification of each valve that was replaced with a Certified Low-Leaking Valve or upgraded with Certified Low-Leaking Valve Packing Technology;
- f. for each valve which TRC could not comply with the requirement to replace or repack the valve with a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology:
  - i. identify the valve;
  - ii. identify the vendors TRC contacted to determine the unavailability of such a Valve or Packing Technology; and,
  - iii. include the written representations or documentation that TRC secured from each vendor regarding the unavailability;
- g. identify the schedule for any future replacements or upgrades using Certified Low-Leaking Valves or Certified Low-Leaking Valve Packing Technology;



- h. The information required in Paragraph 44;
- i. Pursuant to Subparagraph 47.c., the report required therein;
- j. Identification of any LDAR training conducted in accordance with Paragraph 34;
- k. Any deviations identified in the QA/QC performed under Paragraph 36, as well as any corrective actions taken thereunder;
- l. A summary of LDAR audit results for audits that were completed during the reporting period, including specifically identifying all deficiencies; and,
- m. The status of all actions under any CAP that was submitted pursuant to Paragraph 41 during the reporting period.

**C. Incorporation of Remaining 2006 Consent Decree Requirements into Title V Permit**

53. Within 30 days of the Effective Date of this Consent Decree, TRC must apply to modify its Title V Permit as follows:

- a. The language in Paragraph B.15.h of Title V Permit Number P0115806 must be deleted or must be changed to identify that the emission decreases associated with the shutdown of heaters H302, H304, H508 and H5101 do not result in any creditable emissions decreases;
- b. The Plant 4 Flare and the Plant 9 Flare must be required to comply with 40 C.F.R. Part 60, Subpart Ja, and references to the previously applicable 40 C.F.R. Part 60, Subpart J and the 2006 Consent Decree must be removed;
- c. The Plant 4 Flare and the Plant 9 Flare must be required to comply with 40 C.F.R. § 60.107a(a)(2).

- d. The reference to the Consent Decree in Title V Permit Number P0115806 at C.10.c)(2) must be changed to reference 40 C.F.R. Part 60, Subpart Ja as the appropriate underlying requirement; and,
- e. The reference to the Consent Decree in Title V Permit Number P0115806 at C.11.c)(3) must be changed to reference 40 C.F.R. Part 60, Subpart Ja as the appropriate underlying requirement.

54. Until the date that a final Title V Permit is effective which reflects the modifications required by Paragraph 53, the requirements in Paragraph 53 are enforceable through this Consent Decree.

**D. Incorporation of Consent Decree Requirements into Federally Enforceable Permits**

55. Permits Needed to Meet Compliance Obligations. If any compliance obligation under this Section V (Compliance Requirements) requires TRC to obtain a federal, state, or local permit or approval, TRC shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. TRC may seek relief under the provisions of Section XI of this Decree (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 TRC has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

56. Permits to Ensure Survival of Consent Decree Limits and Standards after Termination of Consent Decree.

a. Prior to termination of this Consent Decree, TRC shall submit to permitting authorities in the State of Ohio complete applications, amendments and/or supplements to incorporate as “applicable requirements” the limits and standards listed in

Subparagraph 56.b. into non-Title V, federally enforceable permits that will survive termination of this Consent Decree.

b. The limits and standards imposed by the following Paragraphs of this Consent Decree and its Appendices shall survive termination:

- i. Flaring Emission Reductions and Controls. All of the requirements and limits set forth in Appendix A, Paragraphs A3 and A5; and,
- ii. Leak Detection and Repair. All of the applicable requirements set forth in Paragraph 15.

57. Modifications to Title V Operating Permits. Prior to termination of this Consent Decree, TRC shall submit complete applications to permitting authorities in the State of Ohio to modify, amend, or revise the Title V permit of the TRC Refinery to incorporate the limits and standards identified in the preceding Paragraph into the Title V permit. The Parties agree that the incorporation of these emission limits and standards into Title V Permits shall be done in accordance with applicable state or local Title V rules. The Parties agree that the incorporation may be by “amendment” under 40 C.F.R. § 70.7(d) and analogous state Title V rules, where allowed by state law.

## **VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

58. Phyto-Pollution Reduction Planting Program. TRC shall implement as a Supplemental Environmental Project (“SEP”) the program described in Appendix B (the “Phyto-Pollution Reduction SEP”). The Phyto-Pollution Reduction SEP shall consist of a project to plant trees in the City of Oregon, Ohio. TRC shall implement the Phyto-Pollution Reduction SEP in accordance with the criteria, terms and procedures in Appendix B. TRC shall spend not less than \$150,000 to implement the Phyto-Pollution Reduction SEP. TRC shall not include its

internal personnel costs in implementing or overseeing the implementation of the Phyto-Pollution Reduction SEP as Project Dollars.

59. TRC is responsible for the satisfactory completion of the Phyto-Pollution Reduction SEP in accordance with the requirements of this Consent Decree. TRC may work with third parties, including the City of Oregon and its or their contractors or consultants, in planning and implementing the SEPs.

60. With regard to the Phyto-Pollution Reduction SEP, TRC certifies the truth and accuracy of each of the following:

- a. That all cost information provided to EPA in connection with the SEP is complete and accurate, and that TRC in good faith estimates that the cost to implement the Phyto-Pollution Reduction SEP is at least \$150,000;
- b. That, as of the date of executing this Consent Decree, TRC is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project that TRC was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree;
- d. That TRC has not received and will not receive credit for the SEP in any other enforcement action;
- e. That TRC will not receive any reimbursement for any portion of the SEP from any other person; and,

- f. That TRC is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in this Section. TRC shall certify to EPA before using any Contractor that TRC has inquired of it whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Contractor that it is not a party to such a transaction. For purposes of these certifications, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally guaranteed loan guarantee, or other mechanism for providing federal financial assistance for which the performance period has not yet expired.

61. TRC shall include in each report required by Paragraph 71 a description of its progress toward implementing the SEP required by this Section. In addition, the report required by Paragraph 71 for the period in which the SEP is completed shall contain the following information with respect to the SEP (“SEP Completion Report”):

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all eligible SEP costs expended;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

EPA may require information in addition to that described in this Paragraph in order to evaluate TRC's SEP Completion Report.

62. Any public statement, oral or written, in print, film, or other media, made by TRC making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *United States v. Toledo Refining Company*, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act."

63. For federal and state income tax purposes, TRC agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

## **VII. ENVIRONMENTAL MITIGATION PROJECTS**

64. By no later than the dates specified below, TRC shall complete implementation and commence operation of the Environmental Mitigation Projects described in Paragraphs 65 through 68 for the purpose of reducing emissions of VOCs, H<sub>2</sub>S, SO<sub>2</sub>, and benzene from the Toledo Refinery.

### **A. VOC and Benzene Reduction Projects**

65. For the purposes of this paragraph, "in benzene service" shall mean that a piece of equipment either contains or contacts a fluid (liquid or gas) with a flow-weighted annual average benzene concentration of at least 10% by weight.

66. Pump Upgrades. By no later than December 31, 2020, TRC shall upgrade or replace six (6) pumps that are in benzene service with pumps that are equipped with dual mechanical seals that include a barrier fluid system and which meet the following requirements:

- a. Each dual mechanical seal system is (1) operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or (2)

equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of 40 C.F.R. § 63.172; or (3) equipped with a closed-loop system that purges the barrier fluid into a process stream with zero volatile hazardous air pollutant (VHAP) emissions to atmosphere;

- b. The barrier fluid is not in VHAP service, as that term is defined at 40 C.F.R. § 61.241, and, if the pump is covered by standards under 40 C.F.R. Part 60, is not in VOC service, as that term is defined at 40 C.F.R. § 61.241; and
- c. Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

67. Method 21 Monitoring of Water Traps. Commencing no later than 120 days after Date of Entry, in addition to the quarterly visual monitoring required by 40 C.F.R. § 61.346(b)(4)(i), TRC shall conduct quarterly monitoring, using EPA Reference Method 21, of each drain equipped with a water seal that is subject to the requirements of 40 C.F.R. § 61.346. If the Method 21 monitoring finds detectable emissions above 500 ppmv at any drain, TRC shall take action to reduce the detectable emissions below 500 ppmv no later than 15 days after the emissions are detected.

- a. In the Semi-Annual reports required by Section VIII, TRC shall: (1) identify the number of drains monitored using EPA Reference Method 21; (2) identify the drains at which detectable emissions above 500 ppmv were found; (3) identify the date detectable emissions above 500 ppmv were found; and (4) identify the number of days elapsed between detection of detectable emissions above 500

ppmv and the date that the detectable emissions were reduced below 500 ppmv, as confirmed by a Method 21 reading.

**B. Project to Reduce H<sub>2</sub>S and SO<sub>2</sub> Using Scavenger**

68. Commencing no later than 30 days after Date of Entry and continuing for 2 years thereafter, TRC shall continuously inject 2 gallons per hour of SULFIX 9252 SCAVENGER or similar material (“scavenger”) into the vent gas routed to the Plant 4 flare, except as provided in subparagraphs a. – b., below. TRC shall implement this requirement by establishing an injection rate at 2 gallons per hour for the pump injecting the scavenger, based on the applicable percent stroke and pump curve. At least once per operating day, an operator shall confirm the proper pump setting in accordance with this provision, and maintain a record of such observation. In addition, at least once per operating week, TRC shall review tank supply levels to confirm that injection of the scavenger is being achieved.

- a. Malodor Interruptions. TRC may reduce or discontinue scavenger injection to the extent TRC determines that the scavenger injection is resulting in malodors that are likely to result in off-site malodor complaints (“Malodors”), provided that:
  - i. TRC takes prompt action to return to routine scavenger injection rates as soon as practicable in a manner that will not cause Malodors; and,
  - ii. The duration of any interruption in scavenger injection pursuant to this Paragraph 68.a. shall not count toward the demonstration of



compliance with the required duration of the scavenger injection pursuant to Paragraph 68.

- b. Process Safety and Reliability Interruptions. TRC may reduce or discontinue scavenger injection to the extent TRC reasonably determines that the scavenger injection poses a material risk to the safety of TRC employees, contractors, or the public, including by interference with the reliability of the safe operation of equipment provided that:
  - i. TRC takes prompt action to address such safety and reliability considerations and return to routine scavenger injection rates; and
  - ii. The duration of any interruption in scavenger injection pursuant to this Paragraph 68.c shall not count toward the demonstration of compliance with the required duration of the scavenger injection pursuant to Paragraph 68.
- c. In the Semi-Annual reports required by Section VIII, TRC shall report (i) each time period during which scavenger was not injected at a rate of at least 2 gallons per hour; (ii) the scavenger injection rate for each such time period; and (iii) if TRC believes that one of the exemptions set forth in Subparagraphs 68.b. or 68.c applies, it shall identify the exemption that it believes applies to such time period.

69. By signing this Consent Decree, TRC certifies that it is not required to perform or develop these Mitigation Projects by any federal, state, or local law or regulation, except to the extent that scavenger is sometimes used to reduce the H<sub>2</sub>S concentration of the vent gas routed to

the Plant 4 flare when the H<sub>2</sub>S concentration exceeds the regulatory standard, and that TRC is not required to perform or develop these Projects by agreement, grant, or as injunctive relief awarded in any other action in any forum; that these Projects are not ones that TRC was planning or intending to construct, perform, or implement other than in settlement of the claims resolved by this Decree; and that TRC will not receive any reimbursement for any portion of the costs of these Projects from any other person.

70. Mitigation Progress and Completion Reports. TRC shall include in each report required under Paragraph 71 a status update on each Mitigation Project required by this Section until each Project is completed. In addition, the report required by Paragraph 71 for the period in which each Project is completed shall contain the following information:

- a. A detailed description of the Project as implemented;
- b. A description of any problems encountered in completing the Project and the solutions thereto;
- c. A description of the environmental and public health benefits resulting from implementation of the Project (with a quantification of the benefits and an estimate of the pollutant reductions); and
- d. A certification that the Project has been fully implemented pursuant to the provisions of this Consent Decree.

### **VIII. REPORTING AND RECORDKEEPING**

71. Semi-Annual Compliance Status Reports. On the dates and for the time periods set forth in Paragraph 73, TRC shall submit to EPA in the manner set forth in Section XVI (Notices) the following information:

- a. A progress report on the implementation of the requirements of Section V of this Decree (Compliance Requirements);
- b. The information required in Part E (Reporting) of Appendix A of this Consent Decree;
- c. The information specified in Paragraph 52;

- d. A description of any problems anticipated with respect to meeting the requirements of Section V and/or Appendix A;
- e. A description of the status of the SEP in Section VI of this Decree;
- f. The information specified in Paragraph 70;
- g. The specific information on the Mitigation Projects required to be reported pursuant Paragraphs 67.a., and 68.b.;
- h. For the Semi-Annual report due on August 31, the information required by Paragraph 72;
- i. Any additional matters required by any other Paragraph of this Consent Decree to be submitted in the Semi-Annual report; and
- j. Any additional matters that TRC believes should be brought to the attention of EPA.

72. Emissions Data. In the Semi-Annual report required to be submitted on August 31 of each year for the Toledo Refinery, TRC will provide a summary of annual emissions data for the prior calendar year to include emissions from Covered Flares as specified in Paragraph A11 of Appendix A. To the extent that the required emissions summary data is available in other reports generated by TRC, such other reports can be attached, or the appropriate information can be extracted from such other reports and attached to the August 31 Semi-Annual report to satisfy the requirement.

73. Due Dates. The first compliance status report shall be due two months after the first full half-year after the Effective Date of this Consent Decree (*i.e.*, either: (i) February 28 of the year after the Effective Date, if the Effective Date is between January 1 and June 30 of the preceding year; or (ii) August 31 of the year after the Effective Date, if the Effective Date is between July 1 and December 31). The initial report shall cover the period between the Effective Date and the first full half-year after the Effective Date (a “half-year” runs between January 1 and

June 30 and between July 1 and December 31). Until termination of this Decree, each subsequent report will be due on February 28 and August 31 and shall cover the prior half-year (*i.e.*, January 1 to June 30 or July 1 to December 31).

74. Each report submitted under this Consent Decree shall be signed by the plant manager (or his/her designee) or the person responsible for environmental management and compliance and shall 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.

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

75. The reporting requirements of this Consent Decree do not relieve TRC of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

76. 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.

#### **IX. CIVIL PENALTY**

77. By no later than 30 days after the Date of Entry of this Consent Decree, TRC shall pay the sum of \$418,300 as a civil penalty. TRC shall pay the penalty by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to TRC following entry of the Consent Decree, by the Financial

Litigation Unit of the U.S. Attorney's Office for the Northern District of Ohio, 801 West Superior Avenue, Suite 400, Cleveland, Ohio. At the time of payment, TRC shall send a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter: (i) to the United States in accordance with Section XVI of this Decree (Notices); (ii) by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and (iii) by mail to:

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

The transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Toledo Refining Company*, and shall reference the civil action number and DOJ case number 90-5-2-1-10924.

78. If any portion of the civil penalty due to the United States is not paid when due, TRC shall pay interest on the amount past due, accruing from the Effective Date through the date of payment, at the rate specified in 28 U.S.C. § 1961. Interest payment under this Paragraph shall be in addition to any stipulated penalty due.

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

#### **X. STIPULATED PENALTIES**

80. Failure to Pay Civil Penalty. If TRC fails to pay any portion of the civil penalty required to be paid under Section IX of this Decree (Civil Penalty) when due, TRC shall pay a stipulated penalty of \$2,500 per day for each day that the payment is late. Late payment of the civil penalty and any accrued stipulated penalties shall be made in accordance with Paragraph 77.

81. Failure to Meet all Other Consent Decree Obligations. TRC shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in

Paragraphs 82, 83, 84 and 85 unless excused under Section XI of this Decree (Force Majeure).

For those provisions where the option of a stipulated penalty of either a fixed amount or 1.2 times the economic benefit of delayed compliance is available, the decision of which alternative to seek rests exclusively within the discretion of the United States.

82. Failure to Meet Obligations in Sections V, VI and VIII of this Consent Decree

(except for Subsections V.A and V.B which are covered in Paragraphs 83 and 84).

**STIPULATED PENALTY TABLE 1**

<b>Violation</b>	<b>Stipulated Penalty</b>	
82.a. <u>Violation of Paragraphs 55 or 56.</u> For failure to submit an application for a permit in accordance with the requirements of Paragraph 55 or 56.	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>
	Days 1–30	\$ 800
	Days 31–60	\$1,500
	Days 61 and later	\$3,000
82.b. <u>Violation of Paragraphs 58-63 – or Appendix B.</u> For failure to comply with the requirements of Paragraphs 58 - 63, Appendix B (SEP).	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day per Requirement</u>
	Days 1–30	\$1,000
	Days 31–60	\$1,500
	Days 61 and later	\$2,000
82.c. <u>Violation of requirements related to reports, plans, or other deliverables.</u> For failure to timely submit reports, plans or other deliverables in accordance with the requirements of any paragraph or subparagraph of this Decree (including but not limited to the paragraphs and subparagraphs of Section VIII); provided however, that any report, plan, or other deliverable that has a specific stipulated penalty associated with it shall be assessed stipulated penalties under the specific stipulated penalty provision, not this catch-all provision	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day per Report</u>
	Days 1–30	\$ 300
	Days 31–60	\$1,000
	Days 61 and later	\$2,000 per month

83. Failure to Meet Obligations in Appendix A of this Consent Decree.

**STIPULATED PENALTY TABLE 2**

<b>Violation</b>	<b>Stipulated Penalty</b>	
83.a. <u>Violation of Subparagraph A3.a.i.</u> Failure to comply with the refinery-wide 365-day rolling average limit on Waste Gas flaring	<u>Pollutant</u>	<u>Penalty per Day per ton</u>
	SO <sub>2</sub>	\$ 40
	VOC	\$ 80
	The amount of excess emissions during the event(s) which precipitate(s) the exceedance(s) of the 365-day rolling average limit is not the sole basis for calculating the stipulated penalty due. Instead, each day on which the 365-day rolling average limit is violated—which violations most likely continue even though the precipitating event and the excess emissions do not—counts as a separate day. TRC shall comply with Appendix A1.3 to calculate the stipulated penalties resulting from violating the flaring limitation in Subparagraph A3.a.i.	
83.b. <u>Violation of Paragraph A6.</u> Failure to comply with any applicable obligation required pursuant to Paragraph A6, except for failures to comply with 40 C.F.R. § 63.670(i) and/or (j), which are covered by Subparagraph 83.c.	<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
	Day 1 through 14	\$1,500
	Day 15 through 30	\$2,750
	Day 30 and beyond	\$4,250
83.c. <u>Violation of Paragraph A7.</u> Failure to comply with a requirement of Paragraph A7	<u>Per monitoring system, number of hours per calendar quarter in violation</u>	<u>Penalty per hour per monitoring system</u>
	0.25–50.0	\$ 250
	50.25–100.0	\$ 500
	Over 100.0	\$ 1000

84. Failure to Meet LDAR Compliance Provisions in Section V.B.**STIPULATED PENALTY TABLE 3**

<b>Violation</b>	<b>Stipulated Penalty</b>	
84.a. <u>Violation of Paragraph 18.</u> Failure to timely develop and complete the Facility-Wide LDAR document required in Paragraph 18 and to update it on an annual basis if needed pursuant to Paragraph 18	<u>Period of noncompliance</u>	<u>Penalty per day late</u>
	1 - 15 days	\$ 300
	16 - 30 days	\$ 400
	31 days or more	\$ 500
84.b. <u>Violation of Paragraph 19.</u> Each failure to perform monitoring at the	\$100 per component per missed monitoring event, not to exceed \$25,000 per month	

frequencies set forth in Paragraph 19 or 20, whichever is applicable											
84.c. <u>Violation of Paragraph 21.</u> Each failure to comply with Method 21 (or the AWP, as applicable) in performing LDAR monitoring, as indicated by the leak percentage ratio calculated under Paragraph 39, but only if the auditor identified a leak rate of at least 0.5% per component type in the process unit	<table> <thead> <tr> <th><u>Comparative Monitoring Leak Ratio calculated</u></th> <th><u>Penalty per Covered Process Unit</u></th> </tr> </thead> <tbody> <tr> <td><math>\geq 3.0 &lt; 4.0</math></td> <td>\$15,000</td> </tr> <tr> <td><math>\geq 4.0 &lt; 5.0</math></td> <td>\$30,000</td> </tr> <tr> <td><math>\geq 5.0 &lt; 6.0</math></td> <td>\$45,000</td> </tr> <tr> <td><math>\geq 6.0</math></td> <td>\$60,000</td> </tr> </tbody> </table>	<u>Comparative Monitoring Leak Ratio calculated</u>	<u>Penalty per Covered Process Unit</u>	$\geq 3.0 < 4.0$	\$15,000	$\geq 4.0 < 5.0$	\$30,000	$\geq 5.0 < 6.0$	\$45,000	$\geq 6.0$	\$60,000
<u>Comparative Monitoring Leak Ratio calculated</u>	<u>Penalty per Covered Process Unit</u>										
$\geq 3.0 < 4.0$	\$15,000										
$\geq 4.0 < 5.0$	\$30,000										
$\geq 5.0 < 6.0$	\$45,000										
$\geq 6.0$	\$60,000										
84.d. <u>Violation of Paragraph 21.</u> Each failure to use a monitoring device that is attached to a data logger or equivalent equipment; or each failure, during each monitoring event, to directly electronically record the Screening Value, date, time, identification number of the monitoring equipment, or the identification of the technician in accordance with the requirements of Paragraph 21	\$100 per failure per piece of Covered Equipment, but no greater than \$2,500 per Covered Process Unit per month										
84.e. <u>Violation of Paragraph 21.</u> Each failure to transfer monitoring data to an electronic database on at least a weekly basis in accordance with the requirements of Paragraph 21	\$100 per day for each day that the transfer is late, but no greater than \$2,500 per process unit per month										
84.f. <u>Violation of Paragraph 22.</u> Each failure to conduct and record the calibrations and calibration drift assessments in accordance with the requirements of Paragraph 22	\$100 per missed calibration or calibration drift assessment event										
84.g. <u>Violation of Paragraph 25.</u> Each failure to undertake a repair attempt under the circumstances identified in Paragraph 25	\$150 per day for each day up to the day the repair is made, not to exceed \$1500 per leak (at which time, if the repair still is not made, the penalties in Subparagraph 84.i apply)										
84.h. <u>Violation of Paragraph 26.</u> For each failure to make an attempt at repair of a valve in accordance with the requirements of Paragraph 26.	\$100 per valve, not to exceed \$10,000 per month.										
84.i. <u>Violation of Paragraph 27.</u> Each failure to timely perform a first attempt at repair as required by Paragraph 27. For purposes of these stipulated penalties, the term “repair” includes the required Repair Verification Monitoring in Paragraph 28 after the repair attempt; the stipulated penalties in Subparagraph 84.k do not apply.	\$ 150 per day for each late day, not to exceed \$1500 per leak										



84.j. <u>Violation of Paragraph 27.</u> Each failure to timely perform a final attempt at repair as required by Paragraph 27. For purposes of these stipulated penalties, the term “repair” extends to the required Repair Verification Monitoring in Paragraph 28 after the repair attempt; i.e., no separate stipulated penalties in Subparagraph 84.k would apply.	<table border="1"> <thead> <tr> <th>Equipment type</th> <th>Penalty per Component per day late</th> <th>Not to Exceed</th> </tr> </thead> <tbody> <tr> <td>Valves</td> <td>\$ 300</td> <td>\$ 18,750</td> </tr> <tr> <td>Pumps</td> <td>\$1,200</td> <td>\$ 75,000</td> </tr> </tbody> </table>	Equipment type	Penalty per Component per day late	Not to Exceed	Valves	\$ 300	\$ 18,750	Pumps	\$1,200	\$ 75,000
Equipment type	Penalty per Component per day late	Not to Exceed								
Valves	\$ 300	\$ 18,750								
Pumps	\$1,200	\$ 75,000								
84.k. <u>Violation of Paragraph 28.</u> Each failure to timely perform Repair Verification Monitoring as required by Paragraph 28 in circumstances where the first attempt to adjust, or otherwise alter, the piece of equipment to eliminate the leak was made within 5 days and the final attempt to adjust, or otherwise alter, the piece of equipment to eliminate the leak was made within 15 days	<table border="1"> <thead> <tr> <th>Equipment type</th> <th>Penalty per Component per day late</th> <th>Not to Exceed</th> </tr> </thead> <tbody> <tr> <td>Valves</td> <td>\$ 150</td> <td>\$ 9,375</td> </tr> <tr> <td>Pumps</td> <td>\$ 600</td> <td>\$ 37,500</td> </tr> </tbody> </table>	Equipment type	Penalty per Component per day late	Not to Exceed	Valves	\$ 150	\$ 9,375	Pumps	\$ 600	\$ 37,500
Equipment type	Penalty per Component per day late	Not to Exceed								
Valves	\$ 150	\$ 9,375								
Pumps	\$ 600	\$ 37,500								
84.l. <u>Violation of Paragraph 29.</u> Each failure to undertake the drill-and-tap method in accordance with the requirements of Paragraph 29.	<table border="1"> <thead> <tr> <th>Period of noncompliance</th> <th>Penalty per component per day late</th> </tr> </thead> <tbody> <tr> <td>Between 1 and 15 days</td> <td>\$ 200</td> </tr> <tr> <td>Between 16 and 30 days</td> <td>\$ 350</td> </tr> <tr> <td>Over 30 days</td> <td>\$ 500 per day for each day over 30, not to exceed \$37,500</td> </tr> </tbody> </table>	Period of noncompliance	Penalty per component per day late	Between 1 and 15 days	\$ 200	Between 16 and 30 days	\$ 350	Over 30 days	\$ 500 per day for each day over 30, not to exceed \$37,500	
Period of noncompliance	Penalty per component per day late									
Between 1 and 15 days	\$ 200									
Between 16 and 30 days	\$ 350									
Over 30 days	\$ 500 per day for each day over 30, not to exceed \$37,500									
84.m. <u>Violation of Paragraph 30.</u> Each failure to record the information required by Paragraph 30	\$ 100 per component per item of missed information									
84.n. <u>Violation of Paragraph 32.</u> Each improper placement of a piece of Covered Equipment on the DOR list (i.e., placing a piece of Covered Equipment on the DOR list even though it is feasible to repair it without a process unit shutdown, or placing a valve on the DOR list that causes the Refinery to exceed the 0.10% limit in Subparagraph 32.c.) in violation of the requirements of Paragraph 32	<table border="1"> <thead> <tr> <th>Equipment Type</th> <th>Penalty per component per day on list</th> <th>Not to exceed</th> </tr> </thead> <tbody> <tr> <td>Valves</td> <td>\$ 300</td> <td>\$ 37,500</td> </tr> <tr> <td>Pumps</td> <td>\$ 1200</td> <td>\$ 150,000</td> </tr> </tbody> </table>	Equipment Type	Penalty per component per day on list	Not to exceed	Valves	\$ 300	\$ 37,500	Pumps	\$ 1200	\$ 150,000
Equipment Type	Penalty per component per day on list	Not to exceed								
Valves	\$ 300	\$ 37,500								
Pumps	\$ 1200	\$ 150,000								
84.o. <u>Violation of Subparagraph 32.a.</u> Each failure to comply with the requirement in Subparagraph 32.a that a relevant unit supervisor or person of similar authority sign off on placing a piece of Covered Equipment on the DOR list	\$250 per piece of Covered Equipment									

84.p. <u>Violation of Paragraph 33.</u> Each failure to add a piece of Covered Equipment to the LDAR program in accordance with the requirements of Paragraph 33	\$300 per piece of Covered Equipment (plus an amount, if any, due under Subparagraph 84.b. for any missed monitoring for a component that should have been added to the LDAR program)								
84.q. <u>Violation of Paragraph 33.</u> Each failure to remove a piece of Covered Equipment from the LDAR program in violation of Paragraph 33	\$150 per piece of Covered Equipment								
84.r. <u>Violation of Paragraph 34.</u> Each failure to develop a training protocol in accordance with the requirements of Paragraph 34	\$50 per day of noncompliance								
84.s. <u>Violation of Paragraph 34.</u> Each failure to perform initial, refresher, or new personnel training as required by the training program identified in Paragraph 34	\$1,000 per person per month late								
84.t. <u>Violation of Paragraph 35.</u> Each failure of a monitoring technician or LDAR database coordinator to complete the certification required in Paragraph 35	\$100 per failure per technician or database coordinator								
84.u. <u>Violation of Paragraph 36.</u> Each failure to perform any of the requirements relating to QA/QC in Paragraph 36	\$750 per missed requirement per quarter								
84.v. <u>Violation of Paragraphs 37-38.</u> Each failure to conduct an LDAR audit in accordance with the schedule set forth in Paragraphs 37-38	<table border="1"> <thead> <tr> <th><u>Period of noncompliance</u></th> <th><u>Penalty per day</u></th> </tr> </thead> <tbody> <tr> <td>1 – 15 days</td> <td>\$300</td> </tr> <tr> <td>16 – 30 days</td> <td>\$400</td> </tr> <tr> <td>31 days or more</td> <td>\$500, not to exceed \$50,000 per audit</td> </tr> </tbody> </table>	<u>Period of noncompliance</u>	<u>Penalty per day</u>	1 – 15 days	\$300	16 – 30 days	\$400	31 days or more	\$500, not to exceed \$50,000 per audit
<u>Period of noncompliance</u>	<u>Penalty per day</u>								
1 – 15 days	\$300								
16 – 30 days	\$400								
31 days or more	\$500, not to exceed \$50,000 per audit								
84.w. <u>Violation of Paragraph 37.</u> Each failure to use a third-party auditor or each use of a third-party auditor that is not experienced in LDAR audits, in violation of Paragraph 37	\$25,000 per audit								
84.x. <u>Violation of Paragraph 39.</u> Except for the requirement to undertake Comparative Monitoring, each failure to comply with a requirement for the LDAR audit in accordance with Paragraph 39	\$10,000 per missed requirement, not to exceed \$50,000 per audit								
84.y. <u>Violation of Subparagraphs 39.a–39.c.</u> Each failure to perform Comparative Monitoring during the LDAR audit in accordance with the requirements of Subparagraphs 39.a–39.c	\$50,000 per audit								

84.z. <u>Violation of Paragraph 41.</u> Each failure to timely submit a Final Corrective Action Plan that substantially conforms to the requirements of Paragraph 41	<table border="1"> <thead> <tr> <th><u>Period of noncompliance</u></th> <th><u>Penalty per day per violation</u></th> </tr> </thead> <tbody> <tr> <td>1 - 15 days</td> <td>\$ 100</td> </tr> <tr> <td>16 - 30 days</td> <td>\$ 250</td> </tr> <tr> <td>31 days or more</td> <td>\$ 500</td> </tr> <tr> <td colspan="2">Not to exceed \$50,000 per audit</td> </tr> </tbody> </table>	<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 100	16 - 30 days	\$ 250	31 days or more	\$ 500	Not to exceed \$50,000 per audit	
<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>										
1 - 15 days	\$ 100										
16 - 30 days	\$ 250										
31 days or more	\$ 500										
Not to exceed \$50,000 per audit											
84.aa. <u>Violation of Paragraph 41.</u> Each failure to implement a corrective action within 90 days after the LDAR Audit Completion Date or pursuant to the schedule that TRC must propose pursuant to Subparagraph 41.a. if the corrective action cannot be completed in 90 days	<table border="1"> <thead> <tr> <th><u>Period of noncompliance</u></th> <th><u>Penalty per day per violation</u></th> </tr> </thead> <tbody> <tr> <td>1 - 15 days</td> <td>\$ 500</td> </tr> <tr> <td>16 - 30 days</td> <td>\$ 750</td> </tr> <tr> <td>31 days or more</td> <td>\$1,000</td> </tr> <tr> <td colspan="2">Not to exceed \$100,000 per audit</td> </tr> </tbody> </table>	<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 500	16 - 30 days	\$ 750	31 days or more	\$1,000	Not to exceed \$100,000 per audit	
<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>										
1 - 15 days	\$ 500										
16 - 30 days	\$ 750										
31 days or more	\$1,000										
Not to exceed \$100,000 per audit											
84.bb. <u>Violation of Paragraph 43.</u> Each failure to install a Low-E Valve or a valve fitted with Low-E Packing when required to do so pursuant to Paragraph 43.	\$1000 per valve required by Subparagraph 43.b. or 43.c.; \$10,000 per valve required by Subparagraph 43.d										
84.cc. <u>Violation of Paragraph 50.</u> Each failure to timely submit a Certification of Compliance that substantially conforms to the requirements of Paragraph 50.	<table border="1"> <thead> <tr> <th><u>Period of noncompliance</u></th> <th><u>Penalty per day per violation</u></th> </tr> </thead> <tbody> <tr> <td>1 - 15 days</td> <td>\$ 100</td> </tr> <tr> <td>16 - 30 days</td> <td>\$ 250</td> </tr> <tr> <td>31 days or more</td> <td>\$ 500</td> </tr> <tr> <td colspan="2">Not to exceed \$50,000</td> </tr> </tbody> </table>	<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 100	16 - 30 days	\$ 250	31 days or more	\$ 500	Not to exceed \$50,000	
<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>										
1 - 15 days	\$ 100										
16 - 30 days	\$ 250										
31 days or more	\$ 500										
Not to exceed \$50,000											

85. Failure to Meet Mitigation Project Requirements of this Consent Decree.

**STIPULATED PENALTY TABLE 4**

<b>Violation</b>	<b>Stipulated Penalty</b>								
85.a. <u>Violation of Paragraph 66.</u> Each failure to upgrade or replace a pump as required by Paragraph 66	<table border="1"> <thead> <tr> <th><u>Period of noncompliance</u></th> <th><u>Penalty per day per violation</u></th> </tr> </thead> <tbody> <tr> <td>1 - 15 days</td> <td>\$ 500</td> </tr> <tr> <td>16 - 30 days</td> <td>\$ 750</td> </tr> <tr> <td>31 days or more</td> <td>\$1,000</td> </tr> </tbody> </table>	<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 500	16 - 30 days	\$ 750	31 days or more	\$1,000
<u>Period of noncompliance</u>	<u>Penalty per day per violation</u>								
1 - 15 days	\$ 500								
16 - 30 days	\$ 750								
31 days or more	\$1,000								
85.b. <u>Violation of Paragraph 67.</u> Each failure to monitor as required by Paragraph 67	\$200 per drain per missed monitoring event								

85.c. <u>Violation of Paragraph 68.</u> Each failure to inject scavenger liquid as required by Paragraph 68.	<u>Hours per calendar quarter in noncompliance</u>	<u>Penalty</u>
	Hours 1–50	\$ 25
	Hours 51–100	\$ 75
	Hours over 100	\$ 150

86. Waiver of Payment. The United States may, in its unreviewable discretion, reduce or waive payment of stipulated penalties otherwise due to it under this Consent Decree.

87. Demand for Stipulated Penalties. A written demand by the United States for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount that the United States is demanding for each violation (as can be best estimated), the calculation method underlying the demand, and the grounds upon which the demand is based. Prior to issuing a written demand for stipulated penalties, the United States may, in its unreviewable discretion, contact TRC for informal discussion of matters that the United States believes may merit stipulated penalties.

88. Stipulated Penalties Accrual. 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.

89. Stipulated Penalties Payment Due Date. Stipulated penalties shall be paid no later than thirty (30) days after receipt of a written demand by the United States unless the demand is disputed through compliance with the requirements of the dispute resolution provisions of this Decree.

90. Manner of Payment of Stipulated Penalties. Stipulated penalties owing to the United States of under \$10,000 shall be paid by check and made payable to the “U.S.

Department of Justice,” referencing DOJ Number 90-5-2-1-10924 and delivered to the U.S. Attorney’s Office in the Northern District of Ohio, 801 West Superior Avenue, Suite 400, Cleveland, Ohio. Stipulated penalties owing to the United States of \$10,000 or more shall be paid in the manner set forth in Section IX of this Decree (Civil Penalty). All transmittal correspondence shall state that the payment is for stipulated penalties, shall identify the violations to which the payment relates, and shall include the same identifying information required by Paragraph 77, 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.

91. Stipulated Penalties Dispute. Stipulated penalties shall continue to accrue as provided in Paragraph 88, 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 the United States that is not appealed to the Court, TRC shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of the United States’ decision or order.
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, TRC shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court’s decision or order, except as provided in subparagraph c, below.
- c. If any Party appeals the District Court’s decision, TRC shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

92. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to obligations of the Consent Decree required to be performed prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

93. If TRC fails to pay stipulated penalties according to the terms of this Consent Decree, TRC shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for TRC's failure to pay any stipulated penalties.

94. Subject to the provisions of Section XIV (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 for TRC's violation of this Consent Decree or applicable law. In addition to injunctive relief or stipulated penalties, the United States may seek mitigating emissions reductions equal to or greater than the excess amounts emitted if the violations result in excess emissions. TRC reserves the right to oppose the United States' request for mitigating emission reductions. TRC shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### **XI. FORCE MAJEURE**

95. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of TRC, of any entity controlled by TRC, or of TRC's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite TRC's best efforts to fulfill the obligation. The requirement that TRC 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 such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include TRC’s financial inability to perform any obligation under this Consent Decree.

96. 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, TRC shall notify the United States in writing not later than fifteen calendar days after the time that TRC first knew that the event might cause a delay. In the written notice, TRC shall specifically reference this Paragraph 96 and shall provide 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; TRC’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 TRC, such event may cause or contribute to an endangerment to public health, welfare or the environment. 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. TRC shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. The written notice required by this Paragraph shall be effective upon the mailing of the same by overnight mail or by certified mail, return receipt requested, to the United States in the manner set forth in Section XVI of this Decree (Notices).

97. Failure by TRC to comply with the requirements of Paragraph 96 shall preclude TRC 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.

98. If the United States 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 the United States for 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 obligation. The United States will notify TRC in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

99. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or if the United States and TRC fail to agree on the length of the delay attributable to the Force Majeure event, the United States will notify TRC in writing of its decision.

100. If Defendant elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 45 days after receipt of the United States' notice. In any such proceeding, TRC 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 95 and 96. If TRC 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 the United States and the Court.

## **XII. DISPUTE RESOLUTION**

101. 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.



**A. For All Disputes Except Those Arising Under Subparagraph A5.c of Appendix A.**

102. 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 TRC 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 60 days from the date the dispute arises, 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 30 days after the United States has notified TRC of the conclusion of the informal negotiation period, TRC invokes formal dispute resolution procedures set forth below.

103. Formal Dispute Resolution. TRC 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 Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting TRC's position and any supporting documentation relied upon by TRC.

104. The United States shall serve its Statement of Position within 45 days of receipt of TRC'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 TRC unless TRC files a motion for judicial review of the dispute in accordance with the following Paragraph.

105. TRC may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI of this Consent Decree (Notices), a

motion requesting judicial resolution of the dispute. The motion must be filed within 45 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of TRC'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.

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

107. Standard of Review. In all disputes governed by this Section XI of the Consent Decree, TRC shall bear the burden of demonstrating that its position complies with this Consent Decree and the CAA and that TRC is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and TRC reserves the right to argue to the contrary.

108. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of TRC 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 91. If TRC does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties). As part of the resolution of any dispute under this Section, the Parties, by agreement, or the Court, by order, may, in appropriate circumstances, extend or

modify the schedule for completion of work under this Consent Decree to account for the delay in work that occurred as a result of the dispute resolution process. TRC shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extension or modified schedule.

**B. For Disputes Arising Under Subparagraph A4.c of Appendix A.**

109. For disputes arising under Subparagraph A4.c of Appendix A, the provisions of this Subsection XII.B shall apply if TRC invokes the accelerated dispute resolution as allowed by Subparagraph A4.c. Paragraphs 102–108 are incorporated herein by reference except for the following changes:

Reference	Instead Of	Use
Para. 102; 4th Sentence	60 days	15 days
Para. 102; 5th Sentence	30 days	10 days
Para. 104; 1st Sentence	45 days	15 days
Para. 105; 2nd Sentence	45 days	15 days
Para. 106; 1st Sentence	“within the time period allowed by the Local Rules of this Court for responses to dispositive motions”	“within 21 days”

110. If a dispute under Subparagraph A4.c comes before this Court for disposition, both Parties jointly shall advise the Court that time is of the essence.

**XIII. INFORMATION COLLECTION AND RETENTION**

111. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Toledo Refinery, 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 documentary evidence, including photographs and similar data; and
- d. assess TRC's compliance with this Consent Decree.

112. Except for data recorded by any video camera that may be required pursuant to Paragraph A6 of Appendix A, until one year after the termination of this Consent Decree, TRC shall retain all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its possession or control that directly relate to TRC's performance of its obligations under this Consent Decree. Except for data recorded by any video camera that may be required pursuant to Paragraph A6 of Appendix A, until one year after termination of this Consent Decree, TRC shall instruct its contractors and agents to preserve all documents, records, or other information, regardless of storage medium (*e.g.*, paper or electronic) in its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, that demonstrate or document TRC's compliance or non-compliance with the obligations of 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, TRC shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. TRC shall retain the data recorded by any video camera required pursuant to Paragraph A6 of Appendix A for one year from the date of recording.

113. Except for emissions data, TRC 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 TRC seeks to protect as CBI, TRC shall follow the procedures set forth in 40 C.F.R. Part 2.

114. 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 federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of TRC to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

115. Definition. For purposes of this Section XIV:

“Hazardous Air Pollutants” or “HAPs” shall have the meaning set forth in 42 U.S.C. § 7412(b)(1).

116. Resolution of Claims Alleged in Complaint. Entry of this Consent Decree shall resolve the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

117. Resolution of Claims Alleged in Notices and Findings of Violations (“NOV/FOVs”). Entry of this Consent Decree shall resolve the civil claims of the United States for the violations that occurred through the Date of Lodging of the Consent Decree as alleged in the following NOV/FOVs: (1) EPA-5-13-OH-05 (February 1, 2013); and (2) EPA-5-13-OH-11 (September 30, 2013). These NOV/FOVs are attached as Appendix C to this Consent Decree.

118. Resolution of Claims under Listed Regulations at the Covered Flares and Other Specified Process Units. With respect to emissions of the following pollutants from the following flares, entry of this Consent Decree shall resolve the civil claims of the United States against TRC for violations of the following regulations (and any applicable state regulations that

implement, adopt, or incorporate any of the following regulations) that occurred from the date of accrual through the Date of Lodging:

<b>Flare(s)</b>	<b>Pollutant(s)</b>	<b>Regulation(s)</b>
Covered Flares	VOCs and HAPs	<p>40 C.F.R. § 60.11(d);</p> <p>40 C.F.R. § 60.18(c)(1)-(2), (c)(3)(ii), (c)(4), (d), (e) and (f);</p> <p>40 C.F.R. § 63.6(e)(1)(i);</p> <p>40 C.F.R. § 63.11(b)(1), (3)-(5), (6)(ii), and (7);</p> <p>40 C.F.R. §§ 60.482-10(d), 60.482-10a(d), but only to the extent that these provisions require compliance with 40 C.F.R. §§ 60.18(c)(3)(ii) and (d);</p> <p>40 C.F.R. §§ 60.482-10(e), 60.482-10a(e), but only to the extent that these provisions relate to flares;</p> <p>40 C.F.R. §§ 60.592(a), 60.592a(a), but only to the extent that these provisions: (a) relate to flares, and (b) require compliance with 40 C.F.R. §§ 60.18(c)(3)(ii) and (d);</p> <p>40 C.F.R. § 63.643(a)(1), but only to the extent that this provision: (a) relates to flares, and (b) requires compliance with 40 C.F.R. § 63.11(b)(1) and (b)(6)(ii);</p> <p>40 C.F.R. § 63.648(a), but only to the extent that this provision: (a) relates to flares, and (b) requires compliance with 40 C.F.R. § 60.18(c)(3)(ii) and (d);</p> <p>Table 6 of 40 C.F.R. Part 63, Subpart CC, but only to the extent that Table 6 requires compliance with 40 C.F.R. § 63.6(e)(1)(i);</p> <p>40 C.F.R. § 63.1566(a)(1)(i) and Table 15 of Part 63, Subpart UUU, but only to the extent that Table 15: (a) relates to flares, and (b) requires compliance with 40 C.F.R. § 63.11(b)(1) and (b)(6)(ii);</p> <p>40 C.F.R. § 63.1566(a)(1)(i) and Table 44 of Part 63, Subpart UUU, but only to the extent that Table 44 requires compliance with 40 C.F.R. § 63.6(e)(1).</p>

119. Resolution of LDAR Violations. Entry of this Consent Decree shall resolve the civil claims of the United States against TRC for violations of: (1) 40 C.F.R. Part 60, Subparts GGG and GGGa, and those requirements of Subparts VV and VVa which are applicable via GGG and GGGa; (2) 40 C.F.R. Part 61, Subparts J and V; (3) the Equipment Leak Standards of 40 C.F.R. Part 63, Subpart CC; and (4) any applicable, federally enforceable state or local regulation that implements, adopts, or incorporates the federal provisions cited in this Paragraph that occurred from the date of accrual through the Date of Lodging of this Consent Decree at each process unit (as defined as 40 C.F.R. § 60.590a(e)) at the Toledo Refinery.

120. Resolution of Title V Violations. Entry of this Consent Decree shall resolve the civil claims of the United States against TRC for the violations of Sections 502(a), 503(c), and 504(a) of the CAA, 42 U.S.C. §§ 7661a(a), 7661b(c), 7661c(a), and of 40 C.F.R. §§ 70.1(b), 70.5(a) and (b), 70.6(a), 70.6(c), and 70.7(b), that are based upon the violations resolved by Paragraphs 118–119 for the time frames set forth in those Paragraphs.

121. The resolutions of liability in this Section are based exclusively on claims arising at TRC's Toledo Refinery.

122. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraphs 116–120. 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, the Toledo Refinery, whether related to the violations addressed in this Consent Decree or otherwise.



123. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Toledo Refinery or TRC's CAA violations, TRC 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 Paragraphs 116–120 of this Section.

124. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. TRC is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and TRC'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 TRC's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.

125. This Consent Decree does not limit or affect the rights of TRC 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 TRC, except as otherwise provided by law.

126. 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.

**XV. COSTS**

127. 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 TRC.

**XVI. NOTICES**

128. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

Required only where the "United States" (and not "EPA") is a recipient:

Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
Reference Case No. 90-5-2-1-10924

As to EPA (Region 5):

Compliance Tracker (AE-18J)  
Air Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
r5ardreporting@epa.gov

As to TRC:

Toledo Refining Company LLC  
Environmental Manager  
1819 Woodville Road  
Oregon, OH 43616

General Counsel  
PBF Holding Company LLC  
1 Sylvan Way, Second Floor  
Parsippany, NJ 07054

And

Bart Cassidy  
Manko, Gold, Katcher & Fox, LLP  
401 City Ave, Suite 901  
Bala Cynwyd, PA 19004

129. Date of Submission and Date of Receipt. Unless otherwise provided herein, notifications to or communications between the Parties shall be deemed submitted on the date they are postmarked and sent by U.S. Mail or overnight mail, postage prepaid, or, if the communication is required to be submitted solely to EPA, then on the date sent by electronic mail; provided however, that notices under Section XI (Force Majeure) and Section XII (Dispute Resolution) shall be sent by overnight mail or by certified or registered mail, return receipt requested. Notifications to or communications mailed to TRC shall be deemed to be received on the earlier of: (i) actual receipt by TRC; or (ii) receipt of an electronic version sent to the addressees set forth in this Paragraph. If the date for submission of a report, study, notification, or other communication falls on a Saturday, Sunday or federal holiday, the report, study, notification, or other communication will be deemed timely if it is submitted the next business day.

130. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.

**XVII. EFFECTIVE DATE**

131. 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; provided however, that TRC hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

**XVIII. RETENTION OF JURISDICTION**

132. 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, or effectuating or enforcing compliance with the terms of this Decree.

**XIX. MODIFICATION**

133. The terms of this Consent Decree, including the attached Appendices, may be modified only by a subsequent written agreement signed by the United States and TRC. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

134. The nature and frequency of reports required by this Consent Decree may be modified by mutual agreement of the Parties. The agreement of the United States to such

modification must be in the form of a written notification from EPA, but need not be filed with the Court to be effective.

135. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 107, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## **XX. TERMINATION**

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

- a. Payment of all civil penalties, stipulated penalties and other monetary obligations;
- b. Satisfactory compliance with all provisions of Section V (Compliance Requirements) and Appendix A (Emission Reductions from Flares and Control of Flaring Events);
- c. Operation for at least one year in satisfactory compliance with the limitations and standards set forth in Appendix A, Paragraph A3 and 40 C.F.R. § 63.670(e);
- d. Completion of the Supplemental Environmental Projects in Section VI;
- e. Completion of the Environmental Mitigation Projects in Section VII;
- f. Completion of at least two audits pursuant to Paragraph 37;

- g. Application for and receipt of all non-Title V air permits necessary to ensure survival of the Consent Decree limits and standards after termination of this Consent Decree (Paragraph 56 requirement); and
- h. Application for a modification or amendment to the Title V permit to incorporate the limits and standards in Paragraph 56 into the Title V permit of the Toledo Refinery.

137. Termination: Procedure.

- a. At such time as TRC believes that it has satisfied the conditions for termination set forth in Paragraph 136, TRC may submit a request for termination to the United States by certifying such compliance in accordance with the certification language in Paragraph 74. In the Request for Termination, TRC must demonstrate that it has satisfied the conditions for termination set forth in Paragraph 136. The Request for Termination shall include all necessary supporting documentation.
- b. Following receipt by the United States of TRC's Request for Termination, the Parties shall confer informally concerning the Request. If the United States agrees that the Decree may be terminated, the Parties shall submit a joint motion to terminate this Consent Decree.
- c. If the United States does not agree that the Consent Decree may be terminated, or if TRC does not receive a written response from the United States within 60 days of TRC's submission of the Request for Termination, TRC may invoke dispute resolution under Section XII of this Decree (Dispute Resolution).

138. Partial Termination. Upon satisfying the provisions of Section VI (SEP) and Section VII (Mitigation Projects), TRC may request partial termination after demonstrating compliance with the requirements in Paragraph 136 above for both Sections of this Consent Decree. After submitting one partial termination request, TRC may submit one final termination request once all provisions of this Consent Decree have been completed.

**XXI. PUBLIC PARTICIPATION**

139. This Consent Decree shall be lodged with the Court for a period of not less than 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. TRC 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 TRC in writing that it no longer supports entry of the Decree.

**XXII. SIGNATORIES/SERVICE**

140. Each undersigned representative of TRC 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.

141. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. TRC 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.

### **XXIII. INTEGRATION**

142. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and its Appendices and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. 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.

### **XXIV. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION**

143. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability And Binding Effect), Paragraph 9; Section V (Compliance Requirements), Paragraphs 14 - 57; Section VII (Environmental Mitigation Projects), Paragraphs 64 - 70; Section VIII (Reporting And Recordkeeping), Paragraphs 71(a) - (d) and (f) - (i), and 72 - 74; Section XIII (Information Collection And Retention), Paragraphs 111 - 114; and Appendix A, Parts B - E, Paragraphs A3 - A13 is restitution or required to come into compliance with law.

### **XXV. FINAL JUDGMENT**

144. 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 TRC. 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.



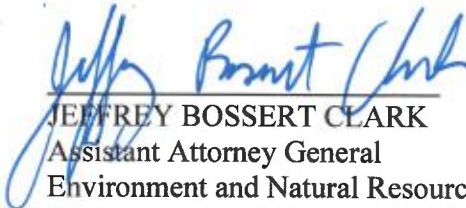
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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UNITED STATES DISTRICT JUDGE

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Toledo Refining Company LLC* (N.D. Ohio).

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



**JEFFREY BOSSERT CLARK**  
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Environment and Natural Resources Division  
United States Department of Justice



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**JUSTIN E. HERDMAN**  
**UNITED STATES ATTORNEY**

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Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Toledo Refining Company LLC* (N.D. Ohio).

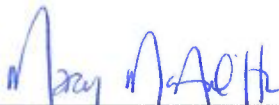
**FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY,  
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We hereby consent to the entry of the Consent Decree in the matter of *United States v. Toledo Refining Company LLC* (N.D. Ohio).

**FOR DEFENDANT TOLEDO REFINING  
COMPANY LLC:**

A handwritten signature in black ink, appearing to read "Michael Gudgeon", with a long horizontal line extending to the right.

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MICHAEL GUDGEON  
Refinery Manager  
Toledo Refining Company LLC