IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

THE UNITED STATES OF AMERICA, Plaintiff, v. CENTER ETHANOL COMPANY, LLC Defendant	)	No. 3:21-cv-1115

CONSENT DECREE

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A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint ("Complaint") concurrently with lodging this Consent Decree that alleges that Defendant, Center Ethanol Company, LLC ("Center Ethanol" or "Defendant"), violated the Clean Air Act (the "CAA" or the "Act");

B. Center Ethanol owns and formerly operated an ethanol production facility at 231 Monsanto Ave., Sauget, IL ("Facility"). The Complaint alleges that Center Ethanol violated Sections 110 and 111 of the Clean Air Act, 42 U.S.C. §§ 7410 and 7411, and the following implementing regulations: 40 C.F.R. Part 60, Subpart Kb (New Source Performance Standards ("NSPS") for Volatile Organic Liquid Storage Vessels for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984); and 40 C.F.R. Part 60, Subpart VV, (NSPS for Equipment Leaks of Volatile Organic Compounds ("VOC") in the Synthetic Organic Chemicals Manufacturing Industry);

C. Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

D. Defendant shut down all ethanol production at the Facility on May 28, 2019;

E. Defendant has ceased operation of its ethanol production Facility and does not intend to reactivate or continue operations;

F. The United States has reviewed the Financial Information submitted by Defendant to determine whether Defendant is financially able to pay a civil penalty for the violations alleged in the Complaint. Based upon this Financial Information, the United States has determined that Defendant has limited financial ability to pay a civil penalty; and

G. The United States and Center Ethanol (the "Parties") recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in

good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, the Parties consent to the Court's jurisdiction over this Decree and any such action and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

II. APPLICABILITY

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

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Center Ethanol of its obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake

the obligations required by this Decree and to be substituted for the Defendant as a Party under the Decree and be thus bound by the terms thereof, and (2) the United States consents to relieve Defendant of its obligations. The United States' decision to refuse to approve the substitution of the transferee for the Defendant shall not be subject to judicial review. At least 30 Days prior to such transfer, Center Ethanol shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Southern District of Illinois, and the United States Department of Justice, in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree. Nothing herein shall prevent Center Ethanol from selling the ethanol production equipment ("Facility" or "Covered Equipment") for removal from the current location. Any such sale for removal shall be included in the report required by Paragraph 21 during the period such reporting is required.

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

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

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in federal or Illinois regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX (Appendices)), but in the event of any conflict between the text of this Consent Decree and any Appendix, the text of this Consent Decree shall control;

c. "Covered Equipment" shall mean all Covered Types of Equipment in all Covered Process Units;

d. "Covered Process Units" shall mean all affected facilities that commenced construction, reconstruction, or modification after January 5, 1981 and on or before November 7, 2006, within the meaning of 40 C.F.R. Part 60, Subpart VV, at the Facility including the following process units: the fermentation alley, and the distillation, dehydration, evaporation, and storage tank units;

e. "Covered Types of Equipment" shall mean all valves, pumps, open ended lines (OELs), and agitators in light liquid or gas/vapor service that are regulated under any "equipment leak" provision of 40 C.F.R. Part 60;

f. "Date of Lodging" shall mean the date that the United States files a "Notice of Lodging" of this Consent Decree with the Clerk of this Court for the purposes of providing notice and comment to the public;

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

h. "Defendant" or "Center Ethanol" shall mean Center Ethanol Company, LLC;

i. "Effective Date" shall have the meaning given in Section XX(Effective Date);

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

k. "Facility" shall mean the ethanol manufacturing plant located at 231 Monsanto Ave., Sauget, Illinois, which is owned and operated by Center Ethanol;

l. "Financial Information" means the third-party audited financial statements, corporate tax returns, and other finance related documents that Defendant provided to the United States in support of the assessment of Defendant's limited ability to pay a civil penalty, which are listed in Appendix B of this Decree;

m. "Finding of Violation" shall mean the Finding of Violation issued by EPA Region 5 to Center Ethanol dated December 21, 2017;

n. "LDAR" or "Leak Detection and Repair" shall mean the leak detection and repair activities required by any "equipment leak" provisions of 40 C.F.R. Part 60. LDAR also shall mean any state or local equipment leak provisions that require the use of EPA Reference Method 21 (40 C.F.R. Part 60, Appendix A) to monitor for equipment leaks and also require the repair of leaks discovered through such monitoring;

o. "LPM" or "LDAR Program with Mitigation" shall mean the LDAR Program specified in Appendix A of this Decree;

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

q. "Parties" shall mean the United States and Center Ethanol;

r. "Reactivation" shall mean restarting any of the ethanol production (Facility or Covered Equipment) subject to this Decree;

s. "Reactivation Date" shall be the date upon which Center Ethanol restarts ethanol production at its Facility;

t. "Section" shall mean a portion of this Decree identified by a Roman numeral;

u. "Subparagraph" shall mean a portion of a Paragraph of this Consent Decree identified by an Arabic numeral and/or a lower-case letter;

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

IV. CIVIL PENALTY

8. Within 60 Days after the Effective Date, Defendant shall pay the sum of $20,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. This civil penalty has been determined based on an evaluation of the Financial Information provided by Defendant to the United States, concluding that Defendant has a limited ability to pay a civil penalty.

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

Adam Parker
Center Ethanol Company, LLC
600 Mason Ridge Center Drive
St. Louis, MO 63141
314-682-3500
aparker@kdpcapital2020.com

Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices). At the time of payment, Center Ethanol shall send notice that payment has been made: to (i) EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) the United States via email or regular mail in accordance with Section XIV; and (iii) EPA in accordance with Section XIV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Center Ethanol Company, LLC* and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-12078.

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

V. COMPLIANCE REQUIREMENTS

11. Defendant shall comply with applicable requirements of statutes, regulations, and permits.

12. If the Facility or any piece of Covered Equipment is reactivated or repurposed for other use at the Facility, Defendant shall apply for and obtain the required permits and follow the requirements of the permits. Defendant shall notify the Parties to this Consent Decree of its decision to Reactivate ethanol production or begin any other production at the Facility at least 60 Days before starting operations.

13. If the Facility is reactivated, Defendant shall comply with the LPM and LDAR Program requirements, as set forth in Appendix A and the applicable regulations.

14. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted for EPA approval pursuant to this Consent Decree, EPA shall in writing:

a. approve the submission;

b. approve the submission upon specified conditions;

c. approve part of the submission and disapprove the remainder; or

d. disapprove the submission.

15. If the submission is approved pursuant to Paragraph 14.a, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 14.b or 14.c, Defendant shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject

to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section IX (Dispute Resolution).

16. If the submission is disapproved in whole or in part pursuant to Paragraph 14.c or 14.d, Defendant shall, within 60 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the Paragraph 14. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with Paragraph 15.

17. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with Paragraphs 15 and 16, or may itself correct any deficiencies subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the following Paragraph.

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

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

any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

20. Defendant shall submit the following reports:

21. Within one month after the end of each calendar-year (i.e., by January 31) after lodging of this Consent Decree, Defendant shall submit a report for the preceding year that shall include the status of the Facility, and, if applicable, the status of permit applications, and any sale for removal of the Covered Equipment or sale of the Facility.

22. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten business Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII (Force Majeure).

23. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment,

Defendant shall notify EPA orally or by email as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

24. All reports shall be submitted to the persons designated in Section XIV (Notices).

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

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

27. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. The reporting requirements of this Section are in addition to any other reports, plans or submissions required by other Sections of this Consent Decree.

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

VII. STIPULATED PENALTIES

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

30. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of $5,000 per Day for each Day that the payment is late.

31. Notification Requirements. The following Stipulated Penalties shall accrue per violation per Day for failing to notify the United States that the Facility has been reactivated:

Period of noncompliance	Penalty per violation per Day
1 – 15 days	$1,000
16 – 30 days	$1,500
31 days or more	$2,000

32. Permitting Requirements. The following Stipulated penalties shall accrue per violation per Day for failure to apply for the appropriate permit for the Facility upon reactivation:

Period of noncompliance	Penalty per violation per Day
1 – 15 days	$1,000
16 – 30 days	$1,500
31 days or more	$2,000

33. LDAR Reporting Requirements. The following Stipulated Penalties shall accrue per violation per Day for each failure to substantially comply with any recordkeeping,

submission, or reporting requirement in Section IV (LDAR Stipulated Penalties) of Appendix A not specifically identified in Table 2 in Appendix A.

Period of noncompliance	Penalty per violation per Day
1 – 15 days	$100
16 – 30 days	$200
31 days or more	$400

34. Stipulated Penalties Accrual. Stipulated penalties under this Consent Decree 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.

35. Demand for Stipulated Penalties and Due Date. Defendant shall pay stipulated penalties to the United States within 30 Days of a written demand by the United States.

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

37. Disputes over Stipulated Penalties. Stipulated penalties shall continue to accrue as provided in Paragraph 34 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the Effective Date or Reactivation Date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing,

together with interest, within 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, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

38. Defendant shall pay Stipulated Penalties for restarting the Facility without applying for the proper permit between the Date of Lodging and the Effective Date of this Consent Decree within 30 Days of the Effective Date of this Decree.

39. Manner of Payment of Stipulated Penalties. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, 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.

40. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant 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 Defendant's failure to pay any stipulated penalties.

41. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

42. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable

law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

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

44. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by email to the EPA contacts identified in Section XIV (Notices) of this Consent Decree, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim;

and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

45. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA 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. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

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

47. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the

effects of the delay, and that Defendant complied with the requirements of Paragraphs 43 and 44. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

49. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 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 conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

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

51. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

52. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

54. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 50 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are

accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 50, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

55. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect, in any way, any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

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

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

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

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendant's compliance with this Consent Decree.

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

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

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

information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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

61. 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 Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

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

63. The resolution of claims in the Paragraph above is conditioned upon the veracity and completeness of the Financial Information provided to EPA by Defendant, and the financial, insurance, and indemnity certification made by Defendant in Paragraph 70. If the Financial Information provided by Defendant, or the financial, insurance and indemnity certification made by Defendant in Paragraph 70, is subsequently determined by EPA to be false, or in any material respect, inaccurate, Defendant shall forfeit the civil penalty payment made pursuant to this

Consent Decree, and this effect of settlement shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Defendant's false or materially inaccurate information.

64. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 62. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 62. 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, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

65. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 62.

66. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations,

and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with 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.

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

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

69. Notwithstanding any other provision of the Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Defendant or the financial, insurance, or indemnity certification made by Defendant in Paragraph 70 is false or, in a material respect, inaccurate.

XII. CERTIFICATION

70. Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, reports, or other information relating to its potential CAA liability regarding the Facility since its receipt of the CAA Finding of Violation;

b. fully complied with any and all EPA requests for information regarding the Facility and Defendant's financial circumstances;

c. submitted to the United States financial information that fairly, accurately, and materially sets forth Defendant's financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to the United States and the time Defendant executes this Consent Decree; and

d. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to the Facility, and submitted to EPA and the Department of Justice upon request such insurance policies, indemnity agreements, and information.

XIII. COSTS

71. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIV. NOTICES

72. Unless otherwise specified in this Decree, 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 by email:	eescdcopy.enrd@usdoj.gov Re: DJ # 90-5-2-1-12078
As to the United States by mail:	EES Case Management Unit Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Re: DJ # 90-5-2-1-12078
As to EPA by email:	r5airenforcement@epa.gov daugavietis.andre@epa.gov
As to Defendant:	Adam Parker Center Ethanol Company, LLC 600 Mason Ridge Center Drive St. Louis, MO 63141 314-682-3500 aparker@kdpcapital2020.com

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

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

XV. EFFECTIVE DATE

75. 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 Defendant 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.

XVI. RETENTION OF JURISDICTION

76. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

77. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

78. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 54, 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).

XVIII. TERMINATION

79. Termination After a Permanent Deactivation of the Facility. If Center Ethanol permanently deactivates the Facility by removing and/or dismantling all Covered Equipment, such that Reactivation of the Facility is no longer possible, then Center Ethanol may send the United States a Request for Termination of this Consent Decree under this Paragraph 79. In any such Request for Termination, Center Ethanol must: (1) explain and demonstrate that the conditions for termination under this Paragraph have been met, and provide copies all necessary

supporting documentation; and (2) certify the accuracy of the information supplied with the Request for Termination in the manner specified by Paragraph 25.

80. Termination After a Reactivation. By no sooner than three years after a Reactivation of the Facility, Center Ethanol may send the United States a Request for Termination of this Consent Decree under this Paragraph 80. In the Request for Termination, Center Ethanol must demonstrate that it has maintained satisfactory compliance with this Consent Decree for the two-year period immediately preceding the Request for Termination, including compliance with Appendix A, if applicable. The Request for Termination shall include all necessary supporting documentation and shall certify the accuracy of the information supplied with the Request in the manner specified by Paragraph 25.

81. In no event may this Consent Decree be terminated if the civil penalty and/or any outstanding stipulated penalties have not been paid.

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

83. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until at least 75 Days after service of its Request for Termination.

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

84. 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) Paragraphs 3-6; Section V (Compliance Requirements); Section VI (Reporting Requirements); Section XI (Information Collection and Retention) Paragraphs 11-28, and 56-61; and Appendix A (LDAR Requirements) is restitution or required to come into compliance with law.

XX. PUBLIC PARTICIPATION

85. 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. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

XXI. SIGNATORIES/SERVICE

86. The undersigned representatives of Defendant and of the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, each 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.

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXII. INTEGRATION

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

XXIII. FINAL JUDGMENT

89. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

XXIV. APPENDICES

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

a. "Appendix A" is entitled LDAR Program Requirements and lists the definitions and procedures to be followed if the Facility reactivates;

b. Appendix A-1" is entitled Commercial Unavailability and lists the factors to be considered and procedures to be followed to claim commercial unavailability; and

c. "Appendix B" is the List of Financial Information Submitted by Defendant for the Ability to Pay Analysis.

Dated and entered this __ day of _____, 2021

_____
UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division

s/ *Samantha M. Ricci*
Samantha M. Ricci
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Steven D. Weinhoeft
United States Attorney
Southern District of Illinois

Nathan E. Wyatt
Assistant United States Attorney Southern District of Illinois

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

T. Leverett Nelson

Digitally signed by T. Leverett Nelson
Date: 2021.09.03 09:29:07 -05'00'

T. Leverett Nelson
Regional Counsel
U.S. Environmenta l Protection Agency, Region 5

Andre Daugavietis

Digitally signed by Andre Daugavietis
Date: 2021.08.27 09:10:15 -05'00'

Andre Daugavietis
Associate Regional Counsel
U.S. Environmenta l Protection Agency, Region 5
Office of Regional Counsel

FOR CENTER ETHANOL COMPANY, LLC:

July 7, 2021

Date

Adam Parker
President
Center Ethanol Company, LLC

APPENDIX A

Appendix A – LDAR Requirements

I. DEFINITIONS – LDAR PROGRAM

a. "Annual" or "Annually" shall mean a calendar year, except as otherwise provided in applicable LDAR provisions in this Appendix A

b. "Average" shall mean the arithmetic mean;

c. "CAP" shall mean the Corrective Action Plan described in Paragraph 33 of this Appendix;

d. "Covered Equipment" shall mean all Covered Types of Equipment in all Covered Process Units;

e. "Covered Process Units" shall mean all affected facilities that commenced construction, reconstruction, or modification after January 5, 1981 and on or before November 7, 2006, within the meaning of 40 C.F.R. Part 60, Subpart VV, at the Facility including the following process units: the fermentation alley, and the distillation, dehydration, evaporation, and storage tank units;

f. "Covered Types of Equipment" shall mean all valves, pumps, open ended lines (OELs), and agitators in light liquid or gas/vapor service that are regulated under any "equipment leak" provision of 40 C.F.R. Part 60;

g. "Day," for purposes of requirements uniquely imposed by the LPM and not by any applicable LDAR provisions, shall mean a calendar day. In computing any period of time under this Consent Decree for submittal of reports or penalties, 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. For all other purposes, "day" shall have the meaning provided in the applicable LDAR provisions;

h. "DOR" shall mean Delay of Repair;

i. "LDAR" or "Leak, Detection, and Repair" shall mean the leak, detection, and repair activities required by any "equipment leak" provisions of 40 C.F.R. Part 60. LDAR also shall mean any state or local equipment leak provisions that require the use of Method 21 to monitor for equipment leaks and also require the repair of leaks discovered through such monitoring;

j. "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;

k. "LDAR Audit Completion Date" or "Completion of an LDAR Audit" shall mean 120 days after the LDAR Audit Commencement Date;

l. "LDAR Personnel" shall mean all Defendant's contractors and employees who perform any of the following activities at the Facility: LDAR monitoring, LDAR data input, maintenance of LDAR monitoring devices, leak repairs on equipment subject to LDAR, and/or any other field duties generated by LDAR requirements;

m. "Low-Emissions Packing" or "Low-E Packing" shall mean either of the following:

(1) A valve packing product, independent of any specific valve, for which the manufacturer has issued a written warranty that the packing will not emit fugitives at greater than 100 ppm and that, if it does so emit at any time in the first five years, the manufacturer will replace the product; provided, however, that no packing product shall qualify as "Low-E" by reason of written warranty unless the packing first was tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions; or

(2) A valve packing product, independent of any specific valve, that has been tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions and that, during the test, at no time leaked greater than 500 ppm and, on average, leaked at less than 100 ppm.

n. "Low-Emissions Valve" or "Low-E Valve" shall mean either of the following:

(1) A valve (including its specific packing assembly or stem sealing component) for which the manufacturer has issued a written warranty that it will not emit fugitives at greater than 100 ppm and that, if it does so emit at any time in the first five years, the manufacturer will replace the valve; provided, however, that no valve shall qualify as "Low-E" by reason of written warranty unless the valve (including its specific packing assembly) either:

(a) first was tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions; or

(b) is as an "extension" of another valve that qualified as "Low-E" under Subparagraph (1)(a) above; or

(2) A valve (including its specific packing assembly) that:

(a) has been tested by the manufacturer or a qualified testing firm pursuant to generally-accepted good engineering practices for testing fugitive emissions and that, during the test, at no time leaked at greater than 500 ppm and, on average, leaked at less than 100 ppm; or

(b) is an "extension" of another valve that qualified as "Low-E" under Subparagraph (1)(a) above.

For purposes of Subparagraphs (1)(b) and (2)(b), being an "extension of another valve" means that the characteristics of the valve that affect sealing performance (e.g., type of valve, stem motion, tolerances, surface finishes, loading arrangement, and stem and body seal material, design, and construction) are the same or essentially equivalent as between the tested and the untested valve.

o. "LPM" or "LDAR Program with Mitigation" shall mean the LDAR Program specified in this Appendix of this Decree;

p. "Maintenance Shutdown" shall mean a shutdown of a Covered Process Unit that either is done for the purpose of scheduled maintenance or lasts longer than fourteen calendar days;

q. "Method 21" shall mean the test method found at 40 C.F.R. Part 60, Appendix A, Method 21. To the extent that the Covered Equipment is subject to regulations that modify Method 21, those modifications shall be applicable;

r. "Process Unit Shutdown" shall mean a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a process unit or part of a process unit consistent with safety constraints and during which repairs can be accomplished. The following are not considered Process Unit Shutdowns:

(1) An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours.

(2) An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the process unit or part of the process unit of materials and start up the unit and would result in greater emissions than delay of repair of leaking components until the next scheduled Process Unit Shutdown.

(3) The use of spare equipment and technically feasible bypassing of equipment without stopping production.

s. "Process Unit" means the components assembled and connected by pipes or ducts to process raw materials and to produce, as intermediate or final products, one or more of the chemicals listed in 40 C.F.R. § 60.489. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. For the purpose of this Subparagraph, process unit includes any feed, intermediate and final product storage vessels (except as specified in 40 C.F.R. § 60.482-1(g)), product transfer racks, and connected ducts and piping. A process unit includes all equipment as defined in this Paragraph.

t. "Quarter" or "quarterly" shall mean a calendar quarter (January through March, April through June, July through September, October through December) except as otherwise provided in applicable LDAR provisions;

u. "Repair Verification Monitoring" shall mean the utilization of monitoring (or other method that indicates the relative size of the leak) by the next calendar day after each attempt at repair of a leaking piece of equipment in order to determine whether the leak has been eliminated or is below the applicable leak definition in the LPM;

v. "Screening Value" shall mean the highest emission level that is recorded at each piece of equipment as it is monitored in compliance with Method 21;

w. "Subsection" shall mean a portion of a Section of this Consent Decree that has a heading identified by a capital letter;

x. "Visual Inspection" shall mean the process of visually inspecting an internal floating roof and the primary seal or the secondary seal (if one is in service) to determine if the internal floating roof is not resting on the surface of the liquid inside the storage tank, if there is liquid accumulated on the roof, if the seal is detached, or if there are holes or tears in the seal fabric;

y. "Week" or "weekly" shall mean the standard calendar period, except as otherwise provided in applicable LDAR provisions.

II. LDAR COMPLIANCE REQUIREMENTS

A. Applicability of the LPM/LDAR Program with Mitigation

2. The requirements of this LPM shall apply to all Covered Equipment and the requirements of Paragraphs 2 through 46 shall apply to all Covered Process Units at the Facility. The requirements of this LPM are in addition to, and not in lieu of, the requirements of any other LDAR regulation that may be applicable to a piece of Covered Equipment. If there is a conflict between an LDAR regulation and this LPM, Defendant shall follow the more stringent of the requirements.

B. Facility-Wide LDAR Document

3. By no later than three months after the Reactivation Date, Defendant shall develop a facility-wide plan that describes:

a. the facility-wide LDAR program (e.g., applicability of regulations to process units and/or specific equipment; leak definitions; monitoring frequencies);

b. a tracking program (e.g., Management of Change as provided in Paragraph 34) that ensures that new pieces of equipment added to the Facility 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;

c. the roles and responsibilities of all employee and contractor personnel assigned to LDAR functions at the Facility;

d. how the number of personnel dedicated to LDAR functions is sufficient to satisfy the requirements of the LDAR program; and

e. how the Facility plans to implement this LPM. Defendant shall review this document on an annual basis and update it as needed by no later than December 31 of each year.

C. Monitoring Frequency and Equipment

4. Beginning no later than six months after the Reactivation Date, for all Covered Equipment, Defendant shall comply with the following periodic monitoring frequencies, unless: (i) more frequent monitoring is required by federal, state, or local laws or regulations; or (ii) the relevant Covered Process Unit has been permanently shut down:

a. Valves - Quarterly

b. Pumps – Monthly

c. Agitators – Monthly

d. Open-Ended Line Closure Devices - Quarterly.

Compliance with the monitoring frequencies in this Paragraph 4 is not required when a specific, applicable LDAR provision excludes or exempts, fully or partially, monitoring at a periodic frequency (*e.g.*, an exemption for equipment that is designated as unsafe-to-monitor or difficult-

to-monitor or an exemption for pumps that have no externally actuated shaft), provided that Defendant satisfies all applicable conditions and requirements for the exclusion or exemption set forth in the regulation.

5. Beginning no later than six months after the Reactivation Date, for all Covered Equipment, Defendant shall comply with Method 21 in performing LDAR monitoring, using an instrument attached to a data logger (or an equivalent instrument) 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. Defendant shall transfer this monitoring data to an electronic database on at least a weekly basis for recordkeeping purposes.

6. If, during monitoring, a piece of Covered Equipment is discovered that is not listed in the data logger, Defendant shall monitor the piece of Covered Equipment and record, by any means available, the Screening Value, the date and time of the Screening Value, and the identification numbers of the monitoring instrument and technician. In such an instance, the failure to initially record the information electronically, in the data logger, does not constitute a violation of this Paragraph's requirement to record the required information electronically, provided that Defendant thereafter promptly adds the piece of Covered Equipment and the information regarding the monitoring event to the LDAR database.

D. Leak Detection and Repair Action Levels

7. Action Levels.

a. Beginning no later than six months after the Reactivation Date of this Consent Decree and continuing until termination, for all leaks from Covered Equipment detected

at or above the lower leak definitions listed in Table 1 for the specific equipment type, Defendant shall perform repairs in accordance with Subsection E, below.

Table 1: Leak Definitions by Equipment Type

Equipment Type	Lower Leak Definition (ppm)
Valves	500
Pumps	2,000
Agitators	2,000
Open-Ended Line Closure Device	500

b. For purposes of these lower leak definitions, Defendant may elect to adjust or not to adjust the monitoring instrument readings for background pursuant to any provisions of applicable LDAR requirements that address background adjustment, provided that Defendant complies with the requirements for doing so or not doing so.

c. Beginning no later than six months after the Reactivation Date of this Consent Decree, if evidence of a potential leak is detected through audio, visual, or olfactory sensing, Defendant shall comply with all applicable regulations and, if repair is required, with Subsection E. This applies to all Covered Equipment, and all valves and pumps in heavy liquid service, at all times.

E. Repairs

8. Except as provided in Subparagraph 18.d(1), by no later than five days after detecting a leak, Defendant shall perform a first attempt at repair. By no later than 15 days after

detection, Defendant shall perform a final attempt at repair of the leaking piece of Covered Equipment or may place the piece of Covered Equipment on the Delay of Repair list provided that Defendant has complied with all applicable regulations and with the requirements of Paragraphs 8-13.

9. Except as provided in Subparagraphs 18.d(1), beginning no later than six months after the Reactivation Date of this Consent Decree and continuing until termination, Defendant shall perform Repair Verification Monitoring as set forth in Paragraphs 10-12.

10. Drill and Tap for Valves (other than Control Valves).

a. Except as provided in Subparagraph b, for leaking valves (other than control valves), when other repair attempts have failed to reduce emissions below the applicable leak definition and Defendant is not able to remove the leaking valve from service, Defendant shall attempt at least one drill-and-tap repair (with a second injection of an appropriate sealing material if the first injection is unsuccessful at repairing the leak) before placing the valve (other than provisionally, as set forth in Subparagraph 10.c) on the DOR list.

b. Drill-and-tap is not required: (i) when Subparagraph 18.d(1) applies; or (ii) when there is a major safety, mechanical, product quality, or environmental issue with repairing the valve using the drill-and-tap method, in which case, Defendant shall document the reason(s) why a drill-and-tap attempt was not performed prior to placing any valve on the DOR list.

c. If a drill-and-tap attempt can reasonably be completed within the 15-day repair period, Defendant shall complete the drill-and-tap attempt in that time period. If a drill-and-tap attempt cannot reasonably occur within the 15-day repair period (e.g., if Defendant's drill-and-tap contractor is not local and must mobilize to the Facility), Defendant provisionally

may place the valve on the DOR list pending attempting the drill-and-tap repair as expeditiously as practical. Defendant may not take more than 30 days from the initial monitoring to attempt a drill-and-tap repair. If drill-and-tap is successful, the valve shall be removed from the provisional DOR list.

11. Except as provided in Subparagraphs 18.d(1), for each leak Defendant 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 applicable, documentation of compliance with Paragraphs 10 and 13 for Covered Equipment placed on the DOR list.

12. Nothing in Paragraphs 8-11 is intended to prevent Defendant 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, Defendant must repair the leak or must comply with the requirements of Subsection F (Delay of Repair) to place the piece of Covered Equipment on the DOR list.

F. Delay of Repair

13. Beginning no later than the Reactivation Date of this Consent Decree for the requirements in Subparagraphs 13.b and 13.c.(i), and beginning no later than three months after the Reactivation Date of this Consent Decree for the other requirements set forth below in this Paragraph, for all Covered Equipment placed on the DOR list, Defendant shall:

a. Require sign-off from the relevant process unit supervisor or person of similar authority that the piece of Covered Equipment is technically infeasible to repair without a Process Unit Shutdown;

b. Undertake periodic monitoring of the Covered Equipment placed on the DOR list at the frequency specified in Paragraph 4 required for other pieces of Covered Equipment of that type in the process unit; and

c. (i) Repair the piece of Covered Equipment within the time frame required by the applicable LDAR regulation; or, (ii) if applicable under Subsection G, replace, repack, or improve the piece of Covered Equipment by the timeframes set forth in Subsection G.

G. Valve Replacement and Improvement Program

14. Commencing no later than six months after the Reactivation Date of this Consent Decree, and continuing until termination, Defendant shall implement the program set forth in Paragraphs 15-23 to improve the emissions performance of the valves that are Covered Equipment in each Covered Process Unit. All references to "valves" in Paragraphs 15-23 exclude pressure relief valves.

15. List of all Existing Valves in the Covered Process Units. In the first compliance status report required under Paragraph 45 and due at least six months after the Reactivation Date of this Consent Decree, Defendant shall include a list of the tag numbers of all valves subject to this LPM, broken down by Covered Process Unit, that are in existence as of the Reactivation Date. The valves on this list shall be the "Existing Valves" for purposes of Paragraphs 16-18.

16. Proactive Initial Valve Tightening Work Practices Relating to Each New Valve Installed and Each Existing Valve Repacked. Defendant shall undertake the following work practices for each new valve that is subject to LDAR that is installed (whether the new valve replaces an Existing Valve or is newly added to a Covered Process Unit) and each Existing Valve that is repacked:

a. Upon installation (or re-installation in the case of repacking), Defendant shall tighten the valve's packing gland nuts or their equivalent (e.g., pushers) to: (i) the manufacturer's recommended gland nut or packing torque; or (ii) any appropriate tightness that will minimize the potential for fugitive emission leaks of any magnitude. This practice shall be implemented prior to the valve's exposure (or re-exposure, in the case of repacking) to process fluids.

b. Not less than three days nor more than two weeks after a new valve that has been installed or an Existing Valve that has been repacked first is exposed to process fluids at operating conditions, Defendant shall recheck the load on the valve packing and, if necessary, shall tighten the packing gland nuts or their equivalent (e.g., pushers) to: (i) the manufacturer's recommended gland nut or packing torque; or (ii) any appropriate tightness that will minimize the potential for fugitive emission leaks of any magnitude.

17. Installing New Valves. Except as provided in Subparagraphs a or b of this Paragraph or Paragraph 20, Defendant shall ensure that each new valve (other than a valve that serves as the closure device on an open-ended line) that it installs in each Covered Process Unit, and that, when installed, will be regulated under LDAR, either is a Low-E Valve or is fitted with Low-E Packing. This requirement applies to entirely new valves that are added to a Covered Process Unit and to Existing Valves that are replaced for any reason in a Covered Process Unit.

a. Paragraph 17 shall not apply in emergencies or exigent circumstances requiring immediate installation or replacement of a valve where a Low-E Valve or Low-E Packing is not available on a timely basis. Any such instance shall be reported in the next LPM compliance status report.

b. Paragraph 17 shall not apply to valves that are installed temporarily for a short-term purpose and then removed (e.g., valves connecting a portion of the Covered Process Unit to a testing device).

18. Replacing or Racking Existing Valves That Have Screening Values at or Above 500 ppm with Low-E Valves or Low-E Packing.

a. Existing Valves Required to Be Replaced or Repacked. Except as provided in Paragraph 20, for each Existing Valve that has a Screening Value at or above 500 ppm during any monitoring event, Defendant shall either replace or repack the Existing Valve with a Low-E Valve or with Low-E Packing.

b. Timing: If Replacing or Repacking Does Not Require a Process Unit Shutdown. If replacing or repacking does not require a Process Unit Shutdown, Defendant shall replace or repack the Existing Valve by no later than 30 days after the monitoring event that triggers the replacing or repacking requirement, unless Defendant complies with the following:

(1) Prior to the deadline, Defendant must take all actions necessary to obtain the required valve or valve packing, including all necessary associated materials, as expeditiously as practical, and retain documentation of the actions taken and the date of each such action;

(2) If, despite Defendant's efforts to comply with Subparagraph 18.b.(1), the required valve or valve packing, including all necessary associated materials, is not available in time to complete the installation within 30 days Defendant must take all reasonable actions to minimize emissions from the valve pending completion of the required replacing or repacking. Examples include:

(a) Repair;

(b) More frequent monitoring, with additional repairs as needed; or

(c) Where practical, interim replacing or repacking of a valve with a valve that is not a Low-E Valve or with packing that is not Low-E Packing; and

(3) Defendant must promptly perform the required replacing or repacking after Defendant's receipt of the valve or valve packing, including all necessary associated materials.

c. Timing: If Replacing or Repacking Requires a Process Unit Shutdown. If replacing or repacking requires a Process Unit Shutdown, Defendant shall replace or repack the Existing Valve during the first Process Unit Shutdown that follows the monitoring event that triggers the requirement to replace or repack the valve, unless Defendant documents that insufficient time existed between the monitoring event and that Process Unit Shutdown to enable Defendant to purchase and install the required valve or valve packing technology. In that case, Defendant shall undertake the replacing or repacking at the next Process Unit Shutdown that occurs after Defendant's receipt of the valve or valve packing, including all necessary associated materials.

d. Actions Required Pending Replacements or Repacking Pursuant to Subparagraph 18.a-c.

(1) Actions Required Pursuant to Subsection E: Defendant shall not be required to comply with Subsection E pending replacing or repacking pursuant to Subparagraphs 18.a-c if Defendant completes the replacing or repacking by the date that is no later than 30 days after detecting the leak. If Defendant does not complete the

replacing or repacking within 30 days, or if at the time of the leak detection Defendant reasonably can anticipate that it might not be able to complete the replacing or repacking within 30 days, Defendant shall comply with all applicable requirements of Subsection E.

(2) Actions Required Pursuant to Applicable Regulations. For each Existing Valve that has a Screening Value at or above 500 ppm, Defendant shall comply with all applicable regulatory requirements, including repair and "delay of repair," pending replacing or repacking pursuant to Subparagraphs 18.a-c.

19. Provisions Related to Low-E Valves and Low-E Packing.

a. "Low-E" Status Not Affected by Subsequent Leaks. If, during monitoring after installation, a Low-E Valve or a valve using Low-E Packing has a Screening Value at or above 500 ppm, the leak is not a violation of this Decree, does not invalidate the "Low-E" status or use of that type of valve or packing technology, and does not require replacing other, non-leaking valves or packing technology of the same type.

b. Repairing Low-E Valves. If, during monitoring after installation, a Low-E Valve or a valve using Low-E Packing has a Screening Value at or above 500 ppm, Paragraphs 8-13 shall apply.

c. Replacing or Repacking Low-E Valves. On any occasion when a Low-E Valve or a valve that utilizes Low-E Packing has a Screening Value at or above 500 ppm, Defendant shall replace or repack it pursuant to the requirements of Paragraph 18.

20. Commercial Unavailability of a Low-E Valve or Low-E Packing. Defendant shall not be required to utilize a Low-E Valve or Low-E Packing to replace or repack a valve if a Low-E Valve or Low-E Packing is commercially unavailable. The factors relevant to the question of commercial unavailability and the procedures that Defendant must follow to assert

that a Low-E Valve or Low-E Packing is commercially unavailable are set forth in Appendix A-1.

21. Records of Low-E Valves and Low-E Packing. Prior to installing any Low-E Valves or Low-E Packing, or if not possible before installation, then as soon as possible after installation, Defendant shall secure from each manufacturer documentation that demonstrates that the proposed valve or packing technology meets the definition of "Low-E Valve" and/or "Low-E Packing." Defendant shall make the documentation available upon request to EPA.

22. Nothing in Paragraphs 18-21 requires Defendant to utilize any valve or valve packing technology that is not appropriate for its intended use in a Covered Process Unit.

23. In each Compliance Status Report due under Section VI (Reporting Requirements) of this Decree, Defendant shall include a separate section in the Report that: (i) describes the actions it took to comply with this Subsection G, including identifying each piece of equipment that triggered a requirement in Subsection G, the Screening Value for that piece of equipment, the type of action taken (i.e., replacement, repacking, or improvement, and the date when the action was taken); (ii) identifies any required actions that were not taken and explains why; and (iii) identifies the schedule for any known, future replacements, repackings, improvements, or eliminations.

24. Management of Change. To the extent not already done, beginning no later than three months after the Reactivation Date of this Consent Decree, Defendant shall ensure that all Covered Equipment added to the Covered Process Units at the Facility for any reason is evaluated to determine if it subject to LDAR requirements. Defendant also shall ensure that all Covered Equipment that was subject to the LDAR program is eliminated from the LDAR

program if it is physically removed from a Covered Process Unit. This evaluation shall be a part of Defendant's facility-wide Management of Change protocol.

25. Training. By no later than nine months after the Reactivation Date of this Consent Decree, Defendant shall develop a training protocol (or, as applicable, require its contractor to develop a training protocol for the contractor's employees) and shall ensure that all LDAR Personnel have completed training on all aspects of LDAR, including this LPM, that are relevant to the person's duties. Once per calendar year, starting in the calendar year after completion of initial training, Defendant shall ensure that refresher training is performed for all LDAR Personnel; provided, however, that refresher training is not required if an individual's employment at the Facility ceases prior to the end of the calendar year, or no longer involves duties relevant to LDAR. Beginning no later than the Reactivation Date of this Consent Decree and continuing until termination of this Consent Decree, Defendant shall ensure (or as applicable, require its contractor to ensure for the contractor's employees) that new LDAR Personnel are sufficiently trained prior to any field involvement (other than supervised involvement for purposes of training) in the LDAR program.

H. Quality Assurance ("QA")/Quality Control ("QC")

26. Daily Certification by Monitoring Technicians. Commencing by no later than one month after the Reactivation Date of this Consent Decree, on each day that monitoring occurs, at the end of such monitoring, Defendant shall ensure that each monitoring technician certifies that the data collected accurately 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 today and to the best of my knowledge and belief, the data accurately represents the monitoring that I performed today.

27. Commencing by no later than the first full calendar quarter after the Reactivation Date of this Consent Decree, and at least once per quarter thereafter, at times that are not announced to the LDAR monitoring technicians, an LDAR-trained employee or contractor of Defendant, who does not serve on a routine basis as an LDAR monitoring technician at the Facility, shall undertake the following no less than once per calendar quarter:

a. Verify that equipment was monitored at the appropriate frequency;

b. Verify that proper documentation and sign-offs have been recorded for all equipment placed on the DOR list;

c. Ensure that repairs have been performed in the required periods;

d. Review monitoring data and equipment counts (*e.g.,* number of pieces of equipment monitored per day) for feasibility and unusual trends;

e. Verify that proper calibration records and monitoring instrument maintenance information are maintained;

f. Verify that other LDAR program records are maintained as required; and

g. Observe in the field each LDAR monitoring technician who is conducting leak detection monitoring to ensure that monitoring during the quarterly QA/QC is being conducted as required.

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

I. LDAR Audits and Corrective Action

28. LDAR Audit Schedule. Until termination of this Consent Decree, Defendant shall ensure that an LDAR audit of all Covered Process Units at the Facility is conducted once every two years in accordance with the following schedule: for the first LDAR audit, the LDAR Audit Commencement Date shall be no later than six months after the Reactivation Date of this Consent Decree; for each subsequent LDAR audit, the LDAR Audit Completion Date shall occur within the same calendar quarter (of the subsequent year) that the first LDAR Audit Completion Date occurred.

29. Requirements related to persons conducting LDAR audits. For each LDAR audit conducted under this Consent Decree, Defendant shall retain a third party with experience in conducting LDAR audits. Defendant shall select a different company than the Facility's regular LDAR contractor to perform the third-party audit and Defendant may not hire that company as the Facility's regular LDAR contractor during the term of this Consent Decree. All such internal audits must be conducted by personnel familiar with LDAR requirements and this LPM.

30. For each Covered Process Unit, each LDAR audit shall include: (i) reviewing compliance with all applicable LDAR regulations, including LDAR requirements related to valves and pumps in heavy liquid service; (ii) reviewing and/or verifying the same items that are required to be reviewed and/or verified in Subparagraphs 27.a-27.f; (iii) reviewing whether any pieces of equipment that are required to be in the LDAR program are not included; and (iv) "comparative monitoring" as described in Paragraph 31. LDAR audits after the first audit also shall include reviewing the Facility's compliance with this LPM.

31. Comparative Monitoring. Comparative monitoring during LDAR audits shall be undertaken as follows:

a. Calculating a Comparative Monitoring Audit Leak Percentage. Covered Equipment shall be monitored in order to calculate a leak percentage for each Covered Process Unit, broken down by equipment type (e.g. valves and pumps). For descriptive purposes under this Section, 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 Percentages." Defendant shall undertake comparative monitoring at all Covered Process Units in each audit. In undertaking Comparative Monitoring, Defendant shall not be required to monitor every component in each Covered Process Unit.

b. Calculating the Historic, Average Leak Percentage from Prior Periodic Monitoring Events. For each Covered Process Unit, the historic, average leak percentage from prior periodic monitoring events, broken down by equipment type (i.e., valves (excluding pressure relief valves) and pumps) shall be calculated. The following number of complete monitoring periods immediately preceding the comparative monitoring shall be used for this purpose: valves – 4 periods; pumps – 12 periods.

c. Calculating the Comparative Monitoring Leak Ratio. For each Covered Process Unit and each Covered Type of Equipment, the ratio of the Comparative Monitoring Audit Leak Percentage from Subparagraph 31.a to the historic, average leak percentage from Subparagraph 31.b shall be calculated. This ratio shall be called the "Comparative Monitoring Leak Ratio." If the denominator in this calculation is "zero," it shall be assumed (for purposes of this calculation but not for any other purpose under this Consent Decree or under any applicable

laws and regulations) that one leaking piece of equipment was found in the process unit through routine monitoring during the 12-month period before the comparative monitoring.

32. When More Frequent Periodic Monitoring is Required. If a Comparative Monitoring Audit Leak Percentage calculated pursuant to Subparagraph 31.a triggers a more frequent monitoring schedule under any applicable federal, state, or local law or regulation than the frequencies listed in the applicable Paragraph in Subsection V.C -- that is, either Paragraph 4, 5, or 6 -- for the equipment type in that Covered Process Unit, Defendant shall monitor the affected type of 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 Defendant monitor at intervals less frequently than those listed in the applicable Paragraph in Subsection V.C.

33. Corrective Action Plan ("CAP")

a. Requirements of a CAP. By no later than the date that is 30 days after each LDAR Audit Completion Date, Defendant shall develop a preliminary Corrective Action Plan if: (i) the results of an LDAR audit identify any deficiencies; or (ii) a Comparative Monitoring Leak Ratio calculated pursuant to Subparagraph 31.c is 3.0 or higher and the Comparative Monitoring Audit Leak Percentage calculated pursuant to Subparagraph 31.a is greater than or equal to 0.5 percent). The preliminary CAP shall describe the actions that Defendant has taken or shall take to address: (i) the deficiencies and/or (ii) the causes of a Comparative Monitoring Leak Ratio that is 3.0 or higher (but only if the Comparative Monitoring Audit Leak Percentage is at or above 0.5 percent). Defendant shall include a schedule by which actions that have not yet been completed shall be completed. Defendant shall promptly complete each corrective action item with the goal of completing each action within the

date that is 90 days after the LDAR Audit Completion Date. If any action is not completed or not expected to be completed within 90 days after the LDAR Audit Completion Date, Defendant shall explain the reasons and propose a schedule for prompt completion in the final CAP to be submitted under Subparagraph 33.b.

b. Submission of the Final CAP to EPA. By no later than 120 days after the LDAR Audit Completion Date, Defendant shall submit the final CAP to EPA, together with a certification of the completion of each item of corrective action. If any action is not completed within 90 days after the LDAR Audit Completion Date, Defendant shall explain the reasons, together with a proposed schedule for prompt completion. Defendant shall submit a supplemental certification of completion by no later than 30 days after completing all actions.

c. EPA Comment on CAP. EPA may submit comments on the CAP. Within 30 days after receipt of any comments from EPA, Defendant shall submit a reply. Disputes arising from any aspect of a CAP shall be resolved in accordance with the dispute resolution provisions of this Consent Decree.

J. Certification of Compliance

34. Within 180 days after the initial LDAR Audit Completion Date, Defendant shall certify to EPA that, to the signer's best knowledge and belief formed after reasonable inquiry: (i) except as otherwise identified, the Facility is in compliance with all applicable LDAR regulations and this LPM; (ii) Defendant 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 Facility that is regulated under LDAR has been identified and included in the Facility's

LDAR program. To the extent that Defendant cannot make the certification in all respects, it shall specifically identify any deviations from Items (i)-(iii) of this Paragraph 34.

K. Tank Monitoring Program [Investigation Pending]

35. No later than 180 days after the Reactivation Date, and continuing on a semi-annual basis thereafter, Defendant shall perform Optical Gas Imaging (OGI) camera inspections to determine whether VOC emissions are detected from the fixed roof tank vents on Tanks TK-6101, TK-6102, TK-6104, TK-6105, and TK-6106.

36. Defendant shall ensure that all OGI camera inspections conducted pursuant to this Consent Decree are performed by individuals, whether employees of a third-party vendor or Defendant personnel, who have received training in OGI camera fundamentals and operation and who maintain proficiency with the OGI camera through regular use.

37. Defendant shall ensure that all OGI camera inspections conducted pursuant to this Consent Decree are performed in accordance with the following requirements:

a. all OGI cameras shall be capable of imaging organic gases that absorb infrared light in approximately the 3.2 to 3.4 micron range, and have an automatic mode (for thermal contrast and brightness) for OGI camera inspections;

b. all OGI cameras shall be calibrated in accordance with the provisions at 40 C.F.R. § 60.18(i)(2);

c. all OGI camera inspections shall be conducted in automatic mode and in gray scale, and Defendant shall select the polarity in order to achieve the maximum contrast of the VOCs with the sky background condition;

d. all OGI camera inspections shall be conducted at a distance of no greater than 50 feet from vents, and Defendant shall image all vents;

e. Defendant shall conduct OGI camera inspections only when the tanks are idle (neither filling no being drawn down); and

f. Defendant shall conduct OGI camera inspections only at times when the wind speed is forecasted to be greater than 4 mph and less than 12 mph.

38. If the OGI camera operator observes emissions during OGI camera inspections conducted pursuant to paragraph 35 or 40:

a. an OGI camera video recording shall be made immediately and during the inspection in which the operator observed emissions, and in accordance with the requirements of paragraphs 36 and 37;

b. within 72 hours of the initial observation of emissions, Defendant shall conduct a Visual Inspection of the tanks. The visual inspection of the tank shall be through roof openings and shall include an inspection of the IFR and rim seal(s).

39. If, during the inspections required by Paragraph 38 or during any Visual Inspection conducted pursuant to 40 C.F.R. Part 60 Subpart Kb:

a. The internal floating roof is not resting of the surface of the liquid inside the tank and is not resting on the leg supports;

b. There is a liquid on the floating roof;

c. The seal(s) is(are) detached;

d. There are holes or tears in the seal fabric; or

e. There are visible gaps between the seal(s) and the wall of the tank, then

Defendant shall, within 45 days of the Visual Inspection, repair the tank to correct the specific failure(s) discovered ("Required Repairs").

40. After completion of any Required Repairs, Defendant shall conduct an OGI camera inspection on the affected tank to confirm that the tank is in good working order within 30 days of completion of the Required Repairs. If emissions are observed during this OGI camera inspection, Defendant shall follow the process set forth in Paragraph 38 again.

41. If, during the Visual Inspections required by Paragraph 38 or 40 C.F.R. Part 60 Subpart Kb, Defendant does not observe any of the failures set forth in Paragraph 39, no further action is required until the next scheduled Visual Inspection or OGI camera inspection.

42. If one or more Required Repairs cannot be made without removing the affected tank from service, Defendant shall empty and remove the tank from service within 45 Days of the Visual Inspection required by Paragraph 38 or 40 C.F.R. Part 60 Subpart Kb; provided, however, that if the Required Repairs cannot be made or the tank cannot be emptied within 45 Days, Defendant may use no more than two extensions of no more than 30 Days each, with written notice to U.S. EPA. Defendant may utilize an extension of time only if alternate suitable storage capacity is unavailable.

43. If, for any given tank, no Required Repairs are called for by Paragraph 39 for two consecutive years, the OGI Camera Inspection frequency required by Paragraph 35 shall be reduced to annually, upon notice to U.S. EPA. If any subsequent inspection calls for Required Repairs under Paragraph 39, then the frequency of OGI Camera Inspection under Paragraph 35 shall be increased to semiannually.

III. LDAR REPORTING REQUIREMENTS

44. LPM Compliance Status Reports. On the dates and for the time periods set forth in Paragraph 35, Defendant shall submit to EPA, in the manner set forth in Section XIV (Notices), the following information:

a. The number of LDAR Personnel at the Facility (excluding Personnel whose functions involve the non-monitoring aspects of repairing leaks) and the approximate percentage of time each such person dedicated to performing his/her LDAR functions;

b. An identification and description of any non-compliance with the requirements of Section V (Compliance Requirements);

c. An identification of any problems encountered in complying with the requirements of Section V (Compliance Requirements);

d. The information required by Paragraph 11;

e. The information required by Paragraph 23;

f. A description of the trainings done in accordance with this Consent Decree;

g. Any deviations identified in the QA/QC performed under Subsection V.H, as well as any corrective actions taken under that Subsection;

h. A summary of LDAR audit results including specifically identifying all alleged deficiencies; and

i. The status of all actions under any CAP that was submitted during the reporting period, unless the CAP was submitted less than one month before the compliance status report.

45. LPM Report Due Dates. The first compliance status report shall be due thirty-one days after the first full half-year after the Reactivation Date of this Consent Decree (i.e., either: (i) January 31 of the year after the Reactivation Date, if the Reactivation Date is between January 1 and June 30 of the preceding year; or (ii) July 31 of the year after the Reactivation Date, if the Reactivation Date is between July 1 and December 31). The initial report shall cover the period between the Reactivation Date and the first full half year after the Reactivation Date (a "half year" runs between January 1 and June 30 and between July 1 and December 31). Until termination of this Decree pursuant to Section XVIII (Termination), each subsequent report will be due on the same date in the following year and shall cover the prior two half years (i.e., either January 1 to December 31 or July 1 to June 30).

IV. LDAR STIPULATED PENALTIES

46. Failure to Meet all Other Consent Decree Obligations. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in Table 2 below unless excused under Section VIII (Force Majeure).

Table 2

Violation	Stipulated Penalty
47.a. Failure to timely develop a Facility-Wide LDAR Document as required by Paragraph 3 or failure to timely update the Document on an annual basis if needed pursuant to Paragraph 3.e	Period of noncompliance: / Penalty Per Day: 1 – 15 days: $300 16 – 30 days: $400 31 days or more: $500
47.b. Each failure to perform monitoring at the frequencies set forth in Paragraph 4	$100 per component per missed monitoring event, not to exceed $10,000 per monitoring event per Covered Process Unit

Violation	Stipulated Penalty
47.c. Each failure to perform LDAR monitoring in accordance with Method 21, in violation of Paragraph 5	Penalty per monitoring event per component not monitored in accordance with Method 21: Component Type: Valves and OELs $100 Pumps and Agitators $400
47.d. For each failure to use a monitoring device that is attached to a data logger and for each failure, during each monitoring event, to directly electronically record the Screening Value, date, time, identification number of the monitoring instrument, and the identification of technician, in violation of these requirements of Paragraph 6	$100 per failure per piece of equipment monitored
47.e. Each failure to transfer monitoring data to an electronic database on at least a weekly basis, in violation of this requirement in Paragraph 5	$150 per week for each week that the transfer is late
47.f. Each failure to timely perform a first attempt at repair as required by Paragraph 8. For purposes of these stipulated penalties, the term "repair" includes the required re-monitoring in Paragraph 9 after the repair attempt; the stipulated penalties in Subparagraph 47.h. do not apply	$150 per day for each late Day, not to exceed $1,000 per leak
47.g. Each failure to timely perform a final attempt at repair as required by Paragraphs 8. For purposes of these stipulated penalties, the term "repair" includes the required re-monitoring in Paragraph 9 after the repair attempt; the stipulated penalties in Subparagraph 47.h. do not apply	Equipment Type / Penalty per Component per Day late / Not to Exceed Valves / $200 / $17,000 per leak

Violation	Stipulated Penalty		
47.h. Each failure to timely perform Repair Verification Monitoring as required by Paragraph 9 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	Equipment Type	Penalty per Component per Day late	Not to Exceed
	Valves	$150	$2,500 per leak
47.i. Each failure to record the information required by Paragraph 11	$100 per item of missed information		
47.j. 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)	Equipment Type	Penalty per Component per Day on list	Not to Exceed
	Valves	$200	$26,000 per leak
47.k. Each failure to comply with the requirement in Subparagraph 13.a. that a relevant unit supervisor or person of similar authority sign off on placing a piece of Covered Equipment on the DOR list	$200 per failure		
47.l. Each failure to comply with the requirements in Subparagraph 13.c. (replace, repack, or improve)	$1,000 per failure		
47.m. Each failure to install a Low-E Valve or a valve fitted with Low-E Packing when required to do so pursuant to Paragraph 17 (new valves)	$1,000 per failure		
47.n. Each failure, in violation of Subparagraph 18.b., to timely comply with the requirements relating to installing a Low-E Valve or a Low-E Packing if a process unit shutdown is not required	$500 per day per failure, not to exceed $10,000		

Violation	Stipulated Penalty
47.o. Each failure to add a piece of Covered Equipment to the LDAR program when required to do so pursuant to the evaluation required by Paragraph 24 (MOC)	$250 per piece of Covered Equipment (plus an amount, if any, due under Paragraph 82.b. for any missed monitoring event related to a component that should have been added to the LDAR program but was not)
47.p. Each failure to remove a piece of Covered Equipment from the LDAR program when required to do so pursuant to Paragraph 24 (MOC)	$100 per failure per piece of Covered Equipment
47.q. Each failure to timely develop a training protocol as required by Paragraph 25	$250 per week late
47.r. Each failure to perform initial, refresher, or new personnel training as required by Paragraph 25	$1,000 per month late
47.s. Each failure of a monitoring technician to complete the certification required in Paragraph 34	$100 per failure
47.t. Each failure to perform any of the requirements relating to QA/QC in Paragraph 27	$1,000 per missed requirement per quarter
47.u. Each failure to conduct an LDAR audit in accordance with the schedule set forth in Paragraph 28	<u>Period of noncompliance</u> / <u>Penalty per day</u> 1 – 30 days / $300 31 days or more / $500, not to exceed $35,500 per audit
47.v. For audits, each failure to use a third party	$25,000 per audit
47.w. Each failure to substantially comply with the Comparative Monitoring requirements of Paragraph 31	$22,500 per audit

Violation	Stipulated Penalty
47.x. Each failure to timely submit a Corrective Action Plan that substantially conforms to the requirements of Paragraph 33	Period of noncompliance / Penalty per day per violation 1 – 30 days: $100 31 days or more: $500 Not to exceed $35,000 per audit
47.y. Each failure to implement a corrective action within three months after the LDAR Audit Completion Date or pursuant to the schedule that Center must propose pursuant to Paragraph 33 if the corrective action cannot be completed in three months or pursuant to an EPA-approved revised schedule pursuant to Paragraph 33	Period of noncompliance / Penalty per day per violation 1 – 30 days: $500 31 days or more: $1,000 Not to exceed $50,000 per audit
47.z. Each failure to timely submit a Certification of Compliance that substantially conforms to the requirements of Paragraph 34	Period of noncompliance / Penalty per day per violation 1 – 30 days: $100 31 days or more: $500 Not to exceed $35,000
47.aa. Each failure to substantially comply with any recordkeeping, submission, or reporting requirement in Section VI not specifically identified in this Table 2	Period of noncompliance / Penalty per day per violation 1 – 15 days: $100 16 – 30 days: $200 31 days or more: $400
47.bb. Each failure to comply with OGI camera inspections for monitoring of the fixed roof tank vents identified in Paragraph 35	$2,000 per missed semi-annual monitoring event for each tank

Violation	Stipulated Penalty
47.cc. Each failure to perform OGI camera inspections in accordance with the requirements identified in Paragraph 37	$1,000 per day per failure, not to exceed $20,000

APPENDIX A-1

APPENDIX A-1

Factors to be Considered and Procedures to be Followed To Claim Commercial Unavailability

This Appendix outlines the factors to be taken into consideration and the procedures to be followed for Defendants to assert that a Low-E Valve or Low-E Packing is "commercially unavailable" pursuant to Paragraph 20 of Appendix A of the Consent Decree.

I. FACTORS

A. Nothing in this Consent Decree, Appendix A, or this Appendix requires Defendants to utilize any valve or packing that is not suitable for its intended use in a Covered Process Unit.

B. The following factors are relevant in determining whether a Low-E Valve or Low-E Packing is commercially available to replace or repack an existing valve:

1. Valve type (*e.g.,* ball, gate, butterfly, needle) (this LDAR Program does not require consideration of a different type of valve than the type that is being replaced);
2. Nominal valve size (*e.g.,* 2 inches, 4 inches);
3. Compatibility of materials of construction with process chemistry and product quality requirements;
4. Valve operating conditions (*e.g.,* temperature, pressure);
5. Service life;
6. Packing friction (*e.g.,* impact on operability of valve);
7. Whether the valve is part of a packaged system or not;
8. Retrofit requirements (*e.g.,* re-piping or space limitations);
9. Other relevant considerations.

C. The following factors may also be relevant, depending upon the Process Unit or equipment where the valve is located:

1. In cases where the valve is a component of equipment that Defendants are licensing or leasing from a third party, valve or valve packing specifications identified by the lessor or licensor of the equipment of which the valve is a component.
2. Valve or valve packing vendor or manufacturer recommendations for the relevant process unit components.

II. PROCEDURES THAT DEFENDANTS SHALL FOLLOW TO ASSERT COMMERCIAL UNAVAILABILITY

A. Defendants shall comply with the following procedures if they seek to assert commercial unavailability under Paragraph 20 of Appendix A of the Consent Decree:

1. Defendants must contact a reasonable number of vendors of valves or valve packing that Defendants, in good faith, believe may have valves or valve packing suitable for the intended use taking into account the relevant factors listed in Section I of this Appendix above.

a. For purposes of this Consent Decree, a reasonable number of vendors presumptively shall mean no less than three.

b. If fewer than three vendors are contacted, the determination of whether such fewer number is reasonable shall be based on the factors in Section I.C.(1) and (2) or on a demonstration that fewer than three vendors offer valves or valve packing considering the factors in Section I.B.(1) – (9).

2. Defendants shall obtain a written representation from each vendor, or equivalent documentation, that a particular valve or valve packing is not available as "Low-Emissions" from that vendor for the intended conditions or use.

a. "Equivalent documentation" may include e-mail or other correspondence or data showing that a valve or valve packing suitable for the intended use does not meet the definition of "Low-E Valve" or "Low-E Packing" in the Consent Decree or that the valve or packing is not suitable for the intended use.

b. If the vendor does not respond or refuses to provide documentation, "equivalent documentation" may consist of records of Defendants' attempts to obtain a response from the vendor.

3. Each LDAR Program Compliance Status Report required by Section III of Appendix A of the Consent Decree shall identify each valve that Defendants otherwise were required to replace or repack, but for which, during the time period covered by the Report, Defendants determined that a Low-E Valve and/or Low-E Packing was not commercially available. Defendants shall provide a complete explanation of the basis for its claim of commercial unavailability, including, as an attachment to the Compliance Status Report, all relevant documentation. This report shall be valid for a period of 365 Days from the date of the report for the specific valve involved and all other similar valves, taking into account the factors listed in Part I.

III. OPTIONAL EPA REVIEW OF DEFENDANT'S ASSERTION OF COMMERCIAL UNAVAILABILITY

A. At its option, EPA may review an assertion by Defendants of commercial unavailability. If EPA disagrees with Defendants' assertion, EPA shall notify Defendants in writing, specifying the Low-E Valve or Low-E Packing that EPA believes to be commercially available and the basis for its view that such valve or packing is appropriate taking into consideration the Factors described in Part I. After Defendants receive EPA's notice, the following shall apply:

1. Defendants shall not be required to retrofit the valve or valve packing for which it asserted commercial unavailability (unless Defendants are otherwise required to do so pursuant to another provision of the Consent Decree).

2. Defendants shall be on notice that EPA will not accept a future assertion of commercial unavailability for: (i) the valve or packing that was the subject of the unavailability assertion; and/or (ii) a valve or packing that is similar to the valve or packing subject to the unavailability assertion, taking into account the Factors described in Part I.

3. If Defendants disagree with EPA's notification, Defendants and EPA shall informally discuss the basis for the claim of commercial unavailability. EPA may thereafter revise its determination, if necessary.

4. If Defendants make a subsequent commercial unavailability claim for the same or similar valve or packing that EPA previously rejected, and the subsequent claim also is rejected by EPA, Defendants shall retrofit the valve or packing with the commercially available valve or packing unless Defendants are successful under Subsection III.B of this Appendix below.

B. Any disputes under this Appendix first shall be subject to informal discussions between Defendants and EPA for a period not to exceed 30 Days before Defendants shall be required to invoke the Dispute Resolution provisions of Section IX of the Consent Decree. Thereafter, if the dispute remains, Defendants shall invoke the Dispute Resolution provisions.

APPENDIX B

Appendix B – Financial Information Submitted by Center Ethanol

1. **Tax returns.** Signed copies of Center Ethanol's federal income tax returns for 2014 through 2020, with all schedules (e.g., Schedule K-1s, consolidating schedules), attachments, and statements.

2. **Financial statements.** Audited financial statements prepared by Center Ethanol for 2014 through 2018; year-end income statements, balance sheets, and statement of cash flows for 2019 and 2020; and monthly financial statements for January through July 2019.

3. **Real estate.** Property tax records indicating the address, parcel number, and tax-assessed value of all real estate owned by Center Ethanol.

4. **Valuations.** Appraisals of Center Ethanol's facility at 231 Monsanto Drive, Sauget, IL, conducted in 2014, 2017, and 2019.

5. **Organization Chart.** Organization chart that shows the ownership structure of Center Ethanol, its direct and indirect subsidiaries, its direct and indirect owners (up to its ultimate owners), and its affiliates.

6. **Debts.** Regarding Center Ethanol's debts and liabilities, including loans owed to shareholders, but not including trade debts:
    a. Documents reflecting the terms of each debt, including loan agreements, commitment letters, lines of credit, guarantees, liens, and security agreements, complete with all schedules, attachments and addendums.
    b. An Excel file summarizing all of Center Ethanol's debts as of October 2019, and an updated version of the file as of April 2021.

7. **Unsecured trade payables.** An August 2019 "Wind-down of Operations and Claim Settlement Proposal to Unsecured Creditors" from Armstrong Teasdale LLP.
    a. Description of the current status of Center Ethanol's settlement with its unsecured debtors, as described in the August 2019 Letter.
    b. Documents created since October 1, 2019 discussing or reflecting the status of Center Ethanol's unsecured liabilities and this settlement effort.
    c. Statement of the total amount paid since October 1, 2019 to satisfy Center Ethanol's unsecured liabilities; the book value of the unsecured liabilities that have been satisfied since October 1, 2019; and the book value of any remaining unsecured liabilities.

8. A summary of bonus payments paid to each employee from January 2014-August 2019.