IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:24-cv-1878-NRN

UNITED STATES OF AMERICA and
STATE OF COLORADO,

Plaintiffs,

v.

ENTERPRISE GAS PROCESSING, LLC
and ENTERPRISE PRODUCTS
OPERATING LLC

Defendants.

CONSENT DECREE

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WHEREAS, Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the State of Colorado (the "State"), on behalf of the Colorado Department of Public Health and Environment ("CDPHE"), have filed a complaint concurrently with this Consent Decree, alleging that Defendants, Enterprise Gas Processing, LLC ("EGP") and Enterprise Products Operating LLC ("EPO"), violated Sections 111 and 112 of the Clean Air Act ("Act"), 42 U.S.C. §§ 7411 to 7412, and Sections 121 and 122 of the Colorado Air Pollution Prevention and Control Act (the "Colorado Act"), C.R.S. §§ 25-7-121 to -122, at the natural gas processing plant that EGP and EPO (jointly, "Defendants") own and operate near Meeker in Rio Blanco County, Colorado ("Facility").

WHEREAS, Defendants do not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint.

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

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, 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. This Court has supplemental jurisdiction over the State law claims asserted by the State pursuant to 28 U.S.C. § 1367. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a), because the

violations alleged in the Complaint are alleged to have occurred in, and Defendants conduct business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Defendants 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 Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendants 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 8, CDPHE, the United States Department of Justice, and the Colorado Attorney General's Office in accordance with Section XV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendants 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. Defendants 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, Defendants shall not raise as a defense the failure by any of their 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 Clean Air Act or in 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. "Affected Facilities" shall include any "affected facility" in 40 C.F.R. § 60.5365a(b) through (h) at the Facility regardless of the "affected facility's" actual date of construction, modification, or reconstruction;

b. "CDPHE" shall mean the Colorado Department of Public Health and Environment;

c. "Clean Air Act" or "CAA" or "the Act" shall mean the Clean Air Act, 42 U.S.C. §§ 7401 – 7671q, and its implementing regulations;

d. "Complaint" shall mean the complaint filed by the United States and the State of Colorado in this action;

e. "Component" shall mean valves, connectors, pressure relief devices, open-ended lines, flanges, covers, closed vent systems, thief hatches or other openings on a controlled storage vessel, compressors, pumps, instruments, and meters;

f. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXV);

g. "Control Valve" shall mean a device capable of modulating fluid flow in

response to a signal from an external device to keep a regulated process variable as close as possible to the desired set point;

h. "Covered Equipment" shall mean the following equipment in all Covered Process Units:

(1) all valves, pumps, and connectors in VOC or wet gas service that are regulated under any "equipment leak" provision of 40 C.F.R. Part 60, or any applicable State equipment leak regulation; and

(2) all valves, pumps, and connectors in VHAP service that are regulated under any equipment leak provision of 40 C.F.R. Part 63, Subpart HH (and by reference 40 C.F.R. Part 61, Subpart V), or any applicable State or equipment leak regulation;

i. "Covered Process Unit" shall mean any process unit that is, or under the terms of this Consent Decree becomes, subject to the equipment leak provisions of 40 C.F.R. Part 60, Subpart OOOOa (and by reference 40 C.F.R. Part 60, Subpart VVa.);

j. "Day," for purposes of requirements uniquely imposed by the LDAR Program under this Consent Decree, and not by any applicable LDAR regulations, shall mean a calendar day. In computing any period of time under this Consent Decree for submittal of reports or Approval of Deliverables (Section VII), where the last Day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until 11:59 p.m. Mountain Time of the next business day. For all other purposes, "Day" shall have the meaning provided in the applicable LDAR Regulations;

k. "Defendants" shall mean Enterprise Gas Processing, LLC and Enterprise Products Operating LLC;

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

m. "Effective Date" shall have the definition provided in Section XVI (Effective Date);

n. "Existing Connectors" shall mean all connectors that are installed in a Covered Process Unit at the Facility prior to the Effective Date;

o. "Existing Valves" shall mean all valves (excluding pressure relief valves) that are installed in a Covered Process Unit at the Facility prior to the Effective Date;

p. "Facility" shall mean the Meeker Gas Plant located approximately 21.5 miles southwest of Meeker, in Rio Blanco County, Colorado;

q. Reserved;

r. "LDAR Auditor" shall mean a third-party auditor company meeting the requirements of Paragraph 28.b;

s. "LDAR Database" shall mean an electronic database that is used to record data generated for compliance with LDAR Regulations and that is capable of exporting data in a reasonably usable format;

t. "LDAR Personnel" shall mean the monitoring technicians and other employees and contractors implementing the LDAR Program or implementing the LDAR Regulations at the Facility. LDAR Personnel does not include the LDAR Auditor;

u. "LDAR Program" shall mean the Leak Detection and Repair Program specified in Paragraphs 14 - 30;

v. "LDAR" or "Leak Detection and Repair" shall mean the leak detection and repair activities required by any applicable "equipment leak" regulations set forth in 40 C.F.R. Part 60, Subparts KKK, OOOO, and OOOOa (and by reference Subparts VV and VVa), 40 C.F.R. Part 63, Subpart HH, and 40 C.F.R. Part 61, Subpart V, as well as any applicable State or local equipment leak requirements that require the use of Method 21 to monitor for equipment leaks and also require the repair of leaks discovered through such monitoring;

w. "LDAR Regulations" shall collectively mean the federal, State, and local laws, regulations, and requirements referenced in Paragraph 7v, as well as any permits incorporating such requirements;

x. "Leak" or "Leaking" shall mean:

(1) A Screening Value as set forth in Paragraphs 19.aor 19.b;

(2) Any emissions detected through olfactory, visual, or auditory sensing; or

(3) Any emissions imaged by an OGI instrument;

y. "Low-Emissions Packing" or "Low-E Packing" shall mean a valve packing product that meets the specifications set forth in Subparagraphs (1) or (2) below. "Low-E Injectable Packing" is a type of Low-E Packing (also meeting the specifications set forth in Subparagraphs (1) or (2) below) capable of being injected into a valve either through a pre-drilled

tap port supplied as part of the original valve design by the valve manufacturer, or a traditional "drill-and-tap" repair of the valve as described in Paragraph 20.d of the Consent Decree:

(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 parts per million (ppm), and that, if it does so emit at greater than 100 ppm at any time in the first five years after installation or the date of shipment as specified by the manufacturer, the manufacturer will replace the product; provided, however, that no packing product shall qualify as "Low-E" by reason of written warranty unless the valve packing product 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 at greater than 500 ppm, and on average, leaked at less than 100 ppm;

z. "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 greater than 100 ppm at any time in the first five years after installation or the date of shipment as specified by the manufacturer, 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 an "extension" of another valve that qualified as "Low-E" under Paragraph 7.z(1) 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 Paragraph 7.z(1) above;

For purposes of Paragraphs 7.z(1)(b) and 7.z(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.

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

bb. "Monthly" shall mean a calendar month (e.g., January 1 through January 31) except as otherwise provided in applicable LDAR regulations;

cc. "Optical Gas Imaging" or "OGI" shall mean monitoring using an instrument that images a gas cloud, not visible to the naked eye, and can absorb/emit radiant energy at the waveband of the infrared camera. The waveband must contain at least the range of 3.2 to 3.4 micrometers;

dd. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

ee. "Parties" shall mean the United States, the State, Enterprise Gas Processing, LLC, and Enterprise Products Operating LLC;

ff. "Plaintiffs" shall mean the United States and the State;

gg. "Process Unit" shall mean "components [equipment] assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A Process Unit can operate independently if supplied with sufficient feed or raw materials and

sufficient storage facilities for the products." 40 C.F.R. § 60.5430a. The Process Units existing at the Facility on the Date of Lodging are listed in Appendix A;

hh. "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; or

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

ii. "Repair Verification Monitoring" shall mean monitoring in order to determine whether the Screening Value is below the applicable leak

definition in the LDAR Regulations or LDAR Program or that the Leak has been eliminated;

jj. "Screening Value" shall mean the highest emission level that is recorded at a piece of Covered Equipment as it is monitored for the relevant monitoring event in accordance with Method 21;

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

ll. "State" or "Colorado" shall mean the State of Colorado, acting on behalf of CDPHE;

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

nn. "VHAP" shall mean volatile hazardous air pollutant and shall have the definition provided for "volatile hazardous air pollutant" in 40 C.F.R. §61.241; and

oo. "VOC" shall mean volatile organic compound and shall have the definition provided for "volatile organic compound" in 40 C.F.R. §§ 60.2 and 60.481a.

IV. CIVIL PENALTY

8. Within 14 Days after Defendants receive notice from the United States that this Consent Decree has been lodged with the Court, Defendants shall deposit the $1,000,000.00 civil penalty into an interest-bearing escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation (the "Escrow Account"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run, or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued

interest thereon, shall be returned to Defendants. If the Consent Decree is entered by the Court, Defendants shall, within 15 Days after the Effective Date, cause the monies in the Escrow Account, together with accrued interest thereon (the "Accrued Interest"), to be paid to the United States and Colorado in accordance with Paragraphs 9 and 11.

9. **Federal Payment Instructions.** Defendants shall pay 50% of the civil penalty and 50% of the Accrued Interest to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Colorado after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Director, Environmental
Enterprise Gas Processing, LLC
1100 Louisiana, Suite 1000, Houston, TX 77002
713.381.6595
EnvironmentalConsentDecree@eprod.com
With a copy to generalcounsel@eprod.com and zlcraft@eprod.com

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

10. At the time of payment, Defendants shall send notice that payment has been made: (i) to 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) to the United States via email or regular mail in accordance with Section XV (Notices), and (iii) to EPA Region 8 in accordance with Section XV (Notices). Such notice shall state that the

payment is for the civil penalty owed pursuant to the Consent Decree in *United States, et al. v. Enterprise Gas Processing. LLC, et al*. and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-11933.

11. **State Payment Instructions.** Defendants shall pay 50% of the civil penalty and 50% of the Accrued Interest to the State by certified, corporate or cashier's check drawn to the order of "Colorado Department of Public Health and Environment" and delivered to the attention of Enforcement Unit Supervisor, Air Pollution Control Division, 4300 Cherry Creek Drive South, APCD-SS-B1, Denver, Colorado 80246-1530. At the time of payment, Defendants shall send notice that payment has been made to the State in accordance with Section XV (Notices). Such notice shall state that the payment is for the civil penalty in *United States and the State of Colorado v. Enterprise Gas Processing. LLC, et al*. and shall reference the civil action number.

12. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating their federal, State, or local income tax.

V. COMPLIANCE REQUIREMENTS

If any Process Unit is not "in VOC" service or "in VHAP" service, as those terms are defined in 40 C.F.R. §§ 60.481a and 61.241, then the requirements of Paragraphs 16 and 31 of Section V (Compliance Requirements) shall be suspended and shall not apply to that Process Unit during the time it is not "in VOC" service or "in VHAP" service. If any Process Unit is placed back "in VOC" service or "in VHAP" service, then the requirements of Paragraphs 16 and 31 of Section V (Compliance Requirements) shall apply to the Process Unit as soon as it is placed back "in VOC" service or "in VHAP" service. However, if the Process Unit is not "in VOC" service or "in VHAP" service for a period of 60 or more days, then Enterprise shall have a

thirty-Day period to reintegrate the Process Unit and complete any obligations that were suspended while the Process Unit was not "in VOC" service or "in VHAP" service.

A. NSPS APPLICABILITY

13. NSPS Subpart OOOOa Applicability.

a. No later than 90 Days after the Effective Date, all Process Units at the Facility shall be an "affected facility" as that term is defined in 40 C.F.R. Part 60, Subpart OOOOa, and Defendants shall accept applicability of and comply with the requirements of Subpart OOOOa at all Affected Facilities.

b. Initial Connector Monitoring at Existing Subpart KKK Process Units.

(1) This Paragraph 13 applies to connectors in VOC or wet gas service in Covered Process Units that are not subject to 40 C.F.R. Part 60, Subparts OOOO or OOOOa at the time of the lodging of this Consent Decree.

(2) By no later than one year after the Effective Date, Defendants shall:

(a) Identify and include such connectors in the Facility's LDAR Database and the LDAR Document required by Paragraph 15;

(b) Conduct and complete initial monitoring of such connectors in accordance with the provisions of 40 C.F.R. § 60.482-11a; and

(c) Repair all detected Leaks in accordance with the

requirements of 40 C.F.R. § 60.482-11a(d).

B. LDAR PROGRAM

14. LDAR Program Applicability.

a. The requirements of this LDAR Program shall apply to all Covered Equipment and all Covered Process Units at the Facility. The requirements of this LDAR Program are in addition to, and not in lieu of, the requirements of any other LDAR Regulation that may apply to a piece of Covered Equipment. If there is a conflict between an LDAR Regulation and this LDAR Program, Defendants shall follow the more stringent of the requirements.

15. LDAR Document.

a. By no later than 180 Days after the Effective Date, Defendants shall develop a facility-wide document that describes:

(1) The LDAR Program (e.g., applicability of regulations to process units and/or specific equipment; leak definitions; monitoring frequencies; repairs; recordkeeping; reporting);

(2) Tracking programs (e.g., Management of Change as provided in Paragraph 24, and Like-Kind Replacement as provided in Paragraph 25) that ensure 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;

(3) The roles and responsibilities of all employees and contractor

personnel assigned to LDAR functions at the Facility and the training each will receive under Paragraph 26 (Training);

(4) How the number of personnel dedicated to LDAR functions is sufficient to satisfy the requirements of the LDAR Program;

(5) Defendants' specifications for valves subject to drill-and-tap requirements (Paragraph 20.d), including, but not limited to, size thresholds for valves at or below which the drill-and-tap requirements of Paragraph 20.d do not apply.

(6) Defendants' planned percentage of Covered Equipment for the Third-Party Auditor in each Covered Process Unit to monitor during comparative monitoring (Paragraph 28); and

(7) An explanation of how Defendants plan to implement this LDAR Program at the Facility.

b. Defendants shall submit the initial LDAR Document to EPA and CDPHE in accordance with Section XV (Notices). After submission of the initial LDAR Document, Defendants shall review the LDAR Document annually and update it by no later than April 30 of each year following the annual review.

c. If requested by the EPA or CDPHE, Defendants shall provide a copy of the LDAR Document, pursuant to the provisions of Section XV (Notices), within fourteen (14) Days.

16. Monitoring Frequency.

a. Beginning no later than 90 Days after the Effective Date, for all Covered

Equipment, Defendants shall comply with the periodic monitoring frequencies in Table 1, unless: (a) more frequent monitoring is required by federal, State, or local laws or regulations; or (b) the relevant Covered Process Unit has been permanently shut down.

Table 1

Equipment Type	**Monitoring Frequency**
Valves	Quarterly
Pumps	Monthly
Connectors	Annually

b. **Alternative Monitoring Frequencies for Valves after Two Years**. At any time after two consecutive years of monitoring valves at the frequency specified in Paragraph 16.a, Defendants may elect to comply with the monitoring requirements set forth in this Paragraph 16.bby notifying EPA no later than three months prior to changing the monitoring frequency specified under this Paragraph 16.b. Defendants may elect to comply with the monitoring requirements of this Paragraph 16.b at the Covered Process Units but may not make this election for anything less than all pieces of Covered Equipment in one entire Covered Process Unit. If Defendants elect to comply with the monitoring requirements of this Paragraph 16.b, it must comply with the following:

(1) **For Valves that Have Not Leaked at Any Time for at Least Two Consecutive Years of Monitoring**. For valves that have not

leaked at any time for at least the two years prior to electing this alternative, Defendants shall monitor valves one time per year. If any leaks are detected during this alternative monitoring schedule or during an LDAR Audit or a federal, State, or local audit or inspection, Defendants immediately shall start monitoring the leaking valve (or valves) pursuant to the requirements of Paragraph 16.b(2).

(2) **For Valves that Have Leaked at Any Time in the Prior Two Years of Monitoring**. For valves that have leaked at any time in the prior two years of monitoring, Defendants shall monitor each such valve monthly from the date of the last leak until it shows no leaks for six consecutive months, at which time Defendants may commence monitoring at the frequency set forth in Paragraph 16.b(1). The alternative monitoring schedule in Paragraph 16.b(1) shall continue to apply to non-leaking valves in the Covered Process Unit.

17. Compliance with the monitoring frequencies in Table 1 is not required when a specific, applicable LDAR regulation 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 Defendants satisfy all applicable conditions and requirements for the exclusion or exemption set forth in the LDAR regulation. Following the Effective Date, if after two consecutive years of monitoring valves at the frequency specified in Paragraph 16.a, then in lieu of compliance with

the monitoring frequencies in Table 1, Defendants may utilize the skip periods provided in 40 C.F.R. § 60.483-2a, as incorporated in 40 C.F.R. § 60.5400a(b). Use of skip periods shall be subject to compliance with the requirements of 40 C.F.R. § 60.483-2a.

18. Method 21 Data Logging.

a. Beginning no later than 90 Days after the Effective Date, for all Covered Equipment, Defendants shall comply with Method 21 in performing LDAR monitoring, using an instrument equipped with a flame ionization detector attached to a data logger which directly records electronically 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 the technician. Defendants shall transfer this monitoring data for each LDAR monitoring event to the Facility's LDAR Database for recordkeeping purposes within seven Days from the date the data was recorded.

b. If, during LDAR monitoring, a piece of Covered Equipment is discovered that is not listed in the data logger, Defendants are permitted to 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 Defendants thereafter add the piece of Covered Equipment

and all the information regarding the monitoring event including the Screening Value, the date and time of the Screening Value, and the identification numbers of the monitoring instrument and technician, into the LDAR Database within ten Days.

c. Use of a data logger shall not be required for repair verifications pursuant to Paragraphs 20 and 34 that utilize an alternative screening procedure specified in Section 8.3.3 of Method 21.

19. Action Levels.

a. Beginning no later than 90 Days after the Effective Date, if a Screening Value is at or above the applicable Leak definition in Table 2, Defendants shall perform repairs, replacements, or repacking, in accordance with Paragraph 20.

Table 2

Covered Type of Equipment	**Lower Leak Definition (ppm)**
Valves	500
Connectors	500
Pumps	2,000

b. For purposes of the Leak definitions in Table 2, Defendants may elect to adjust the monitoring instrument readings for background pursuant to applicable LDAR Regulations.

c. **Leaks Identified by AVO Means.** Beginning no later than 90 Days after the Effective Date, for all Covered Equipment, and all valves, connectors,

and pumps in heavy liquid service, if at any time, including outside of periodic monitoring, evidence of a potential Leak is detected through audio, visual, or olfactory sensing, Defendants shall comply with all applicable regulations and, if repair is required, with Paragraph 20.

20. Repairs.

a. By no later than five (5) Days after detecting a Leak, Defendants shall perform a first attempt at repair. By no later than fifteen (15) Days after detection, Defendants shall repair the Leaking piece of the Covered Equipment or place the piece of Covered Equipment on the Delay of Repair ("DOR") list, provided that Defendants have complied with all applicable LDAR Regulations and requirements of this Paragraph 20, Paragraph 21 (Delay of Repair), Paragraph 22 (Valve Replacement and Improvement Program), and Paragraph 23 (Connector Replacement and Improvement).

b. **Repair Verification Monitoring.** As of the Effective Date, Defendants shall perform Repair Verification Monitoring no later than one (1) Day after each attempt at repair of a Leaking piece of Covered Equipment to determine whether the Leak has been eliminated or is below the applicable Leak definition in Paragraph 19. Repair Verification Monitoring shall confirm that a repair attempt has been successful if:

(1) For a Leak detected using Method 21, the Screening Value is below the applicable Leak definition in the LDAR Program; or

(2) For a Leak detected using Method 21, no emissions are observed

using an alternative screening procedure specified in Section 8.3.3 of Method 21; or

(3) For a Leak detected using an OGI instrument, no emissions are imaged by OGI or the Screening Value is below the applicable Leak definition in the LDAR Program.

c. Reserved

d. **Drill and Tap for Valves**. As of the Effective Date, Defendants shall attempt all technically feasible repair methods, including at least one drill-and-tap repair for any Leaking valve, before placing such valve on the DOR list in accordance with Paragraphs 20.d(1) through 20.d(5).

(1) **Valves Subject to Drill-and-Tap Requirements**. This Paragraph 20.d applies to valves that are Covered Equipment (other than control valves) for which other repair attempts have failed to reduce emissions below the applicable Leak definition and that Defendants are unable to remove from service.

(2) **Required Sealant Re-Injection**. If the first sealant injection performed as part of the drill-and-tap repair is unsuccessful at repairing the Leak, Defendants shall perform a second injection of an appropriate sealing material through the same port.

(3) As an alternative to the drill-and-tap repair method for Leaking valves that are Covered Equipment (other than control valves) set forth in Paragraph 20.d(1) or in circumstances where Low-E Packing is required under Paragraph 22, Defendants may attempt a

drill-and-tap repair using Low-E Injectable Packing. If a drill-and-tap repair using Low-E Injectable Packing fails to reduce emissions below the applicable Leak definition after one injection of Low-E Injectable Packing, Defendants shall place the valve on the DOR list.

(4) **Drill-and-Tap Exceptions**. Drill-and-tap is not required:

(a) When Paragraph 22.g(3)(a) applies; or

(b) If, after consulting with a drill-and-tap contractor, Defendants determine there is a safety, major mechanical, major product quality, or environmental issue with repairing the valve using the drill-and-tap method, then Defendants shall document in an appropriate environmental or maintenance database the reason(s) why any drill-and-tap attempt was not performed prior to placing any valve on the DOR list. In any instance in which Defendants act contrary to the drill-and-tap contractor's recommendation, Defendants shall provide the drill-and-tap contractor's recommendation and documentation for acting contrary to the drill-and-tap contractor's recommendation.

(5) **Timing for Drill-and-Tap Repairs & Provisional DOR Listing**.

(a) If a drill-and-tap attempt can reasonably be completed within the fifteen (15)-Day repair period, Defendants shall complete the drill-and-tap attempt in that time period.

(b) If Defendants have contacted a drill-and-tap contractor within the initial fifteen (15)-Day repair period, and if a drill-and-tap attempt cannot reasonably occur within the fifteen (15)-Day repair period (*e.g.*, if Defendants' drill-and-tap contractor is not local and must mobilize to the Facility), Defendants provisionally may place the valve on the DOR list pending attempting the drill-and-tap repair as expeditiously as practicable. Absent one of the exceptions found in Paragraph 20.d(4) above or as otherwise agreed to in writing by the EPA, in consultation with CDPHE, in no event may Defendants take more than forty-five (45) Days from the initial monitoring to attempt a drill-and-tap repair. If upon Repair Verification Monitoring, drill-and-tap is deemed successful by reference to a Screening Value of less than 500 ppm, the valve shall be removed from the provisional DOR list and considered repaired.

e. Nothing in this Paragraph is intended to prevent Defendants from taking Leaking Covered Equipment out of service instead of attempting a drill-and-tap repair; provided, however, that prior to placing the Covered Equipment back in service, Defendants must repair the Leak or must comply with the requirements of Paragraph 21 to place the piece of Covered Equipment on the DOR list.

21. **Delay of Repair.** Beginning no later than the Effective Date for the requirements

in Paragraphs 21.b and 21.c(1), and beginning no later than 90 Days after the Effective Date for the other requirements set forth in this Paragraph, for all Covered Equipment placed on the DOR list, Defendants shall comply with the following requirements:

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, and maintain records of such supervisor sign-off in accordance with Paragraph 35.a;

b. Undertake periodic monitoring of the Covered Equipment placed on the DOR list at the frequency specified in Paragraph 16.a (unless more frequent monitoring is required under applicable LDAR Regulations); and

c. Either:

(1) Repair the piece of Covered Equipment within the time frame required by the applicable LDAR Regulation or remove the piece of Covered Equipment from the DOR list if it meets the requirements of 40 C.F.R. § 60.482-9a(f); or

(2) If applicable under Paragraphs 22 – 23.b, replace, repack, or improve the piece of Covered Equipment by the timeframes set forth in Paragraphs 22 – 23.b.

d. For purposes of subsection (c) of this Paragraph, Defendants may attempt to repair a piece of Covered Equipment on the DOR list using the same method attempted prior to placing the Covered Equipment on the DOR list. If such a subsequent attempt is successful, it shall not invalidate Defendants' prior placement of the Covered Equipment on the DOR list

provided at least two attempts were made prior to placement on the DOR list.

22. Valve Replacement and Improvement Program.

a. Beginning no later than 90 Days after the Effective Date, Defendants shall implement the Valve Replacement and Improvement Program set forth in this Paragraph to improve the emissions performance of the valves that are Covered Equipment in each Covered Process Unit.

b. All references to "valves" in this Paragraph relate to valves that are Covered Equipment and exclude pressure relief valves.

c. **List of Existing Valves in Covered Process Units**. In the first annual status report required under Paragraph 46, Defendants shall include a list, organized by Covered Process Unit, of the tag numbers of all Existing Valves that are Covered Equipment.

d. **Proactive Initial Valve Tightening Work Practices for Each Newly-Installed or Repacked Valve**. Defendants shall undertake the work practices specified in this Subparagraph with respect to each new valve that is subject to LDAR Regulations 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. Upon installation (or re-installation in the case of repacking) and prior to the valve's exposure (or re-exposure, in the case of repacking) to process fluids, Defendants shall ensure that the valve's packing gland nuts or their equivalent (e.g., pushers) are tightened to:

(1) The manufacturer's recommended gland nut or packing torque; or

(2) Any appropriate tightness that will minimize the potential for fugitive emission Leaks of any magnitude.

e. **Installing New Valves.** Except as provided in Paragraphs 22.e(1), 22.e(2), or 22.i, Defendants shall ensure that each new valve (other than a valve that serves as the closure device on an open-ended line) that they install in each Covered Process Unit, and that, when installed, will be regulated under applicable LDAR Regulations, 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 in a Covered Process Unit for any reason other than a required replacement or repacking pursuant to Paragraph 22.g.

(1) Paragraph 22.e 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, provided however, that as soon as practicable, but in no event later than the next Process Unit Shutdown, Defendants shall install a Low-E Valve or Low-E Packing. Any such instance shall be reported in the next annual status report.

(2) Paragraph 22.e 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).

f. Reserved

g. Required Replacement or Repacking of Leaking Existing Valves with Low-E Valves or Low-E Packing.

(1) Except as provided in Paragraph 22.i, for each Existing Valve that has a Leak twice during the life of the Consent Decree (excluding Repair Verification Monitoring conducted in accordance with Paragraph 20.b or monitoring conducted while the valve is on DOR), Defendants shall either replace the Existing Valve with a Low-E Valve or repack the Existing Valve with Low-E Packing.

(2) **Timing**. Defendants shall replace or repack an Existing Valve pursuant to Paragraph 22.g(1) by no later than thirty (30) Days after the monitoring event that triggered the replacing or repacking requirement, unless Defendants comply with either of the following:

(a) **Permissible Delay Despite Diligent Efforts**. Where replacement or repacking does not require a Process Unit Shutdown, delayed replacement or repacking beyond the thirty (30) Day deadline is permissible only if Defendants satisfy the following requirements:

(i) As expeditiously as practicable, but no later than the thirty (30) Day deadline, Defendants must take actions necessary to obtain the required valve or valve packing, including all necessary associated

materials, and retain documentation of the actions taken and the date of each such action;

(ii) If, despite Defendants' efforts to comply with Paragraph 22.g(2)(a)(i), the required valve or valve packing, including all necessary associated materials, is not available in time to complete the installation within thirty (30) Days, Defendants must take all reasonable actions to minimize emissions from the valve pending completion of the required replacing or repacking. Examples include: (1) repair; (2) more frequent monitoring, with additional repairs as needed; or 3) where practicable, 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

(iii) As soon as practicable following Defendants' receipt of the Low-E Valve or Low-E Valve packing, including all necessary associated materials, the Defendants must perform the required replacement or repacking.

(b) **Delay due to Required Process Unit Shutdown**. If replacing or repacking requires a Process Unit Shutdown, Defendants shall replace or repack the Existing Valve

during the first Process Unit Shutdown that follows the monitoring event that triggered the requirement to replace or repack the valve, unless Defendants:

(i) Document that insufficient time existed between the monitoring event and the Process Unit Shutdown to enable Defendants to purchase and install the required Low-E Valve or Low-E Valve packing technology; and

(ii) Replace or repack the valve at the next Process Unit Shutdown that occurs after Defendants' receipt of the Low-E Valve or Low-E Valve packing, including all necessary associated materials.

(3) **Applicable Requirements Pending Replacing or Repacking**.

(a) Defendants shall not be required to comply with the drill-and-tap requirements of Paragraph 20.d pending replacing or repacking pursuant to Paragraphs 22.g(1)-22.g(2)(b) if Defendants complete the replacing or repacking no later than thirty (30) Days after detecting the Leak. If Defendants do not complete the replacing or repacking within thirty (30) Days**,** or if at the time of the leak detection Defendants reasonably can anticipate that they might not be able to complete the replacing or repacking within thirty (30) Days, Defendants shall comply with all

applicable requirements of Paragraphs 20 - 21.

(b) **Actions Required Pursuant to Applicable Regulations**. For each Existing Valve that has a Screening Value at or above 500 ppm, Defendants shall comply with all applicable LDAR Regulations and the LDAR Program, including repair and DOR, pending replacing or repacking pursuant to Paragraphs 22.g(1) - 22.g(2)(b).

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

(1) **Low-E Status Not Affected by Subsequent Leaks**. If, during monitoring or after installation, a Low-E Valve or a valve using Low-E Packing has a Leak, the Leak is not a violation of this Consent 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.

(2) **Repairing Low-E Valves**. If, during monitoring after installation, a Low-E Valve or a valve using Low-E Packing has a Leak, Paragraphs 20 - 21 shall apply.

(3) **Replacing or Repacking Low-E Valves**. Defendants shall replace or repack a Low-E Valve or a valve using Low-E Packing in accordance with the procedures and requirements for replacing or repacking Leaking Existing Valves under Paragraph 22.g when:

(a) the Low-E Valve or valve with Low-E Packing is found

Leaking twice during the life of the Consent Decree (excluding Repair Verification Monitoring conducted in accordance with Paragraph 20.b or monitoring conducted while the valve is on DOR); or

(b) Defendants replace or repack a Low-E Valve or Valve with Low-E Packing for any reason.

i. **Commercial Unavailability of a Low-E Valve or Low-E Packing**. Defendants 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 Defendants must follow to assert that a Low-E Valve or Low-E Packing is commercially unavailable are set forth in Appendix B.

j. **Records of Low-E Valves and Low-E Packing**. Prior to installing any Low-E Valves or Low-E Packing, Defendants 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." Such documentation may take the form of a purchase order indicating "100 ppm," "Low-E," or a similar description that is reasonably indicative of Low-E status, combined with an invoice indicating receipt of the items identified on the purchase order. Defendants shall submit the documentation to EPA or CDPHE upon request.

k. Nothing in Paragraphs 22.e - 22.i requires Defendants to use any valve or

valve packing technology that is not appropriate for its intended use in a Covered Process Unit.

23. Connector Replacement and Improvement.

a. For any connector requiring replacement or improvement under this Consent Decree, Defendants shall replace or improve Existing Connectors in accordance with Table 3:

Table 3

Connector Type	**Replacement or Improvement Description**
Flanged	Replacement or improvement of the gasket
Threaded	Replacement of the connector with a like-kind connector or other
Compression	Replacement of the connector with a like-kind connector or other
CamLock	Replacement or improvement of the gasket or replacement or improvement of the CamLock
Quick Connect	Replacement or improvement of the gasket, if applicable, or replacement of the connector (with either a like-kind connector or other), if there is no gasket
Any Type	Elimination (*e.g.,* through welding, pipe, etc.)

For purposes of this Paragraph and Table 3, "gasket" means a sealing element that includes, but is not limited to, an O-ring, gasket, or D-ring.

b. **Like-Kind Replacement Requirements**. Where Defendants employ a like-kind replacement as the method for replacing or improving an Existing Connector (*e.g.*, a Quick Connect replaces another Quick

Connect), the Defendants shall adhere to the requirements of Paragraphs 23.b(1) and 23.b(2).

(1) Defendants shall consult with at least two vendors to determine if there are types, models, or styles of a like-kind connector that are less likely to Leak than the Existing Connector. If one or more of those types, models, or styles are technically feasible to use (considering the service, operating conditions, and type of piping or tubing that the connector is in), and would not create a safety, major mechanical, major product quality, or other issue, Defendants shall select a like-kind connector from among such types, models or styles.

(2) If Paragraph 23.b(1) does not apply, Defendants may install a like-kind connector that is the same type, model, or style as the Existing Connector.

c. Reserved.

24. **Management of Change.** As of the Effective Date, Defendants shall implement a "Management of Change Protocol" that shall ensure that:

a. Each valve, pump, and connector added to a Covered Process Unit at the Facility for any reason is evaluated to determine if it is subject to LDAR Regulations; and

b. Each valve, pump, and connector that was subject to the LDAR Program is eliminated from the LDAR Program if it is physically removed from a Covered Process Unit.

c. Reserved.

25. **Like-Kind Replacement Program**. As of the Effective Date, Defendants shall implement a "Like-Kind Replacement Protocol" that shall ensure that:

a. A valve or pump that is replaced by the same type of valve or pump qualifies as a like-kind replacement.

b. Defendants must update the LDAR Database to identify that such a replacement has occurred.

26. Training.

a. **Training Protocol**. By no later than 180 Days after the Effective Date, Defendants shall develop a training protocol for the Facility (or, as applicable, require their contractor(s) to develop a training protocol for the contractor's employees).

b. **Initial Training**. By no later than 270 Days after the Effective Date, Defendants shall ensure that all LDAR Personnel have completed training on all aspects of the Facility-specific LDAR requirements, including this LDAR Program, that are relevant to the person's duties.

c. **Refresher Training**. Once per calendar year starting in the calendar year after completion of initial training, Defendants shall ensure that refresher training on Facility-specific LDAR requirements is performed with respect to 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.

d. **New Employee/Contractor Training Requirement**. After the

development of the training protocol in Paragraph 26.a and continuing until termination of this Consent Decree, Defendants shall ensure (or as applicable, require their contractor to ensure for the contractor's employees) that new LDAR Personnel are sufficiently trained no more than 90 Days prior to any field involvement (other than supervised involvement for purposes of training) with LDAR and/or the LDAR Program.

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

a. **Daily Certification by Monitoring Technicians.** Commencing by no later than ninety (90) Days after the Effective Date, Defendants shall require that, on each Day that monitoring occurs, at the end of such monitoring, 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 identifies the monitoring technician and 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.

b. **QA/QC Requirements**. Commencing by no later than the first full calendar quarter [i.e., period of three calendar months ending on March 31, June 30, September 30, or December 31] after the Effective Date, at times that are not announced to the LDAR monitoring technicians, an LDAR-trained employee or contractor of Defendants, 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 at the Facility:

(1) Verify that Covered Equipment was monitored at the appropriate frequency;

(2) Verify that proper documentation and sign-offs have been recorded for all Covered Equipment placed on the DOR list;

(3) Verify that repairs have been performed in the required periods;

(4) Review monitoring data and Covered Equipment counts (e.g., number of pieces of Covered Equipment monitored per Day) for feasibility and unusual trends;

(5) Verify that proper calibration records and monitoring instrument maintenance information are maintained;

(6) Verify that LDAR records are maintained as required;

(7) 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; and

(8) Verify monitoring technician compliance with the certification requirements of Paragraph 27.a.

c. Defendants shall promptly correct any deficiencies detected or observed.

28. LDAR Audit.

a. **Audit Schedule**. Defendants shall ensure that LDAR Audits are conducted in accordance with the following schedule:

(1) The first LDAR Audit shall include all Covered Process Units at

the Facility. Defendants shall ensure that the LDAR Auditor conducts his/her first Day of on-site inspection for the first LDAR Audit no later than 365 Days after the Effective Date;

(2) The second LDAR Audit shall include all Covered Process Units at the Facility. Defendants shall ensure that the LDAR Auditor conducts his/her first Day of on-site inspection for the second LDAR Audit no sooner than two (2) years after and within the same calendar quarter that the first LDAR Audit Report was submitted.

(3) The final LDAR Audit shall include all Covered Process Units at the Facility. Defendants shall ensure that the LDAR Auditor conducts his/her first Day of on-site inspection for the final LDAR Audit no sooner than two (2) years after and within the same calendar quarter that the second LDAR Audit Report was submitted.

b. **LDAR Auditor Selection Requirements.** For the LDAR Audits to be conducted under this Consent Decree, Defendants shall retain a third-party company with experience in conducting LDAR Audits that is different than the Facility's regular LDAR contractor. Defendants shall not hire any LDAR Auditor employed pursuant to this Consent Decree as a regular LDAR contractor for the Facility during the life of this Consent Decree.

c. **Audit Scope & Content**. For each Covered Process Unit, each LDAR Audit shall include:

(1) A review of compliance with all applicable LDAR Regulations, including:

(a) A determination of the LDAR requirements applicable to each Covered Process Unit at the Facility; and

(b) A review of LDAR requirements related to valves and pumps in heavy liquid service;

(2) A review and/or verification of the same items that are required to be reviewed and/or verified in Paragraphs 27.b(1) through 27.b(8);

(3) A review of whether any pieces of Covered Equipment that are required to be in the LDAR program are not included;

(4) "Comparative Monitoring" as described in Paragraph 28.d; and

(5) A review of the Facility's compliance with this Subsection V.B (LDAR Program).

d. **Comparative Monitoring**. Comparative monitoring during LDAR Audits shall be undertaken as follows:

(1) Calculating a Comparative Monitoring Audit Leak Percentage. Covered Equipment shall be monitored in order to calculate a Leak percentage for each Covered Process Unit. For descriptive purposes under this Paragraph, the monitoring that takes place during an LDAR Audit shall be called "Comparative Monitoring" and the Leak percentages derived from the Comparative Monitoring shall be called the "Comparative Monitoring Audit Leak Percentages." Defendants shall undertake comparative

monitoring of the Covered Equipment in three Covered Process Units during each LDAR Audit and shall calculate separate Comparative Monitoring Audit Leak Percentages for Method 21 and OGI and for each type of Covered Equipment. The Process Units Defendants conduct comparative monitoring of shall differ each audit. In undertaking Comparative Monitoring, Defendants shall not be required to monitor every Component in each Covered Process Unit. Leaks identified by the LDAR Auditor during Comparative Monitoring shall be addressed pursuant to applicable regulations and shall not be subject to the data logging requirements of the LDAR program.

(2) **Calculating the Historic, Average Leak Percentage from Prior Periodic Monitoring Events**. Defendants shall average the Leak percentages from the following monitoring periods immediately preceding the Comparative Monitoring to calculate the "Historic, Average Leak Percentage" for each type of Covered Equipment. The Historic, Average Leak Percentage shall be broken down by each Process Unit and Type of Covered Equipment:

(a) Valves – four (4) quarterly monitoring periods;

(b) Pumps – twelve (12) monthly monitoring periods;

(c) Connectors – four (4) annual monitoring periods.

Defendants shall use all available monitoring periods if four (4) annual monitoring periods are not available at the

time of Comparative Monitoring.

(3) **Calculating the Comparative Monitoring Leak Ratio**. For each Covered Process Unit, the ratio of the Comparative Monitoring Audit Leak Percentage from Paragraph 28.d(1) to the Historic, Average Leak Percentage from Paragraph 28.d(2) 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 Covered Equipment was found in the Process Unit through routine monitoring during the monitoring periods referenced in Paragraph 28.d(2) before the Comparative Monitoring.

e. **When More Frequent Periodic Monitoring is Required**. If a Comparative Monitoring Audit Leak Percentage calculated pursuant to Paragraph 28.d(1) triggers a more frequent monitoring schedule under any applicable LDAR Regulations than the frequencies listed in Paragraph 16 as applicable for the Covered Equipment in that Covered Process Unit, Defendants shall monitor the Covered Equipment at the greater frequency unless and until less frequent monitoring is again allowed under the LDAR Regulations. At no time may Defendants monitor at intervals less frequently than those listed in Paragraph 16 or 17.

f. **Audit Report**. Within 120 Days after completing the LDAR Auditor's

first Day of on-site inspection for any LDAR Audit of the Facility, the LDAR Auditor shall prepare and simultaneously submit to Defendants, EPA, and CDPHE a written report ("Audit Report") that describes:

(1) A summary of findings with respect to the topics specified in Paragraphs 28.c(1) through 28.c(3) and 28.c(5);

(2) The raw data in spreadsheet format with respect to the comparative monitoring described in Paragraph 28.d;

(3) The Comparative Monitoring Audit Leak Percentage for each Process Unit calculated pursuant to Paragraph 28.d(1);

(4) The Comparative Monitoring Leak Ratio for each Process Unit calculated pursuant to Paragraph 28.d(3); and

(5) The Historic, Average Leak Percentage by Covered Equipment described in Paragraph 28.d(2).

29. Corrective Action.

a. **Scope of Corrective Action**. Defendants shall complete each corrective action at the Facility necessary to address both:

(1) Any noncompliance or deficiencies identified during, or as a result of, the LDAR Audit; and

(2) Any Leaks from Covered Equipment if the Comparative Monitoring Leak Ratio calculated pursuant to Paragraph 28.d(3) is 3.0 or higher *and* the Comparative Monitoring Audit Leak Percentage calculated pursuant to Paragraph 28.d(1) is greater than or equal to 0.5 percent at a Covered Process Unit.

b. **Timing/Schedule for Corrective Action**. If Defendants have not completed each corrective action required under Paragraph 29.a within ninety (90) Days of the submission of the Audit Report (or all such corrective actions are not expected to be completed within ninety (90) Days), Defendants shall develop a Corrective Action Plan ("CAP") for the Facility in accordance with Paragraph 29.c.

c. Corrective Action Plan ("CAP").

(1) **Required Contents of a CAP**. A CAP shall:

(a) Explain the reasons why each such corrective action(s) was not completed within ninety (90) Days of the submission of the Audit Report; and

(b) Propose a schedule for prompt completion of all such corrective action(s) as expeditiously as practicable.

(2) **Submission of the CAP**. By no later than 120 Days after submission of the Audit Report, Defendants shall submit the CAP to EPA and CDPHE.

(3) **Review and Approval of the CAP**. The review and approval of the CAP by EPA, in consultation with CDPHE, shall follow the procedures set forth in Section VII (Approval of Deliverables).

(4) **CAP Implementation**. Defendants shall implement the corrective action(s) in the approved CAP in accordance with the approved schedule (and, if applicable, any approved CAP modification).

(5) **CAP Modification**. Defendants shall request modification of the

approved CAP (including modification to the type of corrective action(s) performed or to the schedule of completion) by a written submission that includes an explanation of the reasons for the modification and that otherwise complies with Paragraph 29.c(1). The proposed CAP modification shall be submitted in accordance with Paragraph 29.c(2), and reviewed and approved in accordance with Paragraph 29.c(3).

30. Certification of Compliance.

a. Within 180 Days after the submission of each Audit Report, Defendants shall certify to EPA and CDPHE that, to the signer's best knowledge and belief formed after reasonable inquiry:

(1) Except as otherwise identified, the Facility is in compliance with 1) 40 C.F.R. Part 60, Subparts KKK, OOOO, and OOOOa (and by reference Subparts VV and VVa); 40 C.F.R. Part 63, Subpart HH; and 40 C.F.R. Part 61, Subpart V, as applicable; 2) any related State or local equipment leak requirements applicable to the facility as of March 6, 2024; and 3) this LDAR Program;

(2) Defendants have completed all corrective actions at the Facility, if applicable, or is in the process of completing all corrective actions pursuant to a CAP; and

(3) All Covered Equipment at the Facility that is subject to LDAR Regulations has been identified and included in the LDAR Program.

b. To the extent that Defendants cannot make the certifications specified in Paragraphs 30.a(1) through 30.a(3) in all respects, they shall specifically identify any deviations from such requirements.

c. If all corrective action(s) required under Paragraph 29.a are not complete at the time of original certification under Paragraph 30.a, Defendants shall submit a supplemental certification by no later than thirty (30) Days after the date of completion of all such corrective action(s).

C. SEMI-ANNUAL OPTICAL GAS IMAGING PROGRAM.

31. **OGI Protocol.** Defendants shall develop a protocol for semi-annual Optical Gas Imaging emission monitoring of all Covered Equipment (hereinafter, "the OGI Protocol"). The OGI Protocol shall address and include the following:

a. Use of an Optical Gas Imaging instrument ("OGI Instrument") that complies with the requirements of 40 C.F.R. §60.18(i)(l);

b. Consideration of parameters such as viewing distance, thermal background, wind speed, interferences (e.g., steam), and operator training, unless sufficiently addressed by the instrument manufacturer's operating parameters;

c. On each day an OGI Instrument is used for the program required by this section, a daily instrument check that complies with the requirements of 40 C.F.R. § 60.18(i)(2) shall be conducted on each OGI Instrument and ensure that the OGI Instrument can effectively detect Leaks under the conditions outlined in Paragraph 31.b above;

d. Maintenance of the OGI Instrument in accordance with the manufacturer's

recommendations;

e. Operation of the OGI Instrument in accordance with the manufacturer's operating parameters;

f. Definition of an OGI Leak consistent with Paragraph 7.x(3); and

g. Performance of OGI monitoring by a technician appropriately trained to detect VOC Leaks using OGI.

32. Submission, Approval, and Implementation of the OGI Protocol.

a. By no later than 60 Days after the Effective Date, Defendants shall submit the OGI Protocol to EPA and CDPHE for review and approval.

b. The review and approval of the OGI Protocol by EPA, in consultation with the CDPHE, shall follow the procedures set forth in Section VII (Approval of Deliverables).

c. By no later than 60 Days after EPA's approval of the OGI Protocol, Defendants shall begin conducting semi-annual OGI monitoring of all Covered Equipment in accordance with the EPA-approved OGI Protocol and comply with Paragraphs 34, 35, and 46.h.

33. Reserved.

34. Repairs of OGI-Detected Leaks. This Paragraph applies to all Leaks that were detected during an OGI monitoring event regardless of whether such Leaks were found with the OGI Instrument or detected using auditory, visual, and olfactory sensing during an OGI survey.

a. **Leaking Covered Equipment**. Defendants shall repair (or, if applicable, replace) and re-monitor Leaking Covered Equipment in accordance with Paragraphs 20, 22, and 23. When Paragraph 20 references Method 21,

Defendants may use Method 21 or the alternative screening procedures specified in Section 8.3.3 of Method 21.

b. Reserved.

c. **Leaks from Equipment Other than Covered Equipment**. If, during OGI monitoring under Paragraphs 32.c, Defendants detect Leaking Components that are not Covered Equipment, Defendants shall repair and re-monitor the equipment in accordance with Subpart OOOOa, or any other applicable LDAR Regulation.

D. SECTION V COMPLIANCE REQUIREMENTS RECORDKEEPING.

35. Defendants shall keep all records required by this Paragraph to document compliance with Section V (Compliance Requirements) as provided in Paragraph 83. Upon request by EPA or CDPHE, Defendants shall make all such documents available to the requesting party and shall provide, in electronic format if so requested, all LDAR monitoring data generated during the life of this Consent Decree. In addition to the obligations related to specific Paragraphs below, Defendants shall maintain any monitoring data, including monitoring relating to each piece of Covered Equipment that is removed from any Process Unit, in accordance with the applicable LDAR Regulations and this Consent Decree.

a. **Paragraph 20 (Repairs).** Defendants shall record the following information, in the LDAR Database, or otherwise, for all repairs performed pursuant to Paragraph 20:

(1) The date of all repair attempts;

(2) The repair methods used during each repair attempt;

(3) The date, time, and Screening Values for all Repair Verification

Monitoring or, if OGI is used, the video recording of the successful repair, preserved pursuant to Paragraph 83; and

(4) If applicable, documentation of compliance with Paragraph 21.a for Covered Equipment placed on the DOR list.

b. **Paragraph 26 (Training).** Defendants shall maintain a record of the dates of initial and refresher training for all LDAR Personnel.

c. Paragraph 27 (Quality Assurance/Quality Control). Defendants shall maintain a log that includes:

(1) The date and time that the reviews, verifications, and observations required by Paragraph 27 are undertaken and the names of the individuals who completed these actions;

(2) A description of all deficiencies detected or observed during the QA/QC review required pursuant to Paragraph 27; and

(3) A description of the nature and timing of any corrective actions taken.

d. **Paragraph 28 (LDAR Audits).** Defendants shall maintain all Audit Reports prepared under Paragraph 28.f.

e. Paragraphs 32 - 34 (Optical Gas Imaging). Defendants shall maintain the following records for five (5) years from the date of inspection:

(1) All OGI surveys;

(2) The information described in 40 C.F.R. § 60.18(i)(4)(ii)-(v);

(3) Identification and location of all identified Leaks;

(4) Video recordings of all identified Leaks;

(5) Timing and efficacy of all first attempts and final repairs; and

(6) Repair Verification Monitoring on all Leaking Components.

36. Reserved.

VI. INCORPORATION OF CONSENT DECREE REQUIREMENTS INTO FEDERALLY ENFORCEABLE PERMITS

37. **Permits Needed to Meet Compliance Obligations.** If any compliance obligation under Section V (Compliance Requirements) requires Defendants to obtain a federal, State, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. All applications for non-Title V permits must be submitted within 12 months of the Effective Date. Any permit required under State law must comply with all applicable State statutory and regulatory requirements for obtaining such permit.

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

a. Prior to termination of this Consent Decree, Defendants shall submit complete applications, amendments, and/or supplements for the Facility to incorporate as "applicable requirements" the limits and standards consistent with the compliance parameters specified in the referenced Paragraph 38.b into non-Title V, federally enforceable permits that will survive termination of this Consent Decree to applicable permitting authorities. Following submission of the complete permit applications, Defendants will cooperate with CDPHE by promptly submitting to CDPHE all information that CDPHE seeks following its receipt of the permit materials.

b. The limits and standards imposed by the following Paragraphs of this Consent Decree and its Appendices shall be incorporated into non-Title V, federally enforceable permits prior to Termination:

(1) Subpart OOOOa as it applies to gas processing plants (Paragraph 13); and

(2) Semi-Annual OGI Program as it applies to the Facility (Section V.C).

39. **Modifications to Title V Operating Permit.** Prior to termination of this Consent Decree, Defendants shall submit complete applications to CDPHE to modify, amend, or revise the Facility's Title V permit to incorporate the applicable limits and standards identified in Paragraph 38 into the Title V Permit. The Parties agree that the incorporation of these emission limits and standards into the Title V Permit shall be done in accordance with applicable State or local Title V rules. The Parties agree that the incorporation may be by "amendment" under 40 C.F.R. § 70.7(d) and analogous Colorado Title V rules, where allowed by Colorado law.

VII. APPROVAL OF DELIVERABLES

40. This Section VII shall apply to the following types of submissions by Defendants (hereinafter, "Proposed Submissions'):

a. A CAP required to be submitted to EPA and CDPHE no later than 120 Days after submission of the LDAR Audit Report as set forth in Paragraph 29 and

b. OGI Protocol required to be submitted to EPA and CDPHE no later than 60 Days after the Effective Date as set forth in Paragraph 32.

41. After review of any Proposed Submission, and after consultation with CDPHE, 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.

42. If the submission is approved pursuant to Paragraph 41, Defendants shall take all actions required by the Proposed Submission, in accordance with the provisions and schedules of the Proposed Submission, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 41.b or c, Defendants shall, upon written direction from EPA, after consultation with CDPHE, take all actions required by the Proposed Submission that EPA, after consultation with CDPHE, determines are technically severable from any disapproved portions, and any specified conditions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section XI (Dispute Resolution).

43. If the submission is disapproved in whole or in part pursuant to Paragraph 41.c or d, Defendants shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the Proposed Submission, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

44. If a resubmitted Proposed Submission, or portion thereof, is disapproved in whole or in part, EPA, after consultation with CDPHE, may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies subject to Defendants' right to invoke Dispute Resolution and the right of EPA and CDPHE to seek stipulated penalties as provided in Section IX (Stipulated Penalties).

45. Any stipulated penalties applicable to the original Proposed Submission, as

provided in Section IX (Stipulated Penalties), shall accrue during the 45-Day period or other specified period for correcting deficiencies and resubmitting the Proposed Submission, 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 Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

VIII. REPORTING REQUIREMENTS

46. **Annual Report**. After the Effective Date, Defendants shall submit to EPA and CDPHE a periodic annual report for the Facility within 60 Days after the end of each calendar year (i.e., January through December). Each annual report shall include:

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

b. Reserved.

c. **Valve Replacement and Improvement Program (Paragraph 22).** A separate section that describes the actions Defendants took to comply with Paragraph 22, including:

(1) An identification of each piece of Covered Equipment that triggered a requirement under Paragraph 22;

(2) The post-installation, -repacking, or -improvement Screening Value for each piece of Covered Equipment that triggered a requirement under Paragraph 22;

(3) The date(s) of the action or activity taken to comply with

Paragraph 22;

(4) The repair method or type of action taken (i.e., replacement, repacking, or improvement);

(5) A list of any valves, including Component ID, for which replacement or repacking is delayed beyond 30 Days under Paragraph 22.g(2) and whether the delay is pursuant to Paragraph 22.g(2)(a) or 22.g(2)(b);

(6) If applicable, a description of the emergency or exigent circumstances for each instance when Defendants do not perform the required replacement or repacking in accordance with Paragraph 22.e(1);

(7) Identification of any requirements of Paragraph 22 that were not completed and an explanation for why the requirements were not completed;

(8) The schedule for any planned future action to comply with Paragraph 22;

(9) A description of any claims of commercial unavailability in accordance with Paragraph 22.i and Appendix B; and

(10) Initial annual report only, a list of Existing Valves that are Covered Equipment as required by Paragraph 22.c;

d. **Connector Replacement and Improvement Program (Paragraph 23).** A description of the actions Defendants took to comply with Paragraph 23, including:

(1) An identification of each piece of Covered Equipment that triggered a requirement under Paragraph 23;

(2) The Screening Value for each piece of Covered Equipment that triggered a requirement under Paragraph 23 after installation;

(3) A description of the existing and replacement connector types;

(4) The date(s) of the action or activity taken to comply with Paragraph 23;

(5) Identification of any required actions that were not taken along with an explanation for why the action was not taken; and

(6) The schedule for any planned future action to comply with Paragraph 23;

e. **Training (Paragraph 26).** A description of the training conducted in accordance with Paragraph 26, as well as the names of LDAR Personnel who received the training;

f. **QA/QC (Paragraph 27).** Any deviations identified in the QA/QC performed under Paragraph 27, as well as any corrective actions taken under that Paragraph;

g. **Corrective Action (Paragraph 29).** A summary of all corrective action(s) taken to address each of the deficiencies identified in the Audit Report, in accordance with Paragraph 29, including:

(1) A summary of all corrective actions taken pursuant to Paragraph 29.a during the reporting period and the specific deficiency (or deficiencies) in the Audit Report the corrective action addresses;

and

(2) The status of all actions under any CAP that was submitted during the reporting period, unless the CAP was submitted less than 30 Days before the annual status report was due;

h. **Semi-Annual OGI Program (Section V.C).** A description of the actions Defendants took to comply with Section V.C, including:

(1) An identification and description of any non-compliance with the requirements of Section V.C;

(2) The date and location (including the unique Covered Equipment identification number, if applicable) of each Leak detected during monitoring performed under Section V.C;

(3) The date and location (including the unique Covered Equipment identification number, if applicable) of each Leak that Defendants verified were not Leaks using Method 21 instrument readings;

(4) The date of all repair attempts performed pursuant to Paragraph 34;

(5) The repair method or type used during each repair attempt performed pursuant to Paragraph 34;

(6) The date, time, and results of any post-repair Repair Verification Monitoring with the OGI Instrument or Method 21 performed pursuant to Paragraph 34; and

(7) If applicable, documentation of compliance with:

(a) Paragraph 21 for Covered Equipment placed on the DOR list; or

(b) Paragraph 34.c for delayed repair of Components that are not Covered Equipment.

i. The status of milestones, including a compliance table that lists each milestone set forth in this Consent Decree, each milestone's required completion date, and the date Defendants complete each milestone;

j. The status of permits and permit applications as set forth in Section VI (Incorporation of Consent Decree Requirements in Federally Enforceable Permits);

k. A description of any problems encountered or anticipated in complying with this Consent Decree, together with proposed solutions; and

l. A description of any noncompliance with the requirements of this Consent Decree and an explanation of the noncompliance's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such noncompliance. If the cause of a noncompliance cannot be fully explained at the time the report is due, Defendants shall so state in the report. Defendants shall investigate the cause of the noncompliance and shall then submit an amendment to the report, including a full explanation of the cause of the noncompliance, within 30 Days of determining the cause of the noncompliance. Nothing in this Paragraph or the following Paragraph shall relieve Defendants of their obligations to provide the notice required by Section X (Force Majeure).

47. **Violation Reports**. If Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Decree, Defendants shall notify the United States and

Colorado of such violation and its likely duration, in writing, within ten business days of the day Defendants first become 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, Defendants shall so state in the report. Defendants 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 Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligation to provide the notice required by Section X (Force Majeure).

48. Whenever any violation of this Consent Decree, any applicable permits, or any other event affecting Defendants' performance under this Decree, or the performance of the Facility, may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA and CDPHE orally or by electronic mail as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

49. All reports and other notifications shall be submitted to the persons designated in Section XV (Notices).

50. Each report submitted by Defendants under this Section shall be signed by an official of each Defendant 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.

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

52. The reporting requirements of this Consent Decree do not relieve Defendants 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.

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

IX. STIPULATED PENALTIES

54. Defendants shall be liable for stipulated penalties to the United States and Colorado for violations of this Consent Decree at the Facility as specified below, unless excused under Section X (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. Stipulated penalties will be split 50% to the United States and 50% to Colorado.

55. **Demand for Stipulated Penalties**. Subject to Section XI (Dispute Resolution), Defendants shall pay stipulated penalties upon written demand by a Plaintiff no later than 30 Days after receipt of such a demand. The United States and Colorado shall consult with each other prior to making a demand. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff. Unless otherwise stated, Defendants shall pay 50% of the total stipulated penalty amount due to the United States and 50% to Colorado. A demand for the payment of stipulated penalties shall identify the

particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount that the Plaintiff is demanding for each violation (as can be best estimated), and the calculation method underlying the demand.

56. **Payment of Stipulated Penalties**. Defendants shall pay stipulated penalties owing to the United States and Colorado in the manner set forth and with the confirmation notices required by Section IV (Civil Penalty), 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.

57. **Failure to Pay, or Late Payment of, Civil Penalty.** If Defendants fail to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendants shall pay a stipulated penalty of $5,000 per Day for each Day that the payment is late. Late payment of the civil penalty and any accrued stipulated penalties shall include the identifying information set forth in Section IV (Civil Penalty).

58. **Violations of Section V Compliance Requirements**. Defendants shall be liable for the following stipulated penalties for violations of the following Section V Compliance Requirements:

a. **Requirements for Applicability of 40 C.F.R. Part 60, Subpart OOOOa**. For failure to implement any applicable provision of NSPS Subpart OOOOa for Covered Process Units in violation of Paragraph 13:

Period of Delay or Noncompliance	Penalty per Violation per Day
1st through 15th Day	$500
16th through 30th Day	$1,000
31 Days or more	$2,000

b. **LDAR & OGI Program Requirements**. Defendants shall be liable for stipulated penalties to the United States and Colorado for violations of this

Consent Decree as specified in Table 4 below unless excused under Section X (Force Majeure) and subject to Section XI (Dispute Resolution).

TABLE 4

Consent Decree Violation	Stipulated Penalty
i. Violation of Paragraph 15 (LDAR Document). Failure to timely develop and complete a written LDAR Document or failure to timely update the document on an annual basis as required.	Period of noncompliance / Penalty per Day late 1 - 15 Days: $300 16 - 30 Days: $400 31 Days or more: $500
ii. Violation of Paragraph 16 (Monitoring Frequency). Each failure to perform monitoring at the frequencies set forth in Paragraph 16.	$100 per Component per missed monitoring event, not to exceed $25,000 per 30-Day period per Covered Process Unit.
iii. Violation of Paragraph 18 (Method 21). Each failure to comply with Method 21 in performing LDAR monitoring.	Monitoring Frequency for the Component / Penalty per monitoring event per Covered Process Unit Annual: $20,000 Quarterly: $10,000 Monthly: $5,000
iv. Violation of Paragraph 18.a (use of data logger). 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 accordance with Paragraph 18.	$100 per failure per piece of Covered Equipment monitored.
v. Violation of Paragraph 18.a (monitoring data transfer). Each failure to transfer monitoring data to an electronic database on at least a weekly basis.	$150 per Day for each Day that the transfer is late.

TABLE 4

Consent Decree Violation	Stipulated Penalty
vi. Violation of Paragraph 20.a (First Attempt at Repair). Each failure to timely perform a first repair as required by Paragraph 20.a. For purposes of these stipulated penalties, the term "repair" includes the required Repair Verification Monitoring in Paragraph 20.b after the repair attempt. If the stipulated penalties are collected under this subparagraph, the stipulated penalties in Paragraph 58.b(viii) do not apply.	$150 per Day for each late Day, not to exceed $1,500 per Leak.
vii. Violation of Paragraph 20.a (Final Attempt at Repair). Each failure to timely perform a final attempt at repair as required by Paragraph 20.a unless not required to do so under Paragraph 21 (Delay of Repair). For purposes of these stipulated penalties, the term "repair" includes the required Repair Verification Monitoring in Paragraph 20.b after the repair attempt. If the stipulated penalties are collected under this subparagraph, the stipulated penalties in Paragraph 58.b(viii) do not apply.	Equipment type / Penalty per Component per Day late / Not to exceed Valves/ Connectors: $300 / $45,000 Pumps: $1,200 / $150,000
viii. Violation of Paragraph 20.b (Repair Verification Monitoring). Each failure to timely perform Repair Verification Monitoring as required by Paragraph 20.b in circumstances where the first attempt to repair the piece of Covered Equipment to eliminate the Leak was made within five Days and the final attempt to repair the piece of Covered Equipment to eliminate the Leak was made within 15 Days.	Equipment type / Penalty per Component per Day late / Not to exceed Valves/ Connectors: $150 / $18,750 Pumps: $600 / $75,000
ix. Violation of Paragraph 20.d (Drill and Tap for Valves). Each failure to undertake the drill-and-tap method as required by Paragraph 20.d.	Period of noncompliance / Penalty per Day late 1 - 15 Days: $200 16 - 30 Days: $350 31 Days or more: $500 per Day for each Day over 30, not to exceed $45,000

TABLE 4			
Consent Decree Violation	Stipulated Penalty		
x. Violation of Paragraph 21 (Delay of Repair). Each improper placement of a piece of Covered Equipment on the DOR list (e.g., placing a piece of Covered Equipment on the DOR list even though it is feasible to repair it without a Process Unit Shutdown) required by Paragraph 21.	Equipment type	Penalty per Component per Day late	Not to exceed
	Valves	$300	$75,000
	Pumps	$1,200	$300,000
xi. Violation of Paragraph 21.a (Supervisor Sign-Off for Delay of Repair). Each failure to comply with the requirement in Paragraph 21.a. that a relevant Process Unit supervisor or person of similar authority sign off on placing a piece of Covered Equipment on the DOR list.	$250 per piece of Covered Equipment.		
xii. Violation of Paragraph 21.c(1) (Repair of Covered Equipment on Delay of Repair). Each failure to comply with the requirements of Paragraph 21.c(1).	Refer to the applicable stipulated penalties in Paragraphs 58.b.vi and vii.		
xiii. Violation of Paragraph 21.c(2) (Valve Replacement and Improvement on Delay of Repair). Each failure to comply with the requirements of Paragraph 21.c(2).	Refer to the applicable stipulated penalties in Paragraph 58.b.xvi.		
xiv. Violation of Paragraph 22.d (Work Practices). Each failure to comply with the work practice standards in Paragraph 22.d.	$50 per violation per valve per Day, not to exceed $30,000 for all valves in a Covered Process Unit per Quarter.		
xv. Violation of Paragraph 22.e (Installing New Valves). Each failure to install a Low-E Valve or a valve fitted with Low-E Packing when required to do so pursuant to Paragraph 22.e.	$20,000 per failure, except as provided in Paragraph 59 below.		
xvi. Violation of Paragraph 22.g(2) (Replacement or Repacking). Each failure, in violation of Paragraph 22.g(2), to timely comply with the requirements relating to installing a Low-E Valve or Low-E Packing if a Process Unit Shutdown is not required.	$500 per Day per failure, not to exceed $20,000 per failure, except as provided in Paragraph 59 below.		
xvii. Violation of Paragraph 22.g(2)(b) (Delay Due to Required Process Unit Shutdown). Each failure, in violation of Paragraph 22.g(2)(b), to install a Low-E Valve or Low-E Packing when required to do so during a Process Unit Shutdown.	$20,000 per failure, except as provided in Paragraph 59 below.		

TABLE 4	
Consent Decree Violation	Stipulated Penalty
xiii. Violation of Paragraph 24 (Covered Equipment Addition). 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.	$300 per piece of Covered Equipment (plus an amount, if any, due under Paragraph 58.b.iii for any missed monitoring event related to a Component that should have been added to the LDAR Program but was not).
xix. Violation of Paragraph 24 (Covered Equipment Deletion). Each failure to remove a piece of Covered Equipment from the LDAR program when required to do so pursuant to Paragraph 24.	$150 per failure per piece of Covered Equipment.
xx. Violation of Paragraph 26.a (Training Protocol). Each failure to timely develop a training protocol as required by Paragraph 26.a.	$50 per Day late.
xxi. Violation of Paragraphs 26.b - 26.d (Personnel Training). Each failure to perform initial, refresher, or new personnel training as required by Paragraphs 26.b - 26.d.	$1,000 per person per month late.
xxii. Violation of Paragraph 27 (QA/QC). Each failure to perform any of the requirements relating to QA/QC in Paragraph 27.	$1,000 per missed requirement per quarter.
xxiii. Violation of Paragraph 28.a (LDAR Audit Schedule). Each failure to conduct an LDAR Audit in accordance with the schedule set forth in Paragraph 28.a.	Period of noncompliance / Penalty per Day late 1 - 15 Days: $300 16 - 30 Days: $400 31 Days or more: $500, not to exceed $100,000 per LDAR Audit
xxiv. Violation of Paragraph 28.b (LDAR Auditor Selection). Each failure to use a third party as an auditor as required under Paragraph 28.b; each use of an auditor that is not experienced in LDAR Audits; and each use of Defendants' regular LDAR contractor or LDAR Personnel for the Facility to conduct an LDAR Audit for the Facility, in violation of the requirements of Paragraph 28.b.	$25,000 per LDAR Audit.

TABLE 4		
Consent Decree Violation	Stipulated Penalty	
xxv. Violation of Paragraph 28.c (Audit Scope and Content). Except where Comparative Monitoring is required, each failure to comply with the LDAR Audit requirements in Paragraph 28.c.	$100,000 per LDAR Audit.	
xxvi. Violation of Paragraph 28.d (Comparative Monitoring). Each failure to comply with the Comparative Monitoring requirements of Paragraph 28.d.	$50,000 per LDAR Audit.	
xxvii. Violation of Paragraph 28.f (Audit Report). Each failure to timely submit an Audit Report.	Period of noncompliance	Penalty per Day late
	1 - 15 Days	$300
	16 - 30 Days	$400
	31 Days or more	$500
xxviii. Violation of Paragraph 29.c (Corrective Action Plan Submittal). Each failure to timely submit a Corrective Action Plan that conforms to the requirements of Paragraph 29.c.	Period of noncompliance	Penalty per Day late
	1 - 15 Days	$100
	16 - 30 Days	$250
	31 Days or more	$500, not to exceed $100,000 per LDAR Audit
xxix. Violation of Paragraph 29.b (Corrective Action Plan Implementation). Each failure to implement a corrective action within 90 Days after the LDAR Audit Completion Date or pursuant to the schedule that Defendants must propose pursuant to Paragraph 29.c if the corrective action cannot be completed in 90 Days.	Period of noncompliance	Penalty per Day late
	1 - 15 Days	$500
	16 - 30 Days	$750
	31 Days or more	$1,000 per Day, not to exceed $200,000 per LDAR Audit
xxx. Violation of Paragraph 30 (Certification of Compliance). Each failure to timely submit a Certification of Compliance that substantially conforms to the requirements of Paragraph 30.	Period of noncompliance	Penalty per Day late
	1 - 15 Days	$100
	16 - 30 Days	$250
	31 Days or more	$500, not to exceed $75,000

TABLE 4

Consent Decree Violation	Stipulated Penalty
xxxi. Violation of Paragraph 31 (OGI Protocol). Each failure to develop an OGI Protocol complying with the requirements of Paragraph 31.	Period of noncompliance / Penalty per Day late 1 - 15 Days: $300 16 - 30 Days: $400 31 Days or more: $500, not to exceed $50,000
xxxii. Violation of Paragraph 32 (Submission of OGI Protocol). Each failure to timely submit the OGI Protocol required by Paragraph 32.	Period of noncompliance / Penalty per Day late 1 - 15 Days: $300 16 - 30 Days: $400 31 Days or more: $500, not to exceed $50,000
xxxiii. Violation of Paragraph 32.c (Semiannual OGI Monitoring). Each failure to conduct OGI monitoring in accordance with the OGI Protocol, required by Paragraph 32.c.	$10,000 per missed event
xxxiv. Violation of Paragraph 34 (Repair of Leaks). Each failure to perform timely repair of Covered Equipment Leaks identified through OGI monitoring, as required in Paragraph 34.	Equipment type / Penalty per Component per Day late / Not to exceed Valves/ Connectors: $300: $45,000 Pumps: $1,200: $150,000 Fin Fan Unit: $500: $50,000 Plug or not Covered Equipment
xxxv. Violation of Paragraph 35 (Recordkeeping). Each failure to comply with any recordkeeping requirement in Paragraph 35.	Period of noncompliance / Penalty per Day late 1 - 15 Days: $100 16 - 30 Days: $250 31 Days or more: $500
xxxvi. Violation of Paragraphs 46 (Reporting Requirements). Each failure to comply with any submission or reporting requirement in Paragraph 46 not specifically identified above in this Table.	Period of noncompliance / Penalty per Day late 1 - 15 Days: $300 16 - 30 Days: $750 31 Days or more: $1500

59. Stipulated Penalties in Lieu of those in Paragraphs 58.b.xv, xvi and xvii.

a. For purposes of this Paragraph, the term "Non-Compliant Valve" means a valve that is either: (i) not a Low-E Valve; or (ii) not fitted with Low-E Packing. The term "Compliant Valve" means a valve that is either: (i) a Low-E Valve; or (ii) fitted with Low-E Packing.

b. The stipulated penalties in Paragraph 59.c are to be used instead of those in Paragraphs 58.b.xv, xvi and xvii when a Non-Compliant Valve is installed instead of a Compliant Valve and all of the following requirements are met:

(1) Defendants, and not a government agency, discover the failure involved;

(2) Defendants promptly report the failure to EPA;

(3) In the report, Defendants set forth a schedule for promptly replacing the Non-Compliant Valve with a Compliant Valve; provided, however, that Defendants shall not be required to undertake an unscheduled shutdown of the affected Covered Process Unit in proposing the schedule unless Defendants so choose;

(4) Defendants monitor the Non-Compliant Valve once a month from the time of its discovery until the valve is replaced with a Compliant Valve and no Screening Values above 500 ppm are recorded;

(5) Defendants replace the Non-Compliant Valve or Valve Packing with a Compliant Valve or Valve Packing in accordance with the

schedule set forth in Paragraph 59.b(3); and

(6) Defendants demonstrate that in good faith it intended to install a Compliant Valve but inadvertently installed a Non-Compliant Valve.

c. The following stipulated penalties shall apply under the circumstances in Paragraph 59.b:

(1) In lieu of the penalty in Paragraph 58.b.xv, $2,000 per failure.

(2) In lieu of the penalty in Paragraph 58.b.xvi, $50 per Day per failure, not to exceed $2,000.

(3) In lieu of the penalty in Paragraph 58.b.xvii, $2,000 per failure.

60. **Permit Requirements**. For the failure to timely apply for any permit or approval in accordance with the requirements of Section VI (Incorporation of Consent Decree Requirements into Federally Enforceable Permits): $1,000 per Day per violation.

61. Any other violation of this Consent Decree not otherwise specified in the stipulated penalties above: $1,000 per violation per Day.

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

63. Either Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

64. Stipulated penalties shall continue to accrue as provided in Paragraph 62 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 or CDPHE that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States and/or Colorado within 30 Days of the effective date of the agreement or the receipt of the decision or order of EPA and/or CDPHE.

b. If the dispute is appealed to the Court and the United States or Colorado prevail(s) in whole or in part, Defendants 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, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 30 Days of receiving the final appellate court decision.

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

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

67. **Non-Exclusivity of Remedy.** Stipulated penalties are not the United States' or Colorado's exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the United States and Colorado

expressly reserve the right to seek any other relief they deem appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendants 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.

X. FORCE MAJEURE

68. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants 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 Defendants' financial inability to perform any obligation under this Consent Decree.

69. **Notice of Force Majeure.** 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, Defendants shall provide notice of such event to the Plaintiffs as follows:

a. **Initial Notice.** Defendants shall provide notice orally or by electronic mail to the parties designated in Section XV (Notices), within 72 hours of when Defendants first knew that the event might cause a delay.

b. **Final Notice & Explanation.** Within seven Days of the initial notice, Defendants shall provide to EPA and CDPHE a written explanation and

description of:

(1) The reasons for the delay;

(2) The anticipated duration of the delay;

(3) All actions taken or to be taken to prevent or minimize the delay;

(4) A schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay;

(5) Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim;

(6) A statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare, or the environment; and

(7) Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure.

c. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

d. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

e. The requirements of this Paragraph 69 are in addition to, and do not supersede, any notice obligations for the Facility required by the Act or

implementing regulations, or by any other federal, State, or local law, regulation, permit, or other requirement.

70. If EPA, after a reasonable opportunity for review and comment by CDPHE, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by CDPHE, 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 Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

71. If EPA, after a reasonable opportunity for review and comment by CDPHE, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

72. If Defendants elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 68 and 69. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA, CDPHE, and the

Court.

XI. DISPUTE RESOLUTION

73. 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. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

74. **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 Defendants send the United States and Colorado a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 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, after consultation with Colorado, shall be considered binding unless, within 45 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

75. **Formal Dispute Resolution.** Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and Colorado 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 Defendants' position and any supporting documentation relied upon by Defendants.

76. The United States, after consultation with Colorado, shall serve its Statement of Position within 45 Days of receipt of Defendants' 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 Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

77. **Judicial Dispute Resolution.** Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion must be filed within ten Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' 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.

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

79. Standard of Review.

a. **Disputes Concerning Matters Accorded Record Review**. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 75 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, Defendants 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 75, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree and better further the objectives of the Consent Decree.

80. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 64. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

81. The United States and Colorado, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the 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 or Colorado in accordance with the terms of this Consent Decree;

c. Obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;

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

e. Assess Defendants' compliance with this Consent Decree.

82. Upon request, Defendants shall provide EPA and CDPHE, or their authorized representatives, splits of any samples taken by Defendants. Upon request, EPA or CDPHE shall provide Defendants splits of any samples taken by EPA or CDPHE.

83. Until five years after the termination of this Consent Decree (the "Information Retention Period"), Defendants 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 their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during the Information Retention Period, upon request by the United States or Colorado, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph 83.

84. At the conclusion of the Information Retention Period and until the date one (1) year after the conclusion of the Information Retention Period, Defendants shall notify the United States and Colorado 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 or Colorado, Defendants shall deliver any such documents, records, or other information to EPA or CDPHE. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by

federal law. If Defendants assert such a privilege, they shall provide the following: (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 Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

85. Except for emissions data, including Screening Values, Defendants 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 Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

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

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

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

88. The resolution of liability by the Plaintiffs to Defendants as set forth in Paragraph 87 will be rendered void if Defendants materially fail to comply with the obligations and requirements of Sections V (Compliance Requirements) through VI (Incorporation of Consent Decree Requirements Into Federally Enforceable Permits); provided, however, that the resolution of liability in Paragraph 87 will not be rendered void if Defendants timely remedy such material

failure and pay any stipulated penalties due as a result of such material failure.

89. The United States and Colorado reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or Colorado to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal, State, or local laws, regulations, or permit conditions. The United States and Colorado further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Facility, whether related to the violations addressed in this Consent Decree or otherwise.

90. In any subsequent administrative or judicial proceeding initiated by the United States or Colorado for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or Colorado 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 87.

91. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and Colorado do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent

Decree will result in compliance with provisions of the Act, 42 U.S.C. §§ 7411 and 7412, or with any other provisions of federal, State, or local laws, regulations, or permits.

92. This Consent Decree does not limit or affect the rights of Defendants or of the United States or Colorado 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 Defendants, except as otherwise provided by law.

93. 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.

XIV. COSTS

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

XV. NOTICES

95. 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 # 90-5-2-1-11933
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 # 90-5-2-1-11933

As to EPA Region 8 by email:	R8AirReportEnforcement@epa.gov; and Stovern.michael@epa.gov
As to EPA Region 8 by mail:	Chief, Air and Toxics Technical Enforcement Branch Mail Code: 8ENF-AT U.S. Environmental Protection Agency, Region 8 1595 Wynkoop Street Denver, Colorado 80202-1129
As to Colorado:	shannon.mcmillan@state.co.us; jennifer.morse@state.co.us; david.beckstrom@coag.gov; and laura.steel@coag.gov
As to Colorado by mail:	Compliance & Enforcement Program Manager Colorado Department of Public Health and Environment Air Pollution Control Division APCD – SSP – B1 4300 Cherry Creek Drive South Denver, CO 80246-1530 First Assistant Attorney General Air Quality Unit Natural Resources Section Colorado Department of Law 1300 Broadway, 7th Floor Denver, CO 80203
As to Defendants by mail:	Enterprise Gas Processing LLC 1100 Louisiana, Suite 1000 Houston, TX 77002 Attention: Chief Operating Officer
As to Defendants by email:	EnvironmentalConsentDecree@eprod.com; generalcounsel@eprod.com; zlcraft@eprod.com

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

97. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual

agreement of the Parties in writing.

XVI. EFFECTIVE DATE

98. The Effective Date 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.

XVII. RETENTION OF JURISDICTION

99. 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 XI (Dispute Resolution) and XVIII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

100. 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.

101. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 79, 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).

XIX. TERMINATION

102. **Request for Consent Decree Termination.** At such time that Defendants believe they have completed the following requirements, Defendants may send the United States and Colorado a Request for Termination, which Defendants shall certify in accordance with Section

VIII (Reporting Requirements), stating that Defendants have satisfied the following requirements:

a. Payment of the civil penalties and any accrued stipulated penalties as required by this Consent Decree;

b. Completed the requirements of Section V (Compliance Requirements);

c. Applied for the applicable non-Title V permits for the Facility in accordance with Section VI (Incorporation of Consent Decree Requirements into Federally Enforceable Permits);

d. Received the applicable non-Title V permits for the Facility in accordance with Section VI (Incorporation of Consent Decree Requirements into Federally Enforceable Permits);

e. Applied for modification, amendment, or revision to the Title V Permit for the Facility in accordance with Section VI (Incorporation of Consent Decree Requirements into Federally Enforceable Permits); and

f. Paid all applicable permitting fees due (including but not limited to Title V or NSR permits) for the Facility.

103. Following the final Audit Certification Date for the Third Audit (Paragraph 28.a(3)), Defendants may submit a Request for Termination or a Request for Partial Termination. In either the Request for Termination or Request for Partial Termination, Defendants must demonstrate that they have maintained satisfactory compliance with this Consent Decree for the one-year period immediately preceding the Request. The Request for Termination or Request for Partial Termination must be accompanied by a back-up copy of the LDAR Database for the Facility and any other necessary supporting documentation.

104. **Request for Partial Termination.** At such time that Defendants believe they have completed the requirements in Paragraphs 102.a – c, Defendants may send the United States and Colorado a Request for Partial Termination. Any Request for Partial Termination shall be certified in accordance with Section VIII (Reporting Requirements) and state that Defendants have satisfied the requirements in Paragraphs 102.a – c.

105. As soon as practicable following receipt by the United States and Colorado of Defendants' Request for Termination or Request for Partial Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for full or partial termination of this Consent Decree. If the United States, after consultation with Colorado, agrees that the Decree may be terminated in full or in part, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree in full or in part.

106. If the United States, after consultation with Colorado, does not agree that the Decree may be terminated in full or in part, the Plaintiffs shall within 60 Days notify Defendants in writing of the remaining obligations necessary to satisfy a Request for Termination (Paragraph 102) or a Request for Partial Termination (Paragraph 104). If the Parties Disagree on the remaining obligations necessary to satisfy a Request for Termination (Paragraph 102) or a Request for Partial Termination (Paragraph 104), Defendants may invoke Dispute Resolution under Section XI. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination until 45 Days after service of their Request for Termination.

XX. PUBLIC PARTICIPATION

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

XXI. SIGNATORIES/SERVICE

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

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

XXII. INTEGRATION

110. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and 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. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

111. For purposes of the identification required in 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), Paragraph 5, Section V (Compliance Requirements), Paragraphs 13 - 35, Section VI (Incorporation of Consent Decree Requirements into Federally Enforceable Permits), Paragraphs 37 - 39, Section VIII (Reporting Requirements), Paragraphs 46 - 47, and Section XII (Information Collection and Retention), Paragraph 82 is restitution or required to come into compliance with law.

XXIV. FINAL JUDGMENT

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

XXV. APPENDICES

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

"Appendix A" is the list of Process Units existing at the Facility as of the Date of Lodging;

"Appendix B" is the Factors to be Considered and Procedures to be Followed to Claim Commercial Unavailability.

Dated and entered this __ day of _____, 2024

_____
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. Enterprise Gas Processing, LLC and Enterprise Products Operating LLC.

FOR THE UNITED STATES OF AMERICA:

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

Date: 7/3/2024

MYLES E. FLINT, II
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Phone: (202) 307-1859
Fax: (202) 616-2427
Email: myles.flint@usdog.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. Enterprise Gas Processing, LLC and Enterprise Products Operating LLC.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8:

Becker, Kathleen — Digitally signed by Becker, Kathleen Date: 2024.06.13 15:38:35 -06'00'

_____
Date

KC BECKER
Regional Administrator
U.S. Environmental Protection Agency, Region 8

KENNETH SCHEFSKI — Digitally signed by KENNETH SCHEFSKI Date: 2024.06.13 07:33:49 -06'00'

_____
Date

KENNETH C. SCHEFSKI
Regional Counsel
U.S. Environmental Protection Agency, Region 8

SUZANNE BOHAN — Digitally signed by SUZANNE BOHAN Date: 2024.06.13 07:20:37 -06'00'

_____
Date

SUZANNE J. BOHAN
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 8

Dimascio, Nicholas — Digitally signed by Dimascio, Nicholas Date: 2024.06.12 10:18:58 -06'00'

Date: _____

NICHOLAS A. DIMASCIO
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. Enterprise Gas Processing, LLC and Enterprise Products Operating LLC.

FOR THE STATE OF COLORADO:

Date: 6/18/2024

Michael Ogletree

MICHAEL OGLETREE
Director
Air Pollution Control Division
Colorado Department of Public Health and Environment

PHILIP WEISER
Attorney General
State of Colorado

Date: June 18, 2024

David A. Beckstrom

DAVID A. BECKSTROM*
Second Assistant Attorney General
Natural Resources and Environment Section
Colorado Department of Law
*Attorney of Record

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. Enterprise Gas Processing, LLC and Enterprise Products Operating LLC.

FOR ENTERPRISE GAS PROCESSING, LLC:

Date: 6/21/24

Graham Bacon
Executive Vice President and Chief Operating Officer

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Colorado v. Enterprise Gas Processing, LLC and Enterprise Products Operating LLC.

FOR ENTERPRISE PRODUCTS OPERATING LLC

By its Manager, Enterprise Products OLPGP, Inc.

Date: 6/21/24

Graham Bacon
Executive Vice President and Chief Operating Officer

APPENDIX A

List Process Units

1. Meeker 1
2. Amine and Dehydrator on Backend of Meeker 1
3. Meeker 2
4. Amine and Dehydrator on backend of Meeker 2
5. CTF Dew Point
6. Vapor combustor, Liquid Storage, and Truck Loading

APPENDIX B

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 a valve that utilizes Low-E Packing is "commercially unavailable" pursuant to Paragraph 22.i of the Consent Decree.

I. FACTORS FOR DETERMINING COMMERCIAL UNAVAILABILITY

A. Nothing in this Consent Decree 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 a valve that utilizes Low-E Packing is commercially unavailable to replace or repack an Existing Covered Valve:

(1) Valve type (*e.g.,* ball, gate, butterfly, needle) (neither the Consent Decree nor this Appendix requires 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 Covered Process Unit where the valve is located:

(1) In cases where the valve is a Component of Covered Equipment that Defendants are licensing or leasing from a third party, valve or valve packing specifications identified by the lessor or licensor of the Covered 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 FOR ASSERTING COMMERCIAL UNAVAILABILITY

Defendants shall comply with the following procedures if they seek to assert commercial unavailability under Paragraph 22.i of the Consent Decree:

A. 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.

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

(2) If fewer than three vendors are contacted, the determination of whether such fewer number is reasonable shall be based on Factors set forth in Section I.C., above, or on a demonstration that fewer than three vendors offer valves or valve packing considering Factors set forth in Section I.B., above.

B. 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.

(1) "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.

(2) If a vendor does not respond or refuses to provide a written representation or equivalent documentation, "equivalent documentation" may consist of records of Defendants' attempts to obtain a response from such vendor.

C. Each annual status report required by Paragraph 46 of the Consent Decree shall identify each instance when a Low-E Valve or a valve that utilizes 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 annual status report, all relevant documentation. Each annual report shall be valid for a period of six months from the date of the report for the specific valve involved and all other similar valves, taking into account the factors listed in Section I (Factors) of this Appendix.