

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
Harcros Chemicals Inc.)
)
Defendant.)

Civil No. 2: 17-cv-2432

CONSENT DECREE

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WHEREAS Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (EPA), has filed a civil Complaint in this action concurrently with this Consent Decree pursuant to Section 113(b)(2) of the Clean Air Act (CAA), 42 U.S.C. § 7413(b)(2), against Defendant, Harcros Chemicals Inc. (Defendant or Harcros) with respect to three of its chemical manufacturing, blending, repackaging, and/or distribution facilities owned and/or operated by Defendant in Alabama, Kansas, and Louisiana.

WHEREAS Defendant notified the United States of certain violations on September 10, 2015, and has cooperated with EPA in negotiating this Consent Decree.

WHEREAS the Complaint alleges that Defendant:

a. Violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), at one or more of the chemical manufacturing, blending, repackaging, and/or distribution facilities that it owns and/or operates by failing to: (1) identify all hazards which may result from releases of hazardous substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility taking all steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases which may occur; and

b. Violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), at one or more of the chemical manufacturing, blending, repackaging, and/or distribution facilities that it owns and/or operates by failing to develop Risk Management Plans and/or comply with the Risk Management Program requirements set forth in the regulations promulgated under Section 112(r)(7) and codified at 40 C.F.R. Part 68.

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

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

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

I. JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355. The Court has personal jurisdiction over the Parties.

2. Venue is proper in this judicial district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because Defendant's headquarters is located in this judicial district and some of the violations alleged occurred at Defendant's facilities located within this judicial district.

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

II. APPLICABILITY

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

5. No transfer of ownership or operation of any of the Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least fifteen (15) Days

prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement (with confidential provisions marked as “Confidential Business Information” pursuant to 40 C.F.R. Part 2), to the United States in accordance with Section XIV (Notices and Submissions). Any attempt to transfer ownership or operation of any of the Facilities without complying with this Paragraph constitutes a violation of this Decree.

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

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

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA, or in regulations promulgated thereunder, shall have the meanings assigned to them in such statutes or regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Audit” shall mean the compliance audits conducted by independent third-party auditors and the internal audits conducted by Defendant pursuant to Section V.B. (Compliance Requirements) of this Consent Decree and Appendix A.

b. “Auditor(s)” shall mean the independent third parties approved by EPA to conduct the CAA Sections 112(r)(1) and (7) Audits pursuant to Paragraph 17 of this Consent Decree and Appendix A of this Consent Decree.

c. “Audit Finding” shall mean each way in which an Auditor (or Defendant, for an internal audit), conducting an Audit pursuant to Section V.B of this Consent Decree, determined that any document, record, report, diagram, test, system, review, evaluation, policy, practice, plan, training, procedure, personnel, equipment, or other item, action or omission at a Facility deviates from, or does not comply or conform with a requirement or standard set forth in Appendix A, Paragraphs 5.c and 6.c.

d. “Audit Report” shall mean the report of each Audit submitted by the Auditor pursuant to Paragraph 9 of Appendix A or by Defendant pursuant to Paragraph 20 of this Consent Decree.

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

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

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

h. “Defendant” shall mean Harcross Chemicals Inc.

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

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

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

l. “Extremely Hazardous Substance” or “EHS” shall mean any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity. S. Rep. No. 228, 101st Cong., 1st Sess. 211 (1989). EHSs include, but are not limited to, substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of EHSs published under Section 302 of EPCRA, 42 U.S.C. § 11002, at 40 C.F.R. Part 355, Appendices A and B.

m. “Facility” or “Facilities” shall mean the chemical manufacturing, blending, repackaging, and/or distribution plants that are owned and/or operated by Defendant as of the Date of Lodging at the following locations:

Bessemer, Alabama; 1496 Highway 150

Mobile, Alabama; 1480 Telegraph Road

Muscle Shoals, Alabama; 300 Pepi Drive

Little Rock, Arkansas; 3100 West 65th Street

West Helena, Arkansas; 49 Phillips 311 Road

Golden, Colorado; 4504 Table Mountain Drive

Tampa, Florida; 5132 Trenton Street

Dalton, Georgia; 3452 Corporate Drive

Powder Springs, Georgia; 4030 Fambrough Drive

Valdosta, Georgia; 125 Blanchard Street

Davenport, Iowa; 2040 West River Drive

Wichita, Kansas; 2914 S. Spruce Street

Kansas City, Kansas; 5200 Speaker Road

Shreveport, Louisiana; 1011 Jack Wells Blvd.

St. Gabriel, Louisiana; 3920 Hwy. 30

Westbrook, Maine; 50 Larrabee Road

St. Paul, Minnesota; 584 N. Fairview Ave.

Vicksburg, Mississippi, 4280 Rifle Range Road

St. Louis, Missouri; 4330 Geraldine Avenue

Omaha, Nebraska; 9000 F. Street

Nashua, New Hampshire, 8 Capitol Street

Oklahoma City, Oklahoma; 3909 South Meridian Avenue

Tulsa, Oklahoma; 3810 South Elwood

Thomasville, North Carolina, 125 Sedgehill Drive

Memphis, Tennessee; 1580 Harbor Ave.

Nashville, Tennessee; 1418 Poplar Lane

Pasadena, Texas; 4606 New W. Drive

Dallas, Texas. 2627 Weir Street

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

o. “Limited Function Facility” shall mean a facility owned and/or operated

by Defendant that meets all of the following conditions:

i. does not have any RMP Regulated Substances above threshold

quantities as set forth in 40 C.F.R. § 68.130;

ii. that is not currently registered or has submitted an RMP de-registration to EPA pursuant to 40 C.F.R. § 68.190(c); and

iii. which only stores and distributes RMP Regulated Substances and EHSs, regardless of quantity, in the same containers in which they were received, without routinely opening, processing or repackaging of containers. A facility that routinely transfers such substance between different containers, blends such substances, or opens the containers in which such substances were received for any purpose is not a Limited Function Facility. A Limited Function Facility may open or repackage RMP regulated substances and EHSs if required by law or for the sole purpose of sample collection.

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

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

r. “RMP Regulated Substances” or “Regulated Substance” shall mean any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and/or listed in 40 C.F.R. § 68.130.

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

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

IV. CIVIL PENALTY

9. Within thirty (30) Days after the Effective Date, Defendant shall pay the sum of \$950,000 (nine-hundred fifty thousand dollars) as a civil penalty, together with Interest accruing from January 5, 2017.

10. Payment Method for Civil Penalty. Defendant shall pay \$950,000 plus Interest as provided in Paragraph 9 above at <https://www.pay.gov> or by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (FLU) of the United States Attorney's Office for the District of Kansas after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Ryan Doyle
Director of Engineering and Environment.
Harcros Chemicals Inc.
Ryan.Doyle@harcros.com
913-621-7712

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

11. At the time of payment, Defendant shall send notice that payment has been made: (a) to EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and (b) to the United States via email or regular mail in accordance with Section XIV (Notices and Submissions). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent

Decree in *United States v. Harcros Chemicals Inc.* and shall reference the civil action number and DOJ case number 90-5-2-1-11461.

12. Civil Penalty Augmentation. Defendant shall pay an additional civil penalty for Audit Findings (Augmented Civil Penalty) in accordance with the following Paragraphs 12.a-b:

a. Civil Penalty Augmentation Standard. Defendant shall pay an Augmented Civil Penalty if, based on the Audit Findings for all Facilities, the total economic benefit or gravity of violations (as determined by the number, extent of deviations with regulatory requirements, and potential or actual harm of said violations), significantly exceeds 2.75 times the amount of Civil Penalty as specified in Paragraph 9 above, using the same penalty calculation methodology used to reach the Civil Penalty. The United States may also consider equitable factors not previously considered in determining the amount of penalty paid pursuant to Paragraph 9 above. The decision to seek an augmented penalty is exclusively within the discretion of the United States, which may decline to do so even if the conditions set forth above justifying an augmented penalty are satisfied.

b. Civil Penalty Augmentation Procedures.

i. If the United States seeks an Augmented Civil Penalty it shall send Defendant a written demand for an Augmented Civil Penalty for Audit Findings assessed pursuant to this Paragraph within one hundred and twenty (120) Days of Defendant's submission of the Audit Report for the last audited Facility pursuant to Appendix A, Paragraphs 14 or 15, whichever is applicable. The written demand shall state the amount of the Augmented Civil Penalty demanded and the rationale for augmentation.

(a) Within sixty (60) Days of receiving the United States' demand for an Augmented Civil Penalty, Defendant shall either pay the Augmented Civil

Penalty or invoke dispute resolution pursuant to Section X (Dispute Resolution) as provided by Paragraph 12.b.ii below. In any dispute over a demand for an Augmented Civil Penalty, the Court shall determine whether the penalty sought to be assessed under the Clean Air Act, based upon the total economic benefit or gravity of violations (as determined by the number, extent of deviations with regulatory requirements, and potential or actual harm), for all violations in the internal audit reports or third-party Audit Findings for all Facilities, significantly exceeds 2.75 times the amount of Civil Penalty as specified in Paragraph 9 above and, if so, by what amount. The Court may also consider equitable factors not previously considered in determining the amount of penalty paid pursuant to Paragraph 9 above. The Defendant's expenditures on injunctive relief and Supplemental Environmental Project[s] shall not be considered in determining the United States' right to, or the amount of, any Augmented Civil Penalties.

(b) If Defendant does not pay the Augmented Civil Penalty within sixty (60) days of receipt of the United States' demand or does not invoke dispute resolution pursuant to this Paragraph 12.b.ii below with respect to the Augmented Civil Penalty, then Defendant shall pay a stipulated penalty as provided in Paragraph 40 in addition to Interest accruing from sixty (60) Days after receipt of the United States' demand for the Augmented Civil Penalty.

ii. Payment of Augmented Civil Penalties Subject to Dispute Resolution. If Defendant timely invokes dispute resolution with respect to the Augmented Civil Penalty demand, payment of the Augmented Civil Penalty shall be stayed during the period of dispute resolution as follows:

(a) If a dispute over the demand for an Augmented Civil Penalty is resolved by agreement or by a decision by the United States that is not appealed to the

Court, then Defendant shall pay the Augmented Civil Penalty determined to be owing, together with Interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision;

(b) If a dispute over a demand for the Augmented Civil Penalty is appealed to the Court and the United States prevails in whole or in part, then Defendant shall pay the amount of the Augmented Civil Penalty determined by the Court to be owing, together with Interest on that amount accruing from the date that is sixty (60) Days after receipt of the United States' demand for the Augmented Civil Penalty;

(c) If any Party appeals the District Court's decision or order and the United States prevails in whole or in part, then Defendant shall pay any Augmented Civil Penalty determined to be owing by the Court of Appeals (or the amount the District Court determined to be owing that the Court of Appeals upheld or declined to rule on), together with Interest accruing on that amount from the date that is sixty (60) Days after receipt of the United States' demand for an Augmented Civil Penalty, within fifteen (15) Days of the final appellate court decision.

c. Defendant shall pay the Augmented Civil Penalty to the United States in the manner set forth and with the confirmation notices required by Paragraphs 10 - 11 above, except that the transmittal letter shall state that the payment is for the Augmented Civil Penalty.

d. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay the Augmented Civil Penalty.

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

V. COMPLIANCE REQUIREMENTS

14. The following compliance requirements in Paragraphs 15 - 24 below and Appendix A of this Consent Decree apply to all Facilities listed in Paragraph III.8.m.

A. CAA Section 112(r) Compliance Measures

15. At each Facility listed in Paragraph 8.m and at Defendant's facilities located at 17031 Canal Street in Thornton, Illinois, 942 Industrial Access Road in West Point, Mississippi, and 555 Rivergate Road in Memphis, Tennessee, Defendant shall implement applicable statutes, regulations, codes, industry standards and practices or alternative methods to comply with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), as provided by Appendix A.

16. At each Facility listed in Paragraph 8.m and at Defendant's facilities located at 17031 Canal Street in Thornton, Illinois, 942 Industrial Access Road in West Point, Mississippi, and 555 Rivergate Road in Memphis, Tennessee, Defendant shall comply with all applicable Risk Management Program requirements and regulations promulgated under 42 U.S.C. § 7412(r)(7) and codified at 40 C.F.R. Part 68 Subparts A-H.

B. Compliance Audits

17. Except as provided by Paragraphs 19 - 22 below, Defendant shall retain independent third party Auditors who shall conduct a CAA Section 112(r)(1) and (7) compliance audit (Audit) at each Facility listed in Paragraph 8.m in accordance with the requirements set forth in Appendix A of this Consent Decree. The Audits shall take place during typical operating conditions for each Facility and shall evaluate each Facility's compliance or conformance with the Audit standards set forth in Paragraphs 5.c and 6.c of Appendix A and with the compliance requirements set forth in Paragraphs 15 - 16 of this Consent Decree. Defendant shall ensure that the Auditors conduct each Audit in accordance with all requirements set forth in Appendix A by the deadlines set forth in Paragraph 14 -15 of Appendix A.

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

19. Exemption of Audit Requirements for Certain Facilities. Defendant may exempt no more than seven of the Facilities listed in Paragraph 8.m from the Audit requirements in Paragraph 17 above provided that as of ninety (90) Days prior to the audit completion deadline for each exempted Facility as set forth in Appendix A, Paragraph 14, and continuing thereafter until termination of this Consent Decree pursuant to Section XVIII below, each exempted Facility meets the definition of a Limited Function Facility set forth in Paragraph 8.o, and adheres to the requirements of Paragraph 20 below.

20. For each Facility exempt from the Audit requirements pursuant to Paragraph 19 above, Defendant shall complete an internal audit of the Facility's compliance with Section 112(r)(1) of the CAA General Duty Clause under typical operating conditions for each such Facility in accordance with the requirements set forth in Appendix A, Paragraphs 5.b and c. Defendants shall then correct any discovered non-compliance in accordance with the requirements set forth in Appendix A, Paragraphs 11 - 12 no later than ninety (90) Days prior to the audit completion deadline for each exempted Facility as set forth in Appendix A, Paragraph 14. Defendant shall submit a report of the internal audit to EPA, in accordance with the requirements set forth in Appendix A, Paragraph 9, which includes the dates and methods by which violations were corrected, within ninety (90) days of the Facility's audit completion deadline set forth in Appendix A, Paragraphs 14-15.

21. Defendants shall not be required by this Consent Decree to conduct an independent third-party audit of Facilities exempted under Paragraph 19 above, as would otherwise be required by Paragraph 17 above and Appendix A provided that the Facility

continues to meet the definition of a Limited Function Facility and complies with Paragraph 20 above.

22. If at any time during the term of this Consent Decree, a Facility that was exempted from the independent third party Audit requirements of Paragraph 17 and Appendix A pursuant to Paragraph 19 above no longer meets the definition of a Limited Function Facility as set forth in Paragraph 8.o, Defendant shall:

a. notify EPA within thirty (30) Days of the date that any exempted Facility ceases to meet the definition of a Limited Function Facility in Paragraph 8.o;

b. no longer be exempt from the independent third party audit requirements of Paragraph 17 and Appendix A with respect to that Facility, and shall conduct an independent third party audit of that Facility during typical operating conditions for that Facility in accordance with Appendix A, and correct all Audit Findings in compliance with Appendix A to this Consent Decree by the deadlines set forth in Appendix A, Paragraph 14 for that Facility, unless those dates have already passed, in which case the Defendants shall correct all Audit Findings by the deadlines set forth in Appendix A, Paragraph 15.

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

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

the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

25. Defendant shall implement a Supplemental Environmental Project (SEP) to install foam-based fire suppression systems in accordance with all the provisions of and the schedule set forth in Appendix B of this Consent Decree. The SEP shall provide for the installation of foam-based fire suppression systems at eight existing warehouses that store flammable or combustible liquids. These systems will minimize the impacts of an accident, specifically a fire, by enhancing the speed and effectiveness of the facility's ability to extinguish the flames, thus reducing the chance of the spread of fire, the further melting/rupture of vessels, and the spread of released chemicals by sprinkler water, and will minimize the disposal of the contaminated sprinkler water.

26. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. "Satisfactory completion" means full and complete installation of a functioning and operational foam-based fire suppression system at the eight facilities listed in Appendix B in accordance with the schedule set forth therein. Defendants may use contractors or consultants in planning and implementing the SEP.

27. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP is approximately \$2,500,000;

b. That, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. That Defendant has not received and will not receive credit for the SEP in any other enforcement action; and

e. That Defendant will not receive any reimbursement for any portion of the SEP from any other person.

28. SEP Completion Report

a. Within thirty (30) Days after the date set for completion of the SEP, Defendant shall submit a SEP Completion Report to the United States, in accordance with Section XIV of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any problems encountered in completing the SEP and the solutions thereto;
- iii. An itemized list of all eligible SEP costs expended;
- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

29. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's completion report.

30. After receiving the SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section VIII of this Consent Decree.

31. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

32. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 36.

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

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

VII. REPORTING REQUIREMENTS

35. Defendant shall submit the following reports to EPA:

a. Within fifteen (15) Days of the end of each calendar quarter, starting with the quarter after the Effective Date of this Consent Decree, Defendant shall submit a quarterly status report (paper and electronic copy) for activities occurring the previous quarter which includes, but is not limited to: the status of the Audits; the status of Audit Reports; the status of Defendant's responses to the Audit Findings; the status of any disputes regarding any Audit Findings in any Audit Report; the status of implementation of measures to correct such Audit Findings; and certification that any Facilities exempted from the third party audit requirements of Paragraph 17 pursuant to Paragraph 19 continue to meet the definition of Limited Function Facility in Paragraph 8.o.

i. Each report shall also include a statement regarding any measures taken to correct Audit Finding(s) that occurred after submission of prior quarterly status reports.

ii. Each report shall also include an update on the status of SEP completion for each Facility that shall include the information required by Paragraph 28.a above.

b. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten (10) Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall state this in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the

following Paragraphs relieves Defendant of its obligation to provide the notice required by Section IX (Force Majeure).

c. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in Paragraphs 35.a, b, and d.

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

36. Certification of Reports.

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

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

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

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

38. 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.

VIII. STIPULATED PENALTIES

39. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (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.

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

41. Stipulated Penalties for Violation of Compliance Measures.

a. No stipulated penalties under this Consent Decree shall accrue for violations of the Compliance Measures set forth in Paragraphs 15 - 16 above, or Audit Findings listed in an Audit Report submitted to EPA pursuant to Appendix A, Paragraph 9, provided that: the civil penalty is paid pursuant to Section IV of this Consent Decree, such Audit Finding is disclosed in the Audit Report, and such Audit Finding is corrected as required by Appendix A, Paragraphs 11 - 12, and 14 - 15. Except as set forth in Paragraph 73 below, the United States

hereby explicitly reserves its rights to bring a civil action based on any violation of Compliance Measures set forth in Paragraphs 15 - 16, violations of other provisions of this Consent Decree, including Audit Findings for which civil penalties are not paid, or are not identified in the Audit Report and timely corrected as required by Appendix A, Paragraphs 11 - 12, and 14 - 15, or applicable law (including, but not limited to, actions for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt).

b. The following stipulated penalties shall accrue per violation per Day for violations of Compliance Measures set forth in Paragraphs 15 - 16 above where such violations commenced after the date for completion of the applicable Audit as set forth in Paragraphs 14 - 15 of Appendix A, or where such violations are not contained in the Audit Findings listed in the Audit Report.

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

42. Stipulated Penalties for Failure to Perform Audits and Timely and Adequately Correct Audit Findings in Accordance with Paragraphs V.17 and 20 and Appendix A of this Consent Decree. Defendant shall be liable for the following stipulated penalties that shall accrue per violation per Day for the following violations of the requirements pertaining to the compliance Audits as set forth in Appendix A:

a. Failure to complete an Audit in accordance with the Audit methodology set forth in Paragraphs 5 and 6 of Appendix A, evaluate compliance or conformance with the specified Audit standards set forth in Paragraphs 5 and 6 of Appendix A, and complete the Audit by the applicable deadline as required by Paragraphs 7, 14, and 15 of Appendix A:

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

b. Failure of Auditor to submit Audit Report to EPA and/or of Defendant to submit Defendant's Audit Statement as required by Paragraphs 9, 10, 14, and 15 of Appendix A:

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

c. Failure of Defendant to correct an Audit Finding by applicable deadline as required by Paragraphs 11, 12, 14, and 15 of Appendix A:

Period of Non-Compliance or Days Late	Penalty Per Violation Per Day Late or Deficient
Days 1-30	\$1,000
Days 31-59	\$2,000
Days 60 and Beyond	\$4,000

43. Stipulated Penalties for SEP Compliance

a. Failure to Timely and/or Satisfactorily Complete SEP at Each Facility.

Defendant shall be liable for the following stipulated penalties that shall accrue per violation per Day for failing to timely and/or satisfactorily complete installation of a functioning and operational foam-based fire suppression system at each facility where the SEP will be implemented by the date specified for completing the installation at each facility as set forth in Appendix B:

Period of Non-Compliance or Days Late	Penalty Per Violation Per Day Late or Deficient
Days 1-30	\$350
Days 31-59	\$1,000
Days 60 and Beyond	\$3,000

b. Failure to Complete and Timely Submit a SEP Report. Defendant shall be liable for the following stipulated penalties that shall accrue per violation per Day for failing to complete and timely submit a SEP Report:

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

44. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement set forth in Section VII (Reporting Requirements) and XI (Information Collection and Retention) of this Consent Decree:

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

45. The following stipulated penalties shall accrue per violation per Day for all other violations of this Consent Decree not addressed by Paragraphs 40 - 44 above:

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

46. Except as provided in Paragraph 49.a and b below, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily

completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

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

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

49. Stipulated penalties shall continue to accrue as provided in Paragraph 46 above, during any Dispute Resolution, but need not be paid until the following:

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

b. if the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Paragraph 49.c below;

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

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

transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

51. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for Interest on such penalties, accruing as of the date of receipt of EPA's written demand pursuant to Paragraph 47 above. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

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

IX. FORCE MAJEURE

53. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure event, such that

the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic transmission to the United States, within four (4) Days of when Defendant first knew or, with reasonable diligence, should have known, that the event might cause a delay. Within ten (10) Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all documentation available at that time supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant’s contractors knew or should have known. However, at any time before EPA notifies Defendant pursuant to Paragraphs 55 - 56 below as to whether it agrees that the delay or anticipated delay constitutes a force majeure event, Defendant may provide EPA with additional information that was not and could not have been known to Defendant at the time of the initial written notification of force majeure for consideration by EPA.

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

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

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

58. In any Dispute Resolution proceeding concerning Defendant's claim of force majeure, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 53 - 54. If Defendant carries this burden, the

delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

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

60. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days following receipt of the Notice of Dispute, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures set forth in Paragraphs 61 - 65 below.

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

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

63. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

65. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 63 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are

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

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 63, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

66. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 49. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and shall be paid as provided in Section VIII (Stipulated Penalties) unless waived or reduced by the United States pursuant to Paragraph 48.

XI. INFORMATION COLLECTION AND RETENTION

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

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

- d. obtain documentary evidence, including photographs and similar data; or
- e. assess Defendant's compliance with this Consent Decree.

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

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

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

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

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

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

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

73. This Consent Decree resolves the Defendant's liability for the civil claims of the United States for the following violations:

- a. Violations alleged in the Complaint filed in this action through the Date of Lodging;
- b. Violations of Section 112(r) of the CAA and the regulations promulgated thereunder at the Facilities at which Audits were completed, through the Audit correction dates as set forth in Appendix A, Paragraphs 14 or 15, whichever is applicable, subject to the following conditions:

- i. Payment of the Civil Penalty in accordance with Section IV, including any Augmented Civil Penalties assessed pursuant to Paragraph 12; and
- ii. Disclosure of the violation in an Audit Report submitted in accordance with the requirements set forth in Appendix A, Paragraph 9; and
- iii. Correction of the violation in accordance with the requirements set forth in Appendix A, Paragraphs 11-15.

74. United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 73. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under any applicable federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 73. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, any of Defendant's Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

75. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, and other appropriate relief relating to one of Defendant's Facilities or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 73.

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

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

78. 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.

XIII. COSTS

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

XIV. NOTICES AND SUBMISSIONS

80. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent to the addresses listed below by both email and U.S. mail or an overnight delivery service. Where

the Consent Decree requires a notice or submission to be provided to “the United States,” Defendant shall provide such notice to both U.S. Department of Justice (DOJ) and all of the EPA recipients listed below. Where the Consent Decree requires a notice or a submission to be provided only to “EPA,” Defendant need only provide such notice or submission to EPA and need not provide it to DOJ.

AS TO THE UNITED STATES:

U.S. DOJ

EES Case Management Unit
Re: DJ No. 90-5-2-1-11461
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov

EPA Region 7

Scott Hayes
Chief, Chemical and Oil Release Prevention Branch
EPA Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219
Hayes.Scott@epa.gov

Sarah LaBoda, Esq.
Office of Regional Counsel
EPA Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219
Laboda.Sarah@epa.gov

AS TO DEFENDANT:

Stinson Leonard Street

David Tripp
Douglas Curran
Brittany A. Barrientos
1201 Walnut, Ste. 2900

Kansas City, MO 64113
David.Tripp@stinson.com
Doug.curran@stinson.com
Brittany.Barrientos@stinson.com

Harcros Chemicals Inc.

Ryan Doyle
Director Engineering and Environment
5200 Speaker Road
Kansas City, KS 66106
Ryan.Doyle@harcros.com

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

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

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

XV. EFFECTIVE DATE

84. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

85. 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 X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

86. 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. Extensions of any deadlines set forth herein that are less than one hundred and twenty (120) Days shall not be considered a material modification under this Paragraph.

XVIII. TERMINATION

87. This Consent Decree may be terminated after all of the following conditions have been satisfied:

a. Defendant has paid all civil penalties required by Section IV of this Consent Decree and has paid any accrued stipulated penalties and Interest required by Section VIII; and

b. Defendant has completed all required Audits and corrected all Audit Findings in accordance with the requirements of Paragraphs 17 - 22 and Appendix A of this Consent Decree; and

c. Defendant has maintained substantial compliance with all other requirements of this Consent Decree, including requirements relating to the SEP required by Section VI; and

d. At least five years have passed since the Effective Date.

88. If Defendant believes the conditions for termination set forth in Paragraph 87.a-d above have been satisfied, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

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

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

XIX. PUBLIC PARTICIPATION

91. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Final approval of this Consent Decree by the United States is subject to the public notice and comment under 28 C.F.R. § 50.7.

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

XX. SIGNATORIES/SERVICE

93. Each undersigned representative of Defendant and the Deputy Section Chief of the Environmental Enforcement Section 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.

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

XXI. INTEGRATION

95. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Except for the Appendices identified in Section XXII below, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree, except as provided in Section XVII (Modification).

XXII. APPENDICES

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

- a. “Appendix A” sets forth the requirements for the Compliance Audits required by Paragraphs 17-22 of this Consent Decree.
- b. “Appendix B” sets forth the requirements for the Supplemental Environmental Project required by Section VI of this Consent Decree.

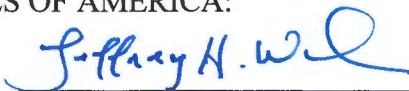
XXIII. FINAL JUDGMENT

97. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and, therefore, enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

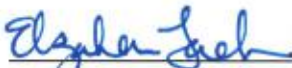
Dated and entered this day of _____, 2017

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:



JEFFREY H. WOOD
Acting Assistant Attorney General
Environmental Enforcement Section
Environment & Natural Resources Division



ELIZABETH L. LOEB
Senior Counsel



JOHN BRODERICK
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044
Elizabeth.Loeb@usdoj.gov
(202) 616-8916

THOMAS E. BEALL
United States Attorney
District of Kansas

s/ Christopher Allman
CHRISTOPHER ALLMAN
Assistant United States Attorney
Ks. S.Ct. No. 14225
500 State Street, Suite 360
Kansas City, Kansas 66101
PH: (913) 551-6730
FX: (913) 551-6541
Email: chris.allman@usdoj.gov

FOR PLAINTIFF U.S. ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE:

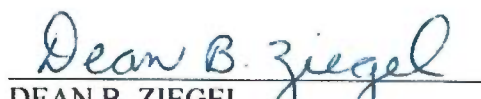
Date: 6/27/17



SUSAN SHINKMAN

Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Date: 19 June 2017

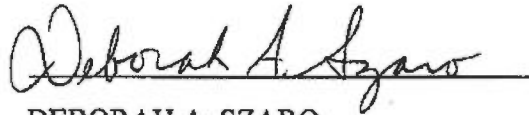


DEAN B. ZIEGEL

Attorney-Advisor
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

U.S. v. HARCROS CHEMICALS INC.

Date: 6/29/17

A handwritten signature in cursive script, reading "Deborah A. Szaro", written over a horizontal line.

DEBORAH A. SZARO
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 1

Date: 06/28/2017

A handwritten signature in cursive script, reading "Susan Studlien", written over a horizontal line.

SUSAN STUDLIEN
Director, Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1

A handwritten signature in cursive script, reading "V. Anne Heard". The signature is written in dark ink and is positioned above a horizontal line.

V. ANNE HEARD
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 4

Date:

6/22/17



Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

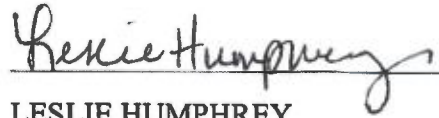
FOR EPA REGION VI:

A handwritten signature in blue ink, reading "Samuel Coleman", is written over a horizontal line.

Samuel J. Coleman, P.E.,
Acting Regional Administrator
EPA Region VI
1445 Ross Ave, Ste. 1200
Dallas, TX 75202

U.S. v. HARCROS CHEMICALS INC.


EDWARD H. CHU
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 7


LESLIE HUMPHREY
Acting Regional Counsel
U.S. Environmental Protection Agency
Region 7


SARAH LABODA
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

Date: June 22, 2017



DEBRA H. THOMAS
Acting Regional Administrator
U.S. Environmental Protection Agency
Region VIII

Date:

6/21/2017



CHRISTOPHER THOMPSON
Legal Enforcement Program Director
U.S. Environmental Protection Agency
Region VIII

Date:

June 19, 2017



MARC WEINER
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FOR HARCROS CHEMICALS:



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Jack Cleary
Vice President of Risk Management &
Regulatory Affairs
Harcros Chemicals Inc.

APPENDIX A

Appendix A Requirements for Independent Third Party Audits

1. Pursuant to Section V.B. of the Consent Decree (Compliance Requirements), Defendant shall either retain an independent third party Auditor(s) to conduct, or pursuant to Paragraphs 19-22 of the Consent Decree the Defendant shall itself conduct, the following Clean Air Act Audits at each Facility required to be Audited under Paragraphs 17-22 of the Consent Decree in accordance with the requirements set forth in this Appendix A: (a) an Audit of each Facility's compliance with the General Duty Clause of Section 112(r)(1) of the CAA (Section 112(r)(1) GDC Audit); and (b) an Audit of each Facility's compliance with applicable Risk Management Program requirements and regulations under Section 112(r)(7) of the CAA (Section 112(r)(7) RMP Audit). Defendant shall give the Auditor(s) a copy of this Consent Decree and all appendices, as well as all other information and access necessary to complete the Audits set forth herein. The Audits will evaluate each Facility's compliance or conformance with the Audit standards set forth in Paragraphs 5.c and 6.c below. Defendant shall ensure that the Auditor(s) conduct the Audits in accordance with the requirements set forth in Paragraphs 2-15 of this Appendix A.

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

3. **EPA Approval of Auditors.**

a. EPA has approved the following Kestrel Management employees as independent third party Auditors to conduct the independent third-party Audits required by Paragraph 17 of the Consent Decree and as set forth in Paragraphs 5 and 6 below.

i. Section 112(r)(1) GDC Audit: Randy Block

ii. Section 112(r)(7) RMP Audit: Robert Evangelisti

iii. Alternate Auditor for All Audits: Jack Anderson, Thomas Rehm, and Ewan Ross.

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

4. Pre-Audit Requirements.

a. Scoping Meeting. At least thirty (30) days prior to the initiation of the first Audit, the Auditor shall participate in a meeting with EPA to review the scope of the Audits.

b. Notice of Audit Commencement. At least ten (10) Days prior to the commencement of each on-site Audit, Defendant shall provide notice to EPA via e-mail to EPA's designated representatives identified in Section XIV of this Consent Decree (Notices and Submissions) of the Day that each Audit will commence.

5. Section 112(r)(1) GDC Audits. Defendant shall give each Auditor a copy of this Consent Decree and all appendices as well as all other information and access necessary to complete the Audits set forth herein. Defendant shall ensure that each Auditor conducts, or in

the case of an internal Audit under Paragraphs 19-22 the Defendant shall conduct, a Section 112(r)(1) GDC Audit at each Facility as set forth below and as required by Paragraphs 17-22 of the Consent Decree.

a. Auditor Qualifications. Each independent third-party Auditor for the Section 112(r)(1) GDC Audit shall be:

i. an independent third party, such as a private auditor, inspector, or other type of verifier external to the Defendant. “Independent third-party” excludes the Defendant and its parent company and subsidiaries, second parties such as contractors or consultants that are within the firm's industry and with whom the regulated entity has a supply-chain relationship, and third parties that are not independent of the first party, which may include contractors, consultants, or purchasers of the facility's goods or services. If the Defendant has other non-audit relationships with the auditor, then the auditor is not a true independent third-party; and

ii. a recognized expert in both the fields of: 1) chemical manufacturing, handling, transfer, re-packaging, storage and disposal, and 2) GDC compliance and the applicable industry codes, standards, and practices including but not limited to the Audit standards listed in Paragraph 5.c. below. The proposed Auditor(s) should have prior experience in conducting audits of facilities’ compliance with the Audit standards set forth in Paragraph 5.c. below.

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

i. Paper Audit. The Auditor(s) for the Section 112(r)(1) GDC Audits, or the Defendant in the case of an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree, shall first review all documents related to the manufacturing, handling, transfer,

re-packaging, storage, and disposal of RMP Regulated Substances and Extremely Hazardous Substances including but not limited to reports prepared pursuant to Section 312 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11022, operating procedures, training procedures, maintenance procedures, written indications of practices, and engineering and design specifications for any areas at the Facility where RMP Regulated Substances and Extremely Hazardous Substances may be present. The Auditor(s) shall additionally determine if Defendant has identified, and its written policies and practices conform with, the most current applicable federal, state and local codes and regulations, and industry practices, standards and guidelines with respect to identifying the hazards posed by the substances and assessing the impacts of possible releases, designing and maintaining a safe facility to prevent accidental releases, and minimizing the consequences of accidental releases that do occur.

ii. On-Site Audit. Following the Paper Audit set forth in Paragraph 5.b.i above at each Facility, the Auditor(s), or the Defendant in the case of an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree, shall conduct on-site evaluations of the equipment, processes, practices, systems, training, operations and maintenance relating to the manufacture, handling, transfer, re-packaging, storage and disposal of RMP Regulated Substances or other Extremely Hazardous Substances including but not limited to the following:

- (a) Tanks, totes, drums, and other storage containers;
- (b) Electrical systems including grounding, bonding, and lightning protection;
- (c) Pumps and piping used for transferring substances, including railcar transfer;

(d) Fire suppression and safety equipment to include pressure relief valves, inerting operations and control systems;

(e) Release containment structures and equipment; and

(f) Pressure vessels, reactors, and other support systems to include heating and cooling systems, condensers, and control devices.

c. Section 112(r)(1) GDC Audit Standards. In the Audit at each Facility set forth in Paragraph 5.b. above, the Auditor(s), or the Defendant in the case of an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree, shall evaluate the conformance of each Facility's documents relating to Hazard Assessments, design and maintenance (designs, procedures, systems, training, equipment, operations, and maintenance), and release planning and mitigation with the following standards:

i. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);

ii. all current applicable federal, state and local codes and regulations, and current accepted industry practices, standards and guidelines, including but not limited to the applicable provisions of the those industry practices, standards, and guidelines set forth in Exhibit 1 hereto.

iii. any additional current national or location-specific regulations, codes, standards or guidelines that the Auditor determines applies to a Facility;

iv. any other codes, standards, and practices; and

v. listed company- or Facility-specific procedures regarding the manufacture, handling, transferring, re-packaging, storage and disposal of RMP Regulated Substances or Extremely Hazardous Substances, including, where applicable, Process Safety Management (PSM) documents.

d. The Auditor(s), or the Defendant in the case of an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree, shall evaluate conformance with all of the above-listed codes, standards, and practices regardless of any retroactivity or grandfathering limitations contained therein.

e. Defendant may use alternative methods for achieving compliance with the requirements of the applicable and recommended industry practices and/or standards as long as the selected alternatives are documented by the Facility to be equivalent to or better than the applicable industry standards in reducing the hazards.

6. CAA Section 112(r)(7) RMP Audits. The Defendant shall ensure that the Auditor(s) conducts, or in the case of an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree the Defendant shall conduct, a CAA Section 112(r)(7) RMP Audit as set forth below at each Facility as required by Paragraphs 17-22 of the Consent Decree.

a. Section 112(r)(7) RMP Auditor Qualifications. Each Auditor for the Section 112(r)(7) RMP Audit shall be:

i. an independent third party, such as a private auditor, inspector, or other type of verifier external to the Defendant. “Independent third-party” excludes the Defendant and its parent company and subsidiaries, second parties such as contractors or consultants that are within the firm's industry and with whom the regulated entity has a supply-chain relationship, and third parties that are not independent of the first party, which may include contractors, consultants, or purchasers of the facility's goods or services. If the Defendant has other non-audit relationships with the auditor, then the auditor is not a true independent third-party; and

ii. a professional engineer with expertise in both the fields of: 1) chemical manufacturing, handling, transfer, re-packaging, storage, and disposal and 2) the development and implementation of RMP plans and the RMP regulations codified at 40 C.F.R. Part 68 (RMP Regulations). The Auditor(s) must have experience in evaluating the compliance of facility plans, policies, practices and procedures with applicable RMP regulations, plans and requirements.

b. Section 112(r)(7) RMP Audit Methodology and Sequence.

i. Paper Audit. The Auditor(s) for the Section 112(r)(7) RMP Audit(s), or the Defendant in the case of an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree, shall first review each Facility's documents related to implementation of the Risk Management Program at each Facility, including but not limited to: each facility's Hazard Review/Analysis, Management of Change, and Standard Operating Procedures, PSM documents, engineering and design specifications, and reports prepared pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022. The Auditor(s) shall additionally determine if Defendant has identified, and its written policies and practices conform with, the regulations set forth at 40 C.F.R. Part 68.

ii. On-Site Audit. Following the Paper Audit set forth in Paragraph 6.b.i above at each Facility, the Auditor(s), or the Defendant in the case of an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree, shall conduct on-site evaluations of the equipment, processes, practices, systems, training, operations and maintenance relating to the manufacture, handling, transfer, re-packaging, storage and disposal of RMP Regulated Substances or other Extremely Hazardous Substances including but not limited to the following items listed below:

- (a) Tanks totes, drums and other storage containers;

- (b) Electrical systems including grounding, bonding and lightning protection;
- (c) Pumps and piping used for transferring substances, including railcar transfer;
- (d) Fire suppression and safety equipment to include pressure relief valves, inerting operations and control systems;
- (e) Release containment structures and equipment;
- (f) Pressure vessels, reactors, and other support systems to include heating and cooling systems, condensers, and control devices.

c. Section 112(r)(7) RMP Audit Standards. The Auditor(s) for the Section 112(r)(7) RMP Audits, or the Defendant in the case of an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree, shall evaluate each Facility's RMP documentation and its processes and equipment listed in Paragraph 6.b.ii above for compliance with the following standards:

- i. applicable RMP Regulations found at 40 C.F.R. Part 68, including Management System (per 40 CFR § 68.15); Hazard Assessment (per 40 CFR 68, Subpart B); Program 3 Prevention Program (per 40 CFR 68, Subpart D); Emergency Response (per 40 CFR 68, Subpart E); Risk Management Plan (per 40 CFR 68, Subpart G); and Other Requirements (per 40 CFR 68, Subpart H); and
- ii. other requirements contained in the Facility's RMP Plans, RMP Prevention Program, Chemical Accident Prevention Program, and Process Safety Management System.

7. Audit Completion. Defendant shall ensure that each Auditor completes or, in the case of an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree the Defendant shall complete, each Audit at each Facility no later than the applicable deadline for each Facility set forth in Paragraphs 14-15 below.

8. Audit Out-briefing.

a. Within five (5) Days of the completion of each on-site Audit, other than internal Audits conducted pursuant to Paragraphs 19-22 of the Consent Decree, the Auditor will conduct an out-briefing with Defendant in which the Auditor shall orally convey the major Audit Findings.

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

c. Defendant shall correct Audit Findings disclosed at the out-briefing in accordance with Paragraph 11 below. Regardless of whether the Defendant corrects such Audit Findings, the Auditor shall include such Audit Findings in the Auditor's Report submitted to EPA pursuant to Paragraph 9 below, but may also include a description of the correction(s) that occurred prior to submission of the Auditor's Report.

9. Audit Report. For each Audit at each Facility, Defendant shall ensure that the Auditor(s) submits, or in the case of an internal Audit pursuant to Paragraphs 19-22 of the

Consent Decree the Defendant shall submit, a report of the Audit results to EPA pursuant to Section XIV (Notices and Submissions) of this Consent Decree by no later than the applicable deadline for each Facility set forth in Paragraphs 14-15 below. EPA shall give notice to Defendant as soon as possible before it has any material communications directly with an Auditor about an Audit and give Defendant the opportunity to participate in such conversations.

The Audit Report shall:

- a. describe when and how the Audit was conducted;
- b. describe the Auditor's conclusions as to which Section 112(r) requirements apply to the Facility and the basis of that conclusion;
- c. describe all the types of information and records reviewed in each Paper Audit phase pursuant to Paragraphs 5.b.i. and 6.b.i. above, and the equipment, processes, practices, structures and other items reviewed, tested, observed or evaluated during the on-site Audit phase pursuant to Paragraphs 5.b.ii. and 6.b.ii. above;
- d. identify each Audit Finding of non-compliance and non-conformance with the Audit standards set forth in Paragraphs 5.c. and 6.c discovered in each Audit; and
- e. provide a detailed recommendation as to how each discovered Audit Finding should be corrected.
- f. For facilities subject to an internal Audit pursuant to Paragraphs 19-22 of the Consent Decree, prior to submittal of the Audit Report, Defendant shall submit a draft of the Audit Report to the independent third-party Auditor for peer-review and verification, and convene a telephone conference with Defendant and the independent third-party Auditor to discuss the draft report. The independent third-party Auditor will verify that the Defendant's internal auditor and audit process demonstrates: 1) competency in their knowledge of the

auditing tools, content, and company processes; 2) that the internal audits were conducted in accordance with Paragraphs 5 b. and c, and followed a disciplined and thorough auditing process utilizing the table of Industry Practices, Standards and Guidelines listed in Exhibit 1; 3) the internal audits employed proper techniques for questioning and data gathering; and, 4) the internal audits were consistent in their approach from facility to facility. Upon confirmation of the above four points, the independent third-party Auditor will provide a signed statement to be included in the final report to verify that to the best of the Auditors' knowledge, the Harco internal audits have adhered to a process demonstrating the above listed attributes.

10. Defendant's Statement for Each Audit.

a. For each Audit at each Facility, by the applicable deadline for each Facility set forth in Paragraphs 14-15 below, Defendant shall submit to EPA, pursuant to Section XIV of this Consent Decree (Notices and Submissions), a written statement (Defendant's Audit Statement) in which Defendant:

- i. responds to or comments on each of the Audit Findings;
- ii. describes each completed or proposed action to correct each Audit Finding, including the date(s) that such corrections occurred or are scheduled to occur; and
- iii. identifies any Audit Findings contained in the Audit Report that Defendant believes are inaccurate or incorrect and the factual or technical basis as to why Defendant believes such Audit Findings are inaccurate or incorrect.

b. If EPA agrees with Defendant that an Audit Finding is inaccurate or incorrect, EPA shall so advise Defendant and Defendant may request that the Auditor revise or remove that Audit Finding from the Audit Report. If the Auditor does not so revise the Audit

Report, EPA may waive or revise the corrective actions consistent with its decision that the Audit Finding was incorrect or inaccurate.

11. Correction of Audit Findings.

a. Except as provided in Paragraph 11.b below, for each Audit at each Facility, Defendant shall implement all steps necessary to correct each Audit Finding identified in the Auditor's Report by the earlier of:

- i. the date it is reasonable under the circumstances; or
- ii. the First Deadline for Correction of Audit Findings for each

Facility as set forth in Paragraphs 14-15 below.

b. Extensions of Correction Deadlines in Limited Circumstances.

i. Defendant may seek more time to implement correction of Audit Findings if in Defendant's Audit Statement submitted to EPA pursuant to Paragraph 10 above, or as soon as practicable thereafter, Defendant explains and documents:

(a) that the correction is likely to cost Defendant more than \$15,000;

(b) that it is not reasonable under the circumstances to correct the Audit Findings by the First Deadline for Correction of Audit Findings set forth for each Facility in Paragraphs 14-15.d below; and

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

ii. Where Defendant seeks additional time to correct Audit Findings pursuant to Paragraph 11.b.i above, Defendant shall correct such Audit Findings no later than the earlier of:

- (a) the correction Date proposed in Defendant's Audit Statement or extension request; or
- (b) the date indicated by EPA in an objection submitted under Paragraph 12 below, provided that such date is not less than ninety (90) Days after Defendant's receipt of EPA's objection; or
- (c) a different date for correction agreed to by the parties or ordered by the Court in Dispute Resolution under Section X of the Consent Decree; or
- (d) the Final Deadline for Correction of Audit Findings as set forth for each Facility in Paragraphs 14-15.d below.

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

a. At any time after receiving the Defendant's Audit Statement pursuant to Paragraph 10 above, EPA may object to (1) the method by which Defendant has corrected or intends to correct an Audit Finding; and/or (2) to the proposed timing of correction where Defendant's Audit Statement proposes a later date for correction than the First Deadline for Correction of Audit Findings for each Facility as set forth in Paragraph 14 and Paragraph 15.d below. If EPA objects, it shall notify the Defendant in writing pursuant to Section XIV of the Consent Decree (Notices and Submissions) as to the bases of its objection(s), and indicate what method or methods to correct the Audit Finding(s) are required, and/or provide the date(s) by which it believes it is reasonable under the circumstances for Defendant to correct the Audit Finding(s).

b. If Defendant disagrees with EPA's proposed method or timing of correction, it may invoke dispute resolution in accordance with Section X of this Consent Decree (Dispute Resolution) by submitting a Notice of Dispute to EPA within fifteen (15) Days of

receiving EPA's objection. If this method of correction is an issue in a dispute, it shall be Defendant's burden to establish that the method by which it proposes to correct the Audit Finding(s) will result in compliance with the applicable Audit standards set forth in Paragraphs 5.c. and 6.c above. If the timing of correction is in dispute, it shall be Defendant's burden to establish (1) that it will cost more than \$15,000 to correct the finding; and (2) that it is not reasonable under the circumstances to correct the Audit Finding(s) any earlier than the date proposed in Defendant's Audit Statement submitted pursuant to Paragraph 10 above. In its sole discretion, EPA may agree to extend the correction deadline to the Final Deadline for Correction of Audit Findings for a Facility set forth in Paragraphs 14 or 15.d below for other reasons. The exercise of this discretion is not subject to Dispute Resolution under Section X of the Consent Decree.

c. If Defendant does not invoke dispute resolution within fifteen (15) Days of receiving EPA's objection pursuant to Paragraph 12.a above, Defendant shall correct the Audit Finding(s) by the method indicated in EPA's objection by the earliest date set forth in Paragraph 11.b.ii above.

13. Notification of Correction of Audit Findings of Non-Compliance and Non-Conformance. For each Audit Finding in the Auditor's Report, Defendant shall notify EPA of the method and date of correction of the Audit Finding of non-compliance and non-conformance in the quarterly report submitted pursuant to Paragraph 35 of the Consent Decree for the quarter in which the correction was completed.

14. Audit Milestone Deadlines. For each Audit, Defendant shall complete or ensure that the Auditor completes the following Audit milestones no later than the applicable deadlines set forth in the table below for: (1) Completion of the Audit as required by Paragraph 7 above;

(2) Submission of the Audit Report as required by Paragraph 9 above; (3) Submission of Defendant's Statement in response to the Audit as required by Paragraph 10 above; and (4) Correction of all Audit Findings as required by Paragraph 11 above, unless EPA has agreed to an alternative date for correction.

	<u>Group</u>	<u>Facilities</u>	<u>Audit Completion Deadline</u>	<u>Deadline for Audit Report</u>	<u>Deadline for Defendant's Statement</u>	<u>First Deadline for Correction of Audit Findings (Para. 11a)</u>	<u>Final Deadline for Correction of Audit Findings (Para. 11b)</u>
1	Group 1	Shreveport	May 23, 2016	July 23, 2016	December 31, 2016	January 31, 2017	July 23, 2017
2		Bessemer	June 22, 2016	August 22, 2016	December 31, 2016	January 31, 2017	August 22, 2017
3		Kansas City	August 22, 2016	October 22, 2016	December 31, 2016	January 31, 2017	December 30, 2018
4	Group 2	Dalton	Lodging + 4M	Lodging + 6M	Lodging + 7M	Lodging + 10M	August 30, 2019
5		Muscle Shoals	Lodging + 4M	Lodging + 6M	Lodging + 7M	Lodging + 10M	Lodging + 22M
6		Powder Springs	Lodging + 4M	Lodging + 6M	Lodging + 7M	Lodging + 10M	Lodging + 16M
7		Vicksburg	Lodging + 4M	Lodging + 6M	Lodging + 7M	Lodging + 10M	Lodging + 22M
9	Group 3	Memphis	Lodging + 8M	Lodging + 10M	Lodging + 11M	Lodging + 14M	Lodging + 24M
10		Nashua	Lodging + 8M	Lodging + 10M	Lodging + 11M	Lodging + 14M	Lodging + 24M
11		West Helena	Lodging + 8M	Lodging + 10M	Lodging + 11M	Lodging + 14M	Lodging + 24M
12		Westbrook	Lodging + 8M	Lodging + 10M	Lodging + 11M	Lodging + 14M	Lodging + 20M
13	Group 4	Mobile	Lodging + 12M	Lodging + 14M	Lodging + 15M	Lodging + 18M	Lodging + 24M
14		Little Rock	Lodging + 12M	Lodging + 14M	Lodging + 15M	Lodging + 18M	Lodging + 26M
15		Nashville	Lodging + 12M	Lodging + 14M	Lodging + 15M	Lodging + 18M	Lodging + 24M
16		St. Louis	Lodging + 12M	Lodging + 14M	Lodging + 15M	Lodging + 18M	Lodging + 26M

17		Dallas	Lodging + 12M	Lodging + 14M	Lodging + 15M	Lodging + 18M	Lodging + 24M
18	Group 5	Golden	Lodging + 17M	Lodging + 19M	Lodging + 20M	Lodging + 23M	Lodging + 29M
19		Valdosta	Lodging + 17M	Lodging + 19M	Lodging + 20M	Lodging + 23M	Lodging + 29M
20		St. Paul	Lodging + 17M	Lodging + 19M	Lodging + 20M	Lodging + 23M	Lodging + 29M
21		Tampa	Lodging + 17M	Lodging + 19M	Lodging + 20M	Lodging + 23M	Lodging + 29M
22		Thomasville	Lodging + 17M	Lodging + 19M	Lodging + 20M	Lodging + 23M	Lodging + 29M
23	Group 6	Pasadena	Lodging + 22M	Lodging + 24M	Lodging + 25M	Lodging + 28M	Lodging + 34M
24		Davenport	Lodging + 22M	Lodging + 24M	Lodging + 25M	Lodging + 28M	Lodging + 34M
25		St. Gabriel	Lodging + 22M	Lodging + 24M	Lodging + 25M	Lodging + 28M	Lodging + 34M
26		Oklahoma City	Lodging + 22M	Lodging + 24M	Lodging + 25M	Lodging + 28M	Lodging + 34M
27		Omaha	Lodging + 22M	Lodging + 24M	Lodging + 25M	Lodging + 28M	Lodging + 34M
28		Tulsa	Lodging + 22M	Lodging + 24M	Lodging + 25M	Lodging + 28M	Lodging + 34M
29		Wichita	Lodging + 22M	Lodging + 24M	Lodging + 25M	Lodging + 28M	Lodging + 34M

"Lodging" means the date of lodging of the Consent Decree

"M" means month

15. Audit Deadlines for Facilities Exempted Under Paragraph 19 of the Consent Decree that No Longer Meet the Definition of Limited Function Facility and are Required to Conduct Third Party Audits pursuant to Paragraph 22 of the Consent Decree. If pursuant to Paragraph 22 of the Consent Decree a Facility is no longer exempt from the independent third party Audit requirements of Paragraph 17 and this Appendix A, then Defendant shall hire an Auditor to conduct an independent third party Audit of that Facility during typical operating conditions for that Facility in accordance with Appendix A, Paragraphs 5.a., b and c., and if

applicable, Paragraphs 6.a., b and c., and correct all Audit Findings in compliance with Appendix A to this Consent Decree by the deadlines set forth in Appendix A, Paragraph 14 for that Facility, unless those dates have already passed. If the dates set forth in Appendix A, Paragraph 14 have already passed, then Defendant shall correct all Audit Findings by the deadlines set forth below:

- a. complete the independent third party Audit within sixty (60) Days of the Day that the formerly exempted Facility ceased to meet the definition of a Limited Function Facility in Paragraph 8.o of the Consent Decree;
- b. submit the Audit Report to EPA in compliance with the requirements of this Appendix A, Paragraph 9 within 120 Days of the Day that the formerly exempted Facility ceased to meet the definition of a Limited Function Facility in Paragraph 8.o of the Consent Decree;
- c. submit the Defendant's Statement to EPA in compliance with the requirements of Appendix A, Paragraph 10 within 150 Days of the Day that the formerly exempted Facility ceased to meet the definition of a Limited Function Facility in Paragraph 8.o of the Consent Decree; and
- d. correct all Audit Findings by the date it is reasonable to do so under the circumstances but no later than 240 Days of the Day that the formerly exempted Facility ceased to meet the definition of a Limited Function Facility in Paragraph 8.o of the Consent Decree (First Deadline for Correction of Audit Findings), unless EPA agrees to extend the deadline pursuant to Paragraphs 11-12 of this Appendix A, in which case the Final Deadline for Correction of Audit Findings for the formerly exempted facility shall be one year and sixty (60)

Days of the Day that the formerly exempted Facility ceased to meet the definition of a Limited Function Facility in Paragraph 8.o of the Consent Decree.

16. Sprinkler System Evaluation at St. Gabriel Facility

a. No later than ten months after the Date of Lodging, Defendant shall evaluate and determine whether a sprinkler system is required at the St. Gabriel Facility under the applicable standards set forth in Paragraphs 5.c and 6.c above.

b. If Defendant determines that no sprinkler system is required, it shall notify EPA of this determination no later than ten months after the Date of Lodging, including the basis of this conclusion.

c. If Defendant determines that a sprinkler system is required at the St. Gabriel Facility, it shall install a sprinkler system which shall be operational no later than twenty-four months after the Date of Lodging. Defendant shall submit to EPA a certification that such system has been installed and is operational no later twenty-four months after the Date of Lodging.

Exhibit 1: Table of Industry Practices, Standards and Guidelines

Standard	Title/Edition
SFPE/NFPA	4 th Edition, 2008
NFPA 1	Fire Code, 2015 Edition
NFPA 13	Standard for Installation of Sprinkler Systems, 2016 Edition
NFPA 30	Flammable and Combustible Liquids Code, 2015 Edition
NFPA 70	National Electric Code, 2017 Edition
NFPA 70B	Recommended Practice for Electrical Equipment Maintenance, 2016 Edition
NFPA 77	Recommended Practice on Static Electricity, 2014 Edition
NFPA 79	Electrical Standards for Industrial Machinery, 2015 Edition
NFPA 91	Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists and Particulate Solids, 2015 Edition
NFPA 101	Life Safety Code, 2015 Edition
NFPA 5000	Building Construction and Safety Code, 2015 Edition
API 570	Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems, 3 rd Edition, 2009
API 653	Tank Inspection, Repair, Alteration and Reconstruction, 5 th Edition, 2014
API 2000	Venting Atmospheric and Low-Pressure Storage Tanks, 5 th Edition, 1998
ASME Section VIII	Boiler and Pressure Vessel Code, Division 1, 2013 Edition
API RP 579 1/ASME FFS-1	Fit for Service, 2 nd Edition, 2007
UL 913	Class 1 Flammable Gases, Vapors and Liquids
UL 1203	Standard for Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 142	Standard for Safety for Steel Aboveground Tanks for Flammable and Combustible Liquids, 9 th Edition, 2006
ASME B31.3	Process Piping, 2014 Edition
ICC – IFC	2015
ICC – IBC	2015
Electrical Ignitions of Fires and Explosions Thomas H. Pratt	1997

CCPS Guidelines for Safe Warehousing for Chemicals	1998
Inerting Systems (White Paper)	2010
ACGIH Industrial Ventilation Manual 28 th Edition	40 CFR 63.2984; 63.3003
Pamphlet 17	Packaging Plant Safety and Operational Guidelines, 4 th Edition – Revision 2, 2011
Chlorine	
Properties of Chlorine	29 CFR 1910.119 d
Chlorine Safety in Industry	ERI Safety
Preventing Chlorine Gas Accidents	Issue of Occupational Health and Safety, May 1, 2005
Chlorine National Center for Environmental Assessment 1999	Integrated Risk Information Systems
Pamphlet 1	Chlorine Basics, 8 th Edition, 2014
Pamphlet 6	Piping Systems for Dry Chlorine, 16 th Edition, 2013
Pamphlet 5	Bulk Storage of Liquid Chlorine, 8 th Edition, 2011
Pamphlet 64	Emergency Response Plans for Chlor-Alkali, Sodium Hypochlorite, and Hydrogen Chloride Facilities, 7 th Edition, 2014
Pamphlet 76	Guidelines for the Safe Motor Vehicular Transportation of Chlorine Cylinders and Ton Containers, 5 th Edition, 2012
Pamphlet 91	Checklist for Chlorine Packaging Plants, Chlorine Distributors, and Tank Car Users of Chlorine, 4 th Edition, 2014
Pamphlet 57	Emergency Shut-Off Systems for Bulk Transfer of Chlorine, 6 th Edition, 2015
Pamphlet 65	Personnel Protective Equipment for Chlor-Alkali Chemicals, 6 th Edition, 2015
Ammonia	
National Emphasis Program for Ammonia	DOSH Directive Nov 5, 2013
ANSI K61.1/ CGA G-2.1	Safety Requirements for the Storage and Handling of Anhydrous Ammonia, 2014 Edition
OSHA 1910.111	Storage and Handling of Anhydrous Ammonia
Sulfur Dioxide Cylinders	
CGA	Sulfur Dioxide, Publication G-3, 1995
Hydro Instruments	Sulfur Dioxide Handling Manual, SO2-001, 2013
Emergency Response Planning, Guidance and Workplace	American Industrial Hygiene Administration

Environmental Exposure Level Guides Handbook	
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APPENDIX B

APPENDIX B - SUPPLEMENTAL ENVIRONMENTAL PROJECT

Pursuant to the Risk Management Program and General Duty Clause under the Clean Air Act, regulated facilities are required to comply with applicable industry codes and standards. At many of its locations, Harcos currently has water-based sprinkler systems which are required pursuant to National Fire Protection Association codes and standards, including NFPA 13. Harcos shall install aqueous film-forming foam (AFFF) fire suppression systems not currently required under the applicable codes and standards, and therefore not otherwise required under law.

The enhanced fire suppression capabilities of an AFFF fire suppression system are expected to minimize the impacts of a fire by enhancing the speed and effectiveness of the facility's ability to extinguish the flames, thus reducing the chance of a fire spreading, of vessel failure due to melting/rupturing, and of the spread of released chemicals in sprinkler and/or fire water.

As set forth herein Defendant Harcos shall purchase, install, and implement an AFFF concentrate fire suppression system at eight existing Harcos facilities that store flammable or combustible liquids, as provided below.

Project Description

Harcos shall install an aqueous film-forming foam (AFFF) fire suppression system at the eight facilities listed below. AFFF foam fire suppression systems extinguish hydrocarbon flammable liquid fires by forming an aqueous film on the surface of the flammable liquid by the AFFF foam solution as it drains from the foam blanket. The film floats on the surface of most hydrocarbon fuels, speeding fire control and knockdown when used on a typical hydrocarbon spill fire.

The AFFF fire suppression system includes (*see* Figure 2):

- Foam;
- Foam Bladder;
- Associated valves and piping.

The AFFF fire suppression system shall be installed at the following eight facilities:

Dallas, Texas; 2627 Weir Street
 Dalton, Georgia; 3452 Corporate Drive
 Kansas City, Kansas; 5200 Speaker Road
 Memphis, Tennessee; 1580 Harbor Ave.
 Memphis, Tennessee; 555 Rivergate Road
 Pasadena, Texas; 4606 New W. Drive (or Houston-area facility)
 St. Louis, Missouri; 4330 Geraldine Avenue
 Thomasville, NC; 125 Sedgehill Drive

Harcros has provided engineering estimates for installing AFFF fire suppression systems at the selected facilities based upon a quote of \$281,330 for installation at the Shreveport facility. Based upon this quote, Harcros estimates a cost range of \$200,000 for smaller facilities to \$500,000 for the Kansas City, Kansas facility, with a total cost estimate of approximately \$2,500,000 for completing this project.

Project Component Deadlines

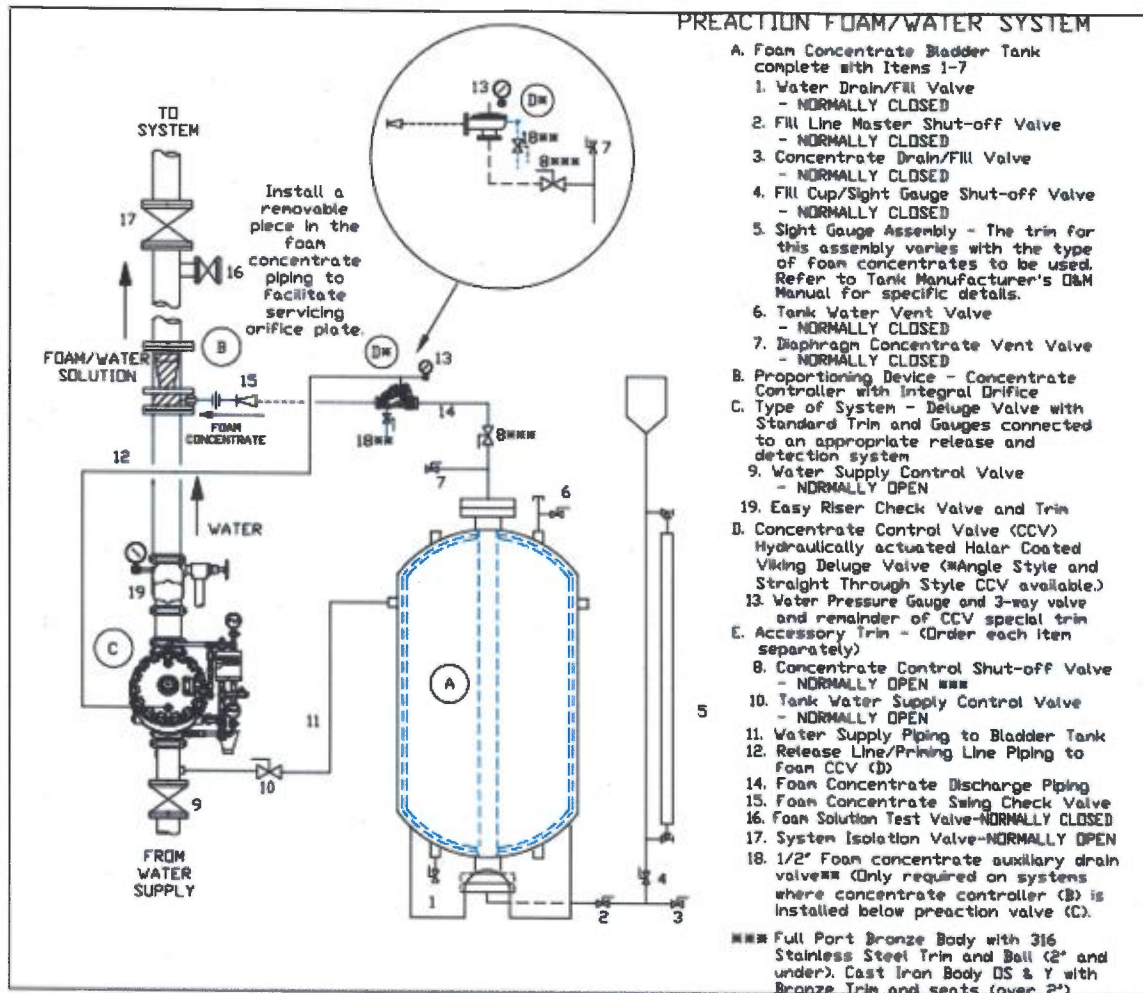
Harcros shall complete installation of the AFFF fire suppression system according to the following schedule.

Compliance Deadline	Total Number of AFFF systems installed	Facility
March 31, 2018	1	Memphis (Rivergate.)
June 30, 2018	3	Kansas City Memphis (Harbor)
December 31, 2018	5	Thomasville Dalton (Warehouse only)
December 31, 2019	8	Dallas Pasadena (or Houston-area facility) St. Louis

Harcros will initiate design activities for the AFFF system at the Kansas City, Kansas, facility on or before 60 days after Lodging of the Consent Decree and commence construction on or before March 31, 2018, with installation to be complete as soon as feasible based on the design briefs and vendor availability, but in no case later than June 30, 2018.

By the compliance deadlines in the table above, Harcros shall commence operations and thereafter continuously operate and maintain the AFFF fire suppression system at each facility for a period of at least five years. Figure 2 is provided for illustrative purposes as a depiction of a foam system.

Figure 2.



Preaction Bladder Tank Foam-Water System